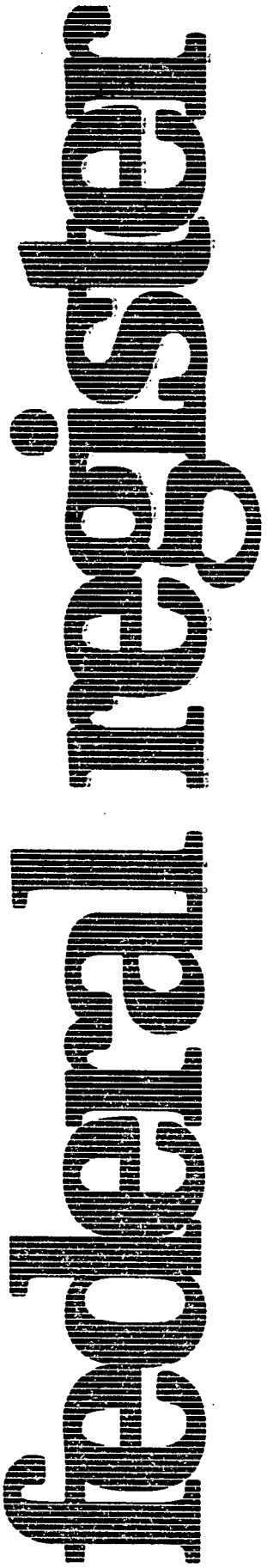
11-20-90
Vol. 55 No. 224
Pages 48215-48590



Tuesday
November 20, 1990

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and Atlanta, GA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 55 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: November 27, 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

ATLANTA, GA

WHEN: December 12, at 9:00 a.m.
WHERE: Summit Building, 401 W. Peachtree Street, 19th Floor Conference Room, Atlanta, GA.
RESERVATIONS: 1-800-347-1997.

Contents

Federal Register

Vol. 55, No. 224

Tuesday, November 20, 1990

Agricultural Marketing Service
PROPOSED RULES
Cotton research and promotion:
Cotton Board assessments; interest and late payment charges and publication of names, 48242

Agriculture Department
See also Agricultural Marketing Service; Forest Service
NOTICES
Committees; establishment, renewal, termination, etc.:
National Plant Genetic Resources Board, 48264

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 48271

Centers for Disease Control
NOTICES
Passenger cruise ships; sanitation inspection:
Fee collection; correction, 48322

Coast Guard
RULES
Drawbridge operations:
Florida, 48232
Virginia, 48232
Regattas and marine parades:
Holiday in the City Boat Parade and Fireworks Display, 48231
PROPOSED RULES
Anchorage regulations:
Lower Mississippi River, 48244

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 48268
Thailand, 48269, 48270
(2 documents)

Conservation and Renewable Energy Office
RULES
Energy conservation:
Federal energy management and planning programs; life cycle cost methodology and procedures, 48217

Defense Department
See also Air Force Department
RULES
Freedom of Information Act; implementation
Correction, 48231
NOTICES
Meetings:
Wage Committee, 48271

Education Department
PROPOSED RULES
Postsecondary education:
Guaranteed student loan and PLUS programs, 48324
NOTICES
Meetings:
National Assessment Governing Board, 48271

Employment and Training Administration
NOTICES
Adjustment assistance:
Cluett Shirt Group, 48303
Halstead Industries, Inc., 48303
Land & Marine Rental Co., 48304
Ormed Manufacturing, Inc., 48304
Federal-State unemployment compensation program:
Revenue quality control program design materials; availability, 48304

Energy Department
See also Conservation and Renewable Energy Office; Energy Information Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Atomic energy agreements; subsequent arrangements, 48272

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 48272

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Asbestos, 48406
Air programs; State authority delegations:
Tennessee, 48233
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Rhode Island, 48246
Hazardous waste:
Identification and listing—
Exclusions, 48248
NOTICES
Grants and cooperative agreements; availability, etc.:
Exploratory research, 48287
Meetings:
National Drinking Water Advisory Council, 48287
Science Advisory Board, 48287

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 48321

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 48255, 48226, 48228
(3 documents)

Airworthiness standards:
Special conditions—
Dornier SEASTAR model CD2 series airplanes, 48223
PROPOSED RULES
Airworthiness directives:
Boeing, 48243
NOTICES
Exemption petitions; summary and disposition, 48317

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 48239
Iowa, 48239
Louisiana, 48239
North Carolina, 48240
North Dakota, 48240
Oklahoma, 48241
PROPOSED RULES
Radio broadcasting:
Broadcast auxiliary services and cable television relay service; congested areas, definition, 48260
Radio stations; table of assignments:
Maine, 48257
Minnesota, 48257
Ohio, 48258
Texas, 48258, 48259
(2 documents)
Wisconsin, 48259
NOTICES
Agency information collection activities under OMB review, 48288

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Colorado et al., 48238
New York et al., 48235
Texas et al., 48234
PROPOSED RULES
Flood elevation determinations:
Texas; correction, 48257
NOTICES
Agency information collection activities under OMB review, 48288

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Potomac Electric Power Co. et al., 48273
Natural gas certificate filings:
Algonquin Gas Transmission Co. et al., 48274
Applications, hearings, determinations, etc.:
El Paso Natural Gas Co., 48283
Florida Gas Transmission Co., 48284
Texas Eastern Transmission Corp., 48284
Texas Gas Transmission Corp., 48284

Federal Maritime Commission
NOTICES
Agreements filed, etc., 48289
Casualty and nonperformance certificates:
Epirotiki Lines, Inc., et al., 48289

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 48321
Applications, hearings, determinations, etc.:
Dai-Ichi Kangyo Bank, Ltd., 48289

Federal Trade Commission
RULES
Appliances, consumer; energy costs and consumption information in labeling and advertising:
Comparability ranges—
Refrigerators, refrigerator-freezers, and freezers; correction, 48229

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Fenbendazole, 48230
Medical devices:
Electromedical devices; classification, 48436
NOTICES
Biological product licenses:
American Red Cross Blood Services, Northeastern Region, Albany, NY; correction, 48291
Biological products:
Computer assisted submissions for license applications; biologic product and establishment; points to consider document availability, 48291
Food additive petitions:
Mobay Corp., 48292
Food for human consumption:
Identity standards deviation; market testing permits—
Eggnog, light, 48291, 48292
(2 documents)
Human drugs:
Patent extension; regulatory review period determinations—
Dipentum, 48293
Interceptor; correction, 48294
Medical devices:
Class III devices subject to 515(b) requirements; compliance policy guide availability, 48294

Foreign-Trade Zones Board
PROPOSED RULES
Foreign-trade zones in United States, 48446

Forest Service
RULES
National Forest System timber; sale and disposal:
Log export and substitution restrictions, 48572
NOTICES
Environmental statements; availability, etc.:
Rio Grande National Forest, CO, 48264
Six Rivers National Forest, CA; correction, 48264

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Human Development Services Office; Public Health Service

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 48284
Decisions and orders, 48285

Human Development Services Office
NOTICES
Agency information collection activities under OMB review, 48294

Interior Department
See Land Management Bureau; National Park Service

International Trade Administration
NOTICES
Antidumping:
Large power transformers from Japan, 48265
Short supply determinations:
Steel plate, 48266

International Trade Commission
NOTICES
Import investigations:
Gene amplification thermal cyclers and subassemblies from United Kingdom, 48302

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Burlington Northern Railroad Co., 48303

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Utah, 48299

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Serendipity Mining, Inc., 48305

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Child restraint systems and seat belt assemblies; bilingual instructions; petition denied, 48262
Motor vehicles safety standards:
Door locks and door retention components; petition denied, 48261

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Marine mammals, 48267
(2 documents)
Marine mammals; correction, 48267

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 48300
Chesapeake and Ohio Canal National Historical Park Commission, 48300
National Register of Historic Places:
Pending nominations, 48300

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Uranerz U.S.A., Inc., 48305
Meetings:
Reactor Safeguards Advisory Committee, 48305, 48306
(4 documents)
Meetings; Sunshine Act, 48321
Regulatory guides; issuance, availability, and withdrawal, 48307

Presidential Documents
PROCLAMATIONS
Special observances:
Federation of the Blind Day, National (Proc. 6232), 48215
Military Families Recognition Day, National (Proc. 6233), 48585
EXECUTIVE ORDERS
Chemical and biological weapons proliferation; international negotiations and imposition of U.S. controls (EO 12735), 48587

Public Health Service
See also Centers for Disease Control; Food and Drug Administration
NOTICES
Agency information collection activities under OMB review, 48454
Organization, functions, and authority delegations:
Health Resources and Services Administration, 48295

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 48307, 48308
(2 documents)
Applications, hearings, determinations, etc.:
Christiana Bank og Kreditkasse, 48314
Consolidated TVX Mining Corp., 48312
Electronic Medical Management, Inc., 48315
Public utility holding company filings, 48309
Rodney Square Multi-Manager Fund et al., 48315
Sanifill, Inc., 48317

State Department
NOTICES
Meetings:
Historical Diplomatic Documentation Advisory Committee, 48317
International Telegraph and Telephone Consultative Committee, 48317

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 48318
Cost-of-living adjustments and headstone or marker allowance rate, 48318
Medical care reimbursement rates; 1991 FY, 48320

Separate Parts In This Issue

Part II
Department of Education, 48324

Part III
Environmental Protection Agency, 48406

Part IV
Department of Health and Human Services, Food and Drug Administration, 48436

Part V
Department of Commerce, Foreign-Trade Zones Board, 48446

Part VI
Department of Health and Human Services, Public Health Service, 48454

Part VII
Department of Agriculture, Forest Service, 48572

Part VIII
The President, 48585

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
6232 48215
6233 48585

Executive Orders:
12735 48587

7 CFR

Proposed Rules:
1205 48242

10 CFR
436 48217

14 CFR
21 48223
23 48223
39 (3 documents) 48225–48228

Proposed Rules:
39 48243

15 CFR

Proposed Rules:
400 48446

16 CFR
305 48229

21 CFR
558 48230
872 48436
874 48436
878 48436
884 48436
886 48436
888 48436
892 48436

32 CFR
286 48231

33 CFR
100 48231
117 (2 documents) 48232

Proposed Rules:
110 48244

34 CFR

Proposed Rules:
682 48324

36 CFR
223 48572

40 CFR
60 48233
61 (2 documents) 48233, 48406

Proposed Rules:
52 48246
261 48248

44 CFR
64 (3 documents) 48234–48238

Proposed Rules:
67 48257

47 CFR
73 (6 documents) 48239–48241

Proposed Rules:
73 (6 documents) 48257–48259
74 48260

49 CFR

Proposed Rules:
552 48261
571 48262

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 1990

Presidential Documents

Title 3—

The President

Proclamation 6232 of November 15, 1990

National Federation of the Blind Day, 1990

By the President of the United States of America

A Proclamation

Since its founding half a century ago, the National Federation of the Blind has been a leading advocate for Americans affected by severe visual loss. Its administrators, staff, and supporters know that persons who are blind possess not only the desire but also the ability to lead full, independent, and productive lives, and they have encouraged all Americans to recognize this fact as well.

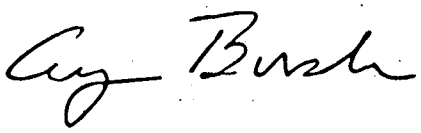
Through an effective community outreach program, the Federation has been working to enhance the public image of blind Americans and to promote real equality of opportunity for these members of our society. This outreach program includes television and radio appearances by Federation members, public presentations, and the distribution of educational materials. In addition, the Federation produces monthly and quarterly publications that serve as a valuable source of news and information on issues affecting Americans with impaired eyesight.

If the United States is to remain a strong and prosperous country, one that is competitive in the rapidly changing global marketplace, we must utilize the talent, creativity, and skill of all our citizens. Helping more blind Americans to enter this country's social and economic mainstream is, therefore, not only a moral imperative but also a wise investment in our Nation's future. On July 26, I was pleased to sign into law the Americans with Disabilities Act of 1990. The world's first comprehensive declaration of equality for persons with disabilities, this legislation prohibits employers covered by the Act from discriminating against qualified applicants or employees on the basis of a disability; it guarantees persons with disabilities access to public accommodations, such as offices, hotels, and shopping centers; and it calls for improved access to transportation, State and local government services, and telecommunications as well. This legislation—like the efforts of the National Federation of the Blind—reflects our commitment to ensuring equality of opportunity for all Americans.

In recognition of the Federation and its outstanding work, the Congress, by House Joint Resolution 667, has designated November 16, 1990, as "National Federation of the Blind Day" and has authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 16, 1990, as National Federation of the Blind Day. I encourage all Americans to observe this day through appropriate programs and activities that reaffirm our appreciation of the rights needs, and abilities of persons who are blind.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-27445
Filed 11-16-90; 2:30 pm]
Billing code 3195-01-M.

Rules and Regulations

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 436

[Docket No. CAS-RM-79-107]

Federal Energy Management and Planning Programs; Life Cycle Cost Methodology and Procedures

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Energy today gives notice of final amendments to 10 CFR part 436 to update the guidelines applicable to Federal agency in-house energy management programs. The principal purpose of this rulemaking is to make changes in the guidelines to conform to the provisions of the Federal Energy Management Improvement Act of 1988 (Pub. L. 100-615). The changes made final today mainly involve amendments to the life cycle cost methodology and procedures to provide for an annually determined, market-based discount rate and for a more effective system to revise annually the energy cost escalation rates Federal agencies are required to assume.

EFFECTIVE DATE: December 20, 1990.

FOR FURTHER INFORMATION CONTACT:
K. Dean DeVine, P.E., Federal Energy Management Program, CE-44, Office of Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6784.
Neal J. Strauss, Office of General Counsel, Conservation and Regulations, GC-12, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE) today publishes final amendments to some of the rules in 10 CFR part 436 which are applicable to programs for the management of energy consumption by Federal agencies. The amendments are directed principally toward updating the life cycle cost methodology and procedures in subpart A of 10 CFR part 436 in light of provisions in the Federal Energy Management Improvement Act of 1988 (FEMIA) granting DOE more discretion in setting discount and energy cost escalation rates, and of ten years of experience under the existing rule (Pub. L. 100-615). These amendments will promote improved energy cost efficiency in: (1) The design of new Federal buildings, and the application of energy conservation measures to existing Federal buildings, (2) leasing of buildings for Federal use, and (3) construction of buildings, structures and facilities in all segments of the economy. Secondarily, the amendments also are designed to make necessary revisions to other subparts of part 436 to take account of the execution of some provisions of section 10 of Executive Order 11912, as amended by Executive Order 12003, 42 FR 37523 (July 20, 1977) related to Fiscal Year 1985 building energy reduction goals and the expiration of part II of title V of the National Energy Conservation Policy Act (NECPA), Public Law 95-619, which provided for the Solar in Federal Buildings Demonstration Program.

The proposed version of today's amendments was noticed for public comment at 55 FR 2590 (January 25, 1990). Further details with regard to the background of this rulemaking may be found in the supplementary information portion of the January 25 notice of proposed rulemaking.

DOE received one comment from the Natural Resources Defense Council (NRDC) which is addressed in detail below. Except for the changes made in response to the NRDC comment, and one technical change to § 436.10, Purpose, there are no substantial differences between the proposed and final amendments.

The proposed version of today's amendments stated that the purpose of the life cycle costing methodology is attainment of the 10 percent Btu per gross square foot 1995 reduction goal. That statement was too narrow. As a technical change to conform the rule more precisely to NECPA's stated purpose for the life cycle costing methodology as revised by FEMIA (Pub. L. 100-615), DOE has revised § 436.10 to state that the purpose of subpart A is to provide the life cycle cost methods and procedures to be used for the design of new Federal buildings and the application of energy conservation measures to existing buildings. 42 U.S.C. 8254(b).

In developing the amendments which are finalized today, DOE actively consulted with the Office of Management and Budget (OMB), the Department of Defense (DOD), and the General Services Administration (GSA). DOE received substantial assistance from the National Institute of Standards and Technology (NIST).

II. Discussion of Comments

A. Discount Rate Selection Method

In general, the NRDC agrees with DOE that measuring the interest rate on U.S. Treasury bonds and removing the effects of inflation is the appropriate procedure for setting a market-based discount rate to be used in performing life cycle cost analyses for purposes of estimating and comparing the cost effects of investing in greater energy efficiency in Federal buildings. However, for a variety of reasons, the NRDC takes issue with the proposed use of the inflation projections of the President's Council of Economic Advisers, arguing instead for use of long-term averages of past rates of inflation. The NRDC also criticizes the use of current market interest rates for long-term U.S. Treasury bonds and argues instead for historic averages of long-term U.S. Treasury bond rates. The NRDC expressed concern about a potential for extreme fluctuations which might result in some energy conservation measures being included one quarter and others with the same characteristics being excluded the very next quarter. Finally, the NRDC contends that long-term real discount rates are desirable because they tend to offset a bias toward supply-side resources resulting from the effects of taxes and inflation.

Inflation Projections v. Long-Term Averages of Past Inflation Rates

The NRDC's chief objections to the proposed use of the inflation projections of the President's Council of Economic Advisers are that: (1) Inflation may not be the same as projected; and (2) the projections are biased toward the "lower end of the credible range of inflation." NRDC Comment, p. 3. Their chief arguments in favor of using long-term averages of past inflation rates are: (1) Greater reliability; (2) variations in inflation are not important unless they persist over a long period of time; and (3) greater objectivity.

While the inflation projections of the President's Council of Economic Advisers may not be precisely predictive of the actual rate of inflation for any given year, long-term averages of past inflation rates are not infallibly predictive either. Long-term averages of past rates are insensitive to changes in current market conditions. Consequently, from time to time, the discrepancy between the long-term average of past inflation rates and actual inflation for any given year is going to be larger, perhaps considerably larger, than the discrepancy between the inflation projections of the President's Council of Economic Advisers and actual inflation.

Although recognizing that such a discrepancy might occur from time to time, the NRDC downplays its significance, and argues that, over the long term, discrepancies of this nature will even out and the program as a whole will be cost effective over that term. It is unclear what the NRDC means precisely by long term. (At some points in its comments, the NRDC seems to argue in favor of a 50-year or even a 100-year time frame.) But even assuming for the sake of argument that the long term is 25 or 30 years, and accepting that long run averages are more objective because some subjective policy considerations are screened out, the danger of distortion over the short and intermediate term, stemming from rigid adherence to long run averages, is not worth incurring when, as the NRDC itself has pointed out, the inflation projections of the President's Council of Economic Advisers are within the "credible range of inflation."

In general, if market conditions change significantly, those changes should be reflected to a reasonable extent in the results of life cycle cost analyses conducted by Federal agencies. Use of the inflation projections of the President's Council of Economic Advisers rather than long run averages of past rates is consistent with that policy preference.

Avoidance of Extreme Fluctuations

In arguing against reliance on current market interest rates for long-term U.S. Treasury bonds and projected inflation rates, the NRDC contends that such reliance could result in inappropriate quarterly changes in the list of energy conservation measures which are cost-justified. This contention apparently reflects a misreading of the Notice of Proposed Rulemaking. As proposed, the discount rate would be established at the beginning of each fiscal year and would not change over the year. Consequently, there would be no quarterly variations.

Nevertheless, the NRDC comment caused DOE to reexamine the proposed rule to determine whether additional modifications were warranted to avoid extreme fluctuations on a year-to-year basis. While DOE wants the real discount rate to be responsive to market conditions; DOE agrees with the NRDC that extreme fluctuations would be disruptive.

To avoid such fluctuations, DOE has modified the proposed rule to lengthen the period of time over which long-term U.S. Treasury bond rates are to be averaged from the most recent three months, prior to the cut-off date for preparing the annual supplement to the Life Cycle Cost Manual for the Federal Energy Management Program (NIST 85-3273), to the entire year preceding. The effect of this modification will be to avoid seasonal fluctuations in the current long-term bond rate.

As a further modification to avoid extreme fluctuations, DOE has altered the proposed rule to provide for a ceiling and a floor on the real discount rate. In the Notice of Proposed Rulemaking, DOE described an adjustment procedure to account for the fact that the Council of Economic Advisors inflation projection is for a five-year period, while the U.S. Treasury bond maturity is 10 years and longer. DOE today modifies the proposed rule by imposing a ceiling set at the real discount rate prescribed by the Office of Management and Budget in its Circular A-94, "Discount Rates to be Used in Evaluating Time-Distributed Costs and Benefits." The effect of this ceiling would be to avoid a discount rate for energy efficiency and renewable energy projects higher than the discount rate applicable to most other capital-intensive Federal projects. The floor is at 3 percent (real), the approximate average of long-term real rates of return in the U.S. The effect of this floor is to avoid negligible or negative discount rates.

Offsetting the Alleged Bias for Supply-Side Resources

In arguing for use of long-term real discount rates, the NRDC points out that one of the effects of using such rates is to counteract the alleged bias in favor of supply technologies with high capital costs, such as nuclear power and offshore oil drilling. This alleged bias is reflected in relatively low implicit discount rates for such projects which are cited by the NRDC but for which no source is given. Although the NRDC does not explain precisely what accounts for the relatively low implicit discount rates, part of the explanation seems to be tax policies to which the NRDC objects.

For a variety of reasons, DOE does not think that the alleged bias to which the NRDC points is a persuasive reason for using long-term averages of past real discount rates. First, setting a real discount rate involves accounting for the time value of money, and the alleged bias is irrelevant to that task. Second, DOE does not think that it is appropriate to use the discretion given by Congress to set a discount rate in order to counteract tax policy that has been enacted into law. Third, it is very unlikely that any investment decision in the Federal Energy Management Program, as currently authorized, will involve a proposal or proposals to which the alleged bias would apply.

B. Study Period

The NRDC criticizes the 25-year limit on analysis period on the ground that it is arbitrary to limit the life of buildings for purposes of analysis to 25 years. This criticism ignores section 544(a)(1) of NECPA which compels DOE to use 25 years as the outside limit on the analysis period. DOE also doubts the desirability of extending the period from 25 to 50 or more years, as the NRDC recommends, because: (1) There is no reliable method of forecasting energy price escalation beyond 25 years; (2) estimates of cash flows that far out in time are likely to be too speculative; and (3) the effect of discounting makes estimated cash flows beyond 25 years relatively insignificant.

C. Presumptions

The NRDC also argues for modification of the provisions of 10 CFR 436.13(b) which provides, in certain circumstances, that a Federal agency may presume that an investment in an energy conservation measure to retrofit a Federal building would not be life cycle cost effective if the building is

occupied under a short-term lease or if it is scheduled for demolition or retirement from service within three years. The NRDC contends that the provisions in question are too broad because many retrofits pay back in one year or less. DOE agrees and in today's notice modifies 10 CFR 436.13 (b)(1) and (b)(3) by narrowing the scope of the permissible presumption. Under the modified provisions, the presumption could be applied only if the remaining time period with respect to a short-term lease or with respect to an owned building scheduled for demolition or retirement from service is one year or less.

D. External Cost Effects

The NRDC insists that DOE include the external benefits of saving energy in the life cycle cost methodology. Among the external benefits the NRDC seems to think should be included are enhanced national security from oil import avoidance and reduced air pollution from compounds of sulfur and oxygen and of nitrogen and oxygen, as well as from "global greenhouse gas emissions."

No specifics are offered by the NRDC as to how to attach a dollar value to these external benefits. NRDC also did not comment with regard to the proposed revision of 10 CFR 436.14(f) to delete the requirement for Federal agencies to assume for purposes of a life cycle cost analysis that investment costs are 90 percent of actual investment costs. That requirement was an adjustment to reflect external cost benefits, and was originally modeled on the 10 percent Federal energy tax credit which has expired. See 45 FR 5620, 5621 (January 23, 1980).

In arguing for inclusion of external benefits, the NRDC referred to what it described as "the clear purpose of the Energy Policy and Conservation Act **** to reduce energy consumption below the levels that were being provided by market forces." The NRDC concluded: "The clear economic concept behind such a goal is that energy has a societal value in excess of its market value." Neither the text of the Energy Policy and Conservation Act (Pub. L. 94–385) nor any authoritative portion of its legislative history is cited in support of these assertions generally or with respect to life cycle cost analyses in particular. NRDC Comment, p. 9.

Historically, part of the authority for subpart A of 10 CFR part 436 has been section 381 of the Energy Policy and Conservation Act, 42 U.S.C. 6361, as implemented by Executive Order 11912, as amended. However, neither section 381 nor its specific legislative history supports the NRDC assertions. The principal authority for Subpart A has been and continues to be NECPA, and the text and related legislative history of NECPA (discussed below) are the relevant indications of legislative intent with regard to particular issues regarding the life cycle cost methodology and procedures including the issue of accounting for external benefits.

The NRDC also referred to "numerous policy statements over the last seventeen years," as well as programs and tax law provisions allegedly aimed at reducing oil imports. Based on those alleged statements, programs, and provisions of law, the NRDC argues in substance that maintenance of consistency and credibility in national energy policy warrants inclusion of external benefits in the life cycle cost methodology for Federal buildings. While the NRDC is specific in identifying some of the programs (*e.g.*, the Strategic Petroleum Reserve) and the tax law provisions (tax incentives for oil exploration or extraction) on which it relies, there is no specific reference to any particular policy statement.

Given that the Federal Energy Management Program involves public expenditures which have benefits in reducing the need for expenditures in other programs, DOE has always been receptive to the idea of including external benefits in the life cycle cost methodology and procedures so long as the method for doing so met the statutory requirement (now set forth in section 544(a)(1) of NECPA) of being "practical and effective." See also section 545(a)(1) of Public Law 95–619. This first attempt to include external benefits was the 10 percent off of actual investment costs reflected in 10 CFR 436.14(f).

The basis for the 10 percent credit reflected in the investment cost assumption required by 10 CFR 436.14(f), and deleted today, was always somewhat slender, and it eroded substantially with the expiration of energy tax credits in 1985. Moreover, that assumption appears to have contributed to a lack of credibility for the life cycle cost analysis results with some officials of the Executive Branch involved in formulating the President's annual budget request and with some Senators and Representatives on appropriating committees who want measures of cost effectiveness which substantially reflect the estimated cost effects over relevant time periods that are readily measurable in dollars. Including a measure of external cost effects, which at best was a rough approximation, without much empirical basis, seems to have contributed to a tendency to disregard the raw data results of life cycle cost analyses under 10 CFR part 436 in the energy policy decisions that really count, the decisions to seek and to provide budgetary resources for investments in increased energy efficiency.

In 1980, apparently dissatisfied with DOE efforts to resolve several issues with regard to the life cycle cost methodology and procedures, such as a procedure for estimating external benefits, more appropriate than the procedure in 10 CFR 436.14(b), Congress passed the Energy Security Act (Public Law 96–294). Section 405 of that Act amended NECPA to specify that, in establishing life cycle cost methods, the Secretary must use "marginal fuel costs." That term was not defined in the statute, but the Joint Explanatory Statement of the Committee of Conference said: "The Conferees intend that 'marginal fuel costs' are the marginal costs which a customer would pay for fuel or energy available in the region of the country where the Federal building is located." 1980 U.S. Code Congressional and Administrative News, 2077, 2171.

During the 1980's, DOE sought to comply with the above-quoted Congressional guidance which was interpreted as the legislatively preferred approach for inclusion of external benefits in the life cycle cost methodology. At the outset, by an advance notice of proposed rulemaking, DOE invited the public to respond to some tentative thinking by DOE's Energy Information Administration about setting marginal fuel costs including an oil import premium, and to make suggestions as how to proceed toward a notice of proposed rulemaking. 45 FR 66620 (October 7, 1980). DOE did not receive any useful public response to that advance notice. Repeated efforts to develop a notice of proposed rulemaking failed because DOE was unable to develop marginal price projections which appeared rational and had a sufficient rational basis to warrant proposal for public comment.

As indicated above, experience with the budget and appropriation process revealed that within the Executive Branch and the Congress the life cycle cost results produced in accordance with DOE's existing methodology were diluted or disregarded. The credibility of those results became an increasingly serious policy concern for DOE and the other Federal agencies. That concern, together with the problems encountered in projecting marginal fuel costs, led to the conclusion that reflecting external benefits in the life cycle cost

methodology was neither "practical" nor "effective". Accordingly, the Administration did not object to statutory amendments to NECPA in FEMIA substituting a requirement for use of average fuel costs for the previous requirement for marginal fuel costs.

While the change in law does not necessarily bar inclusion of external benefits in the life cycle cost methodology and procedures in some form other than marginal fuel costs, it does suggest that the inclusion of such benefits is not mandatory. In the absence of any credible way of projecting such benefits, DOE must reject the NRDC insistence that the methodology be amended to account for them. However, in rejecting the NRDC's viewpoint on external benefits, DOE is not saying that external benefits should not affect decisions related to the Federal Energy Management Program. Those kind of benefits should be taken into account, in addition to the results of life cycle cost analyses, in the formulation of a budget request, in legislating appropriations, and in the drafting of new laws which affect Federal energy consumption.

DOE believes that the methodology and procedures, as amended today, will yield life cycle cost analyses with results which will represent a more credible and compelling argument for greater investment in increased energy efficiency in the Federal sector than the analyses produced in the past.

III. Review Under Executive Order 12291

Today's regulatory amendments were reviewed under Executive Order 12291. DOE has concluded that the rule is not a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million of more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic export markets. In accordance with the requirements of Executive Order 12291, the notice has been reviewed by OMB.

IV. Review Under the Regulatory Flexibility Act

These regulatory amendments were reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601–612, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, *i.e.*, small businesses and small government jurisdictions. DOE has certified that these regulatory amendments will not have such an impact.

V. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interests of States and local governments and, if the effects are sufficiently substantial, preparation of a Federalism Assessment is required to assist senior policymakers. This rulemaking will not have any substantial direct effects on State and local governments. The final amendments will affect Federal agency buildings and operations regarding activities which are not subject to direct State regulation.

VI. Environmental Review

The life cycle costing methodology is used only to make decisions on the cost effective utilization of energy generally and on cost effective measures to reduce non-renewable energy consumption. DOE has determined that the incremental changes made in the methodology by today's rule are not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the final rule.

List of Subjects in 10 CFR Part 436

Energy conservation, Federal buildings and facilities, Renewable energy resources, Reporting and recordkeeping requirements.

Issued in Washington, DC, October 16, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

PART 436—[AMENDED]

10 CFR part 436 is amended as follows:

1. The authority citation for 10 CFR part 436 is revised to read as follows:

Authority: Energy Policy and Conservation Act, as amended, 42 U.S.C. 6361; Executive Order 11912, as amended, 42 FR 37523 (July 20, 1977); National Energy Conservation Policy Act, Title V, Part 3, as amended. 42 U.S.C. 8251–8261.

2. Sections 436.1 and 436.2 are revised to read as follows:

§ 436.1 Scope.

This part sets forth the rules for Federal energy management and planning programs to reduce Federal energy consumption and to promote life cycle cost effective investments in building energy systems and energy conservation measures for Federal building.

§ 436.2 General objectives.

The objectives of Federal energy management and planning programs are:

(a) To apply energy conservation measures to, and improve the design for construction of Federal buildings such that the energy consumption per gross square foot of Federal buildings in use during the fiscal year 1995 is at least 10 percent less than the energy consumption per gross square foot in 1985;

(b) To promote the methodology and procedures for conducting life cycle cost analyses of proposed investments in building energy systems and energy conservation measures; and

(c) To promote efficient use of energy in all agency operations through general operations plans.

3. 10 CFR part 436 is amended by revising subpart A as follows:

Subpart A—Methodology and Procedures for Life Cycle Cost Analyses

Sec.

436.10 Purpose.
436.11 Definitions.
436.12 Life cycle cost methodology.
436.13 Presuming cost-effectiveness results.
436.14 Methodological assumptions.
436.15 Formatting cost data.
436.16 Establishing non-fuel cost categories.
436.17 Establishing energy cost data.
436.18 Measuring cost-effectiveness.
436.19 Life cycle costs.
436.20 Net savings.
436.21 Savings-to-investment ratio.
436.22 Adjusted internal rate of return.
436.23 Estimated simple payback time.
436.24 Uncertainty analysis.

Subpart A—Methodology and Procedures for Life Cycle Cost Analyses

§ 436.10 Purpose.

This subpart establishes a methodology and procedures for estimating and comparing the life cycle costs of Federal buildings, for determining the life cycle cost effectiveness of energy conservation measures, and for rank ordering life cycle cost effective energy conservation measures in order to design a new Federal building or to retrofit an existing Federal building.

§ 436.11 Definitions.

As used in this subpart—

Base Year means the fiscal year in which a life cycle cost analysis is conducted.

Building energy system means an energy conservation measure or any portion of the structure of a building or any mechanical, electrical, or other functional system supporting the building, the nature or selection of which for a new building influences significantly the cost of energy consumed.

Component price means any variable sub-element of the total charge for a fuel or energy, including but not limited to such charges as "demand charges," "off-peak charges" and "seasonal charges."

Demand charge means that portion of the charge for electric service based upon the plant and equipment costs associated with supplying the electricity consumed.

DOE means Department of Energy.

Energy conservation measures means measures that are applied to an existing Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operation and maintenance efficiencies, or retrofit activities.

Federal agency means "agency" as defined by 5 U.S.C. 551(1).

Federal building means an energy conservation measure or any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy. Such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection.

Investment costs means the initial costs of design, engineering, purchase, construction, and installation exclusive of sunk costs.

Life Cycle Cost means the total cost of owning, operating and maintaining a building over its useful life (including its fuel, energy, labor, and replacement components), determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

Non-recurring costs means costs that are not uniformly incurred annually over the study period.

Non-fuel operation and maintenance costs means material and labor cost for routine upkeep, repair and operation exclusive of energy cost.

Recurring costs means future costs that are incurred uniformly and annually over the study period.

Replacement costs means future cost to replace a building energy system, energy conservation measure, or any component thereof.

Retrofit means installation of a building energy system alternative in an existing Federal building.

Salvage value means the value of any building energy system removed or replaced during the study period, or recovered through resale or remaining at the end of the study period.

Study period means the time period covered by a life cycle cost analysis.

Sunk costs means costs incurred prior to the time at which the life cycle cost analysis occurs.

Time-of-day rate means the charge for service during periods of the day based on the cost of supplying services during various times of the day.

§ 436.12 Life cycle cost methodology.

The life cycle cost methodology for this part is a systematic analysis of relevant costs, excluding sunk costs, over a study period, relating initial costs to future costs by the technique of discounting future costs to present values.

§ 436.13 Presuming cost-effectiveness results.

(a) If the investment and other costs for an energy conservation measure considered for retrofit to an existing Federal building or a building energy system considered for incorporation into a new building design are insignificant, a Federal agency may presume that such a system is life cycle cost-effective without further analysis.

(b) A Federal agency may presume that an investment in an energy conservation measure retrofit to an existing Federal building is not life cycle cost-effective if the Federal building is—

(1) Occupied under a short-term lease with a remaining term of one year or less, and without a renewal option or with a renewal option which is not likely to be exercised;

(2) Occupied under a lease which includes the cost of utilities in the rent and does not provide a pass through of energy savings to the government; or

(3) Scheduled to be demolished or retired from service within one year or less.

§ 436.14 Methodological assumptions.

(a) Each Federal Agency shall discount to present values the future cash flows established in either current or constant dollars consistent with the nominal or real discount rate, and related tables, published in the annual supplement to the Life Cycle Costing Manual for the Federal Energy Management Program (NIST 85–3273) and determined annually by DOE as follows—

(1) The nominal discount rate shall be a 12 month average of the composite yields of all outstanding U.S. Treasury bonds neither due nor callable in less than ten years, as most recently reported by the Federal Reserve Board; and

(2) Subject to a ceiling of 10 percent and a floor of three percent the real discount rate shall be a 12 month average of the composite yields of all outstanding U.S. Treasury bonds neither due nor callable in less than ten years, as most recently reported by the Federal Reserve Board, adjusted to exclude estimated increases in the general level of prices consistent with projections of inflation in the most recent Economic Report of the President's Council of Economic Advisors.

(b) Each Federal agency shall assume that energy prices will change at rates projected by DOE's Energy Information Administration and published by NIST annually no later than the beginning of the fiscal year in the Annual Supplement to the Life Cycle Costing Manual for the Federal Energy Management Program, in tables consistent with the discount rate determined by DOE under paragraph (a) of this section, except that—

(1) If the Federal agency is using component prices under § 436.14(c), that agency may use corresponding component escalation rates provided by the energy supplier.

(2) For Federal buildings in foreign countries, the Federal agency may use a "reasonable" escalation rate.

(c) Each Federal agency shall assume that the price of energy in the base year is the actual price charged for energy delivered to the Federal building and may use actual component prices as provided by the energy supplier.

(d) Each Federal agency shall assume that the appropriate study period is as follows:

(1) For evaluating and ranking alternative retrofits for an existing Federal building, the study period is the expected life of the retrofit, or 25 years from the beginning of beneficial use, whichever is shorter.

(2) For determining the life cycle costs or net savings of mutually exclusive alternatives for a given building energy system (e.g., alternative designs for a particular system or size of a new or retrofit building energy system), a uniform study period for all alternatives shall be assumed which is equal to—

(i) The estimated life of the mutually exclusive alternative having the longest life, not to exceed 25 years from the beginning of beneficial use with appropriate replacement and salvage values for each of the other alternatives; or

(ii) The lowest common multiple of the expected lives of the alternative, not to exceed 25 from the beginning of beneficial use with appropriate replacement and salvage values for each alternative.

(3) For evaluating alternative designs for a new Federal building, the study period extends from the base year through the expected life of the building or 25 years from the beginning of beneficial use, whichever is shorter.

(e) Each Federal agency shall assume that the expected life of any building energy system is the period of service without major renewal or overhaul, as estimated by a qualified engineer or architect, as appropriate, or any other reliable source except that the period of service of a building energy system shall not be deemed to exceed the expected life of the owned building, or the effective remaining term of the leased building (taking into account renewal options likely to be exercised).

(f) Each Federal agency may assume that investment costs are a lump sum occurring at the beginning of the base year, or may discount future investment costs to present value using the appropriate present worth factors under paragraph (a) of this section.

(g) Each Federal agency may assume that energy costs and non-fuel operation and maintenance costs begin to accrue at the beginning of the base year or when actually projected to occur.

(h) Each Federal agency may assume that costs occur in a lump sum at any time within the year in which they are incurred.

(i) This section shall not apply to calculations of estimated simple payback time under § 436.22 of this part.

§ 436.15 Formating cost data.

In establishing cost data under §§ 436.16 and 436.17 and measuring cost effectiveness by the modes of analysis described by § 436.19 through § 436.22, a format for accomplishing the analysis which includes all required input data and assumptions shall be used. Subject to § 436.18(b), Federal agencies are encouraged to use worksheets or computer software referenced in the Life Cycle Cost Manual for the Federal Energy Management Program.

§ 436.16 Establishing non-fuel cost categories.

(a) The relevant non-fuel cost categories are—

(1) Investment costs;

(2) Non-fuel operation and maintenance cost;

(3) Replacement cost; and

(4) Salvage value.

(b) The present value of recurring costs is the product of the base year value of recurring costs as multiplied by the appropriate uniform present worth factor under § 436.14, or as calculated by computer software indicated in § 436.18(b) and used with the official discount rate and escalation rate assumptions under § 436.14. When recurring costs begin to accrue at a later time, subtract the present value of recurring costs over the delay, calculated using the appropriate uniform present worth factor for the period of the delay, from the present value of recurring costs over the study period or, if using computer software, indicate a delayed beneficial occupancy date.

(c) The present value of non-recurring cost under § 436.16(a) is the product of the non-recurring costs as multiplied by appropriate single present worth factors under § 436.14 for the respective years in which the costs are expected to be incurred, or as calculated by computer software provided or approved by DOE and used with the official discount rate and escalation rate assumptions under § 436.14.

§ 436.17 Establishing energy cost data.

(a) Each Federal agency shall establish energy costs in the base year by multiplying the total units of energy used in the base year by the price per unit of energy in the base year as determined in accordance with § 436.14(c).

(b) When energy costs begin to accrue in the base year, the present value of energy costs over the study period is the product of energy costs in the base year as established under § 436.17(a), multiplied by the appropriate modified uniform present worth factor adjusted for energy price escalation for the applicable region, sector, fuel type, and study period consistent with § 436.14, or as calculated by computer software provided or approved by DOE and used with the official discount rate and escalation rate assumptions under § 436.14. When energy costs begin to accrue at a later time, subtract the present value of energy costs over the delay, calculated using the adjusted, modified uniform present worth factor for the period of delay, from the present value of energy costs over the study period or, if using computer software, indicate a delayed beneficial occupancy date.

§ 436.18 Measuring cost-effectiveness.

(a) In accordance with this section, each Federal agency shall measure cost-effectiveness by combining cost data established under §§ 436.16 and 436.17 in the appropriate mode of analysis as described in § 436.19 through § 436.22.

(b) Federal agencies performing LCC analysis on computers shall use either the Federal Buildings Life Cycle Costing (FBLCC) software provided by DOE or software consistent with this subpart.

(c) Replacement of a building energy system with an energy conservation measure by retrofit to an existing Federal building or by substitution in the design for a new Federal building shall be deemed cost-effective if—

(1) Life cycle costs, as described by § 436.19, are estimated to be lower; or

(2) Net savings, as described by § 436.20, are estimated to be positive; or

(3) The savings-to-investment ratio, as described by § 436.21, is estimated to be greater than one; or

(4) The adjusted internal rate of return, as described by § 436.22, is estimated to be greater than the discount rate as set by DOE.

(d) As a rough measure, each Federal agency may determine estimated simple payback time under § 436.23, which indicates whether a retrofit is likely to be cost-effective under one of the four calculation methods referenced in § 436.18(c). An energy conservation measure alternative is likely to be cost-effective if estimated payback time is significantly less than the useful life of that system, and of the Federal building in which it is to be installed.

(e) Mutually exclusive alternatives for a given building energy system, considered in determining such matters as the optimal size of a solar energy system, the optimal thickness of insulation, or the best choice of double-glazing or triple-glazing for windows, shall be compared and evaluated on the basis of life cycle costs or net savings over equivalent study periods. The alternative which is estimated to result in the lowest life cycle costs or the highest net savings shall be deemed the most cost-effective because it tends to minimize the life cycle cost of Federal building.

(f) When available appropriations will not permit all cost-effective energy conservation measures to be undertaken, they shall be ranked in descending order of their savings-to-investment ratios, or their adjusted internal rate of return, to establish priority. If available appropriations

cannot be fully exhausted for a fiscal year by taking all budgeted energy conservation measures according to their rank, the set of energy conservation measures that will maximize net savings for available appropriations should be selected.

(g) Alternative building designs for new Federal buildings shall be evaluated on the basis of life cycle costs. The alternative design which results in the lowest life cycle costs for a given new building shall be deemed the most cost-effective.

§ 436.19 Life cycle costs.

Life cycle costs are the sum of the present values of—

(a) Investment costs, less salvage values at the end of the study period;

(b) Non-fuel operation and maintenance costs;

(c) Replacement costs less salvage costs of replaced building systems; and

(d) Energy costs.

§ 436.20 Net savings.

For a retrofit project, net savings may be found by subtracting life cycle costs based on the proposed project from life cycle costs based on not having it. For a new building design, net savings is the difference between the life cycle costs of an alternative design and the life cycle costs of the basic design.

§ 436.21 Savings-to-investment ratio.

The savings-to-investment ratio is the ratio of the present value savings to the present value costs of an energy conservation measure. The numerator of the ratio is the present value of net savings in energy and non-fuel operation and maintenance costs attributable to the proposed energy conservation measure. The denominator of the ratio is the present value of the net increase in investment and replacement costs less salvage value attributable to the proposed energy conservation measure.

§ 436.22 Adjusted internal rate of return.

The adjusted internal rate of return is the overall rate of return on an energy conservation measure. It is calculated by subtracting 1 from the Nth root of the ratio of the terminal value of savings to the present value of costs, where N is the number of years in the study period. The numerator of the ratio is calculated by using the discount rate to compound forward to the end of the study period the yearly net savings in energy and non-fuel operation and maintenance costs attributable to the proposed energy conservation measure. The denominator of the ratio is the present value of the net increase in investment and replacement costs less salvage value attributable to the proposed energy conservation measure.

§ 436.23 Estimated simple payback time.

The estimated simple payback time is the number of years required for the cumulative value of energy cost savings less future non-fuel costs to equal the investment costs of the building energy system, without consideration of future price changes or discount rates.

§ 436.24 Uncertainty analyses.

If particular items of cost data or timing of cash flows are uncertain and are not fixed under § 436.14, Federal agencies may examine the impact of uncertainty on the calculation of life cycle cost effectiveness or the assignment of rank order by conducting additional analyses using any standard engineering economics method such as sensitivity and probabilistic analysis. If additional analysis casts substantial doubt on the life cycle cost analysis results, a Federal agency should consider obtaining more reliable data or eliminating the building energy system alternative.

Appendix A to Subpart A and Subparts B, C, and D [Reserved]

4. 10 CFR part 436 is further amended by removing appendix A to subpart A, and by removing and reserving subparts B, C and D.

§ 436.100 [Amended]

5. 10 CFR part 436 is further amended by removing the last two sentences of § 436.100(a) and by revising § 436.100 (b) to read:

* * * * *

(b) *Scope.* This subpart applies to all general operations of Federal agencies and is applicable to management of all energy used by Federal agencies that is excluded from coverage pursuant to section 543(a)(2) of part 3 of title V of the National Energy Conservation Policy Act, as amended (42 U.S.C. 8251–8261).

[FR Doc. 90–27313 Filed 11–19–90; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 061CE, Special Conditions No. 23–ACE–44A]

Special Conditions; Dornier SEASTAR Model CD2 Series Airplanes

AGENCY: Federal Aviation Administratioin (FAA), DOT.

ACTION: Final special conditions, amended.

SUMMARY: This rulemaking action amends final special conditions 23–ACE–44, for the Dornier SEASTAR Model CD2 series airplanes, which were published in the **Federal Register** October 25, 1989 (54 FR 43417). A notice proposing this amendment was published April 6, 1990 (55 FR 12857). These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards for airplanes to be type certificated in the commuter category. The novel and unusual design features include operation from water for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This amendment adopts additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

Type Certification Basis

The type certification basis for the Dornier SEASTAR Model CD2 series airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; part 23 of the FAR, effective February 1, 1965, as amended by amendments 23–1 through 23–34; Special Federal Aviation Regulation (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27–1 through 27–6; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any; special conditions 23–ACE–44 and 23–ACE–44A

Background

On November 18, 1986, Claudius Dornier SEASTAR GmbH and Company made application for a type certificate through the Luftfahrt Bundesamt to the FAA Brussels Office for the SEASTAR Model CD2 airplane. At the time of application, commuter category airplane airworthiness standards were not incorporated into part 23 of the FAR. Certification for 12 passenger airplanes would require compliance with the part

25 airworthiness standards for transport category airplanes.

The commuter category airworthiness standards, which permit a seating configuration, excluding pilot seats, of 19 or fewer, were incorporated into part 23 by amendment 23–34 (52 FR 1806, January 15, 1987), which became effective on February 17, 1987. Claudius Dornier subsequently made a new application for U.S. type certificate on July 31, 1987, for part 23 commuter category certification.

The Dornier SEASTAR Model CD2 is a high wing, twin-engine amphibious airplane with turbopropeller engines mounted on the center-top of the parasol wing in a tandem push-pull arrangement. The airframe structure utilizes composite materials. The maximum gross weight is 10,141 lbs. with a seating configuration of 12 passengers, excluding pilot seats.

Final special conditions were published in the **Federal Register** October 25, 1989 (54 FR 43417). Subsequently, the FAA determined that requirements addressing operations from water were necessary. A notice of proposed amendment to special conditions was published in the **Federal Register** (55 FR 12857, April 6, 1990) under Docket No. 080CE, Notice No. 23–ACE–51, inviting comments.

Discussion of Comments

No comments were received in response to Notice 23–ACE–51 (55 FR 12857, April 6, 1990). The closing date for comments was August 6, 1990. Accordingly, the amendment to special conditions 23–ACE–44 is adopted as proposed.

The FAA has further reviewed paragraph 2 of Special Conditions 23–ACE–44, Protection of Systems from Lightning and High Energy Radio Frequency (RF) Fields, and has determined that the FAA policy at the time that the application for type certificate was submitted did not require protection for essential systems from high energy radio frequency fields external to the airplane. This amendment deletes the requirement to protect essential systems from high energy radio frequency fields external to the airplane.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

Authority

The authority citation for these amended special conditions is as follows:

Authority: Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends special conditions 23–ACE–44 as part of the type certification basis for the Dornier SEASTAR Model CD2 series airplanes by revising paragraph 2 and adding a new paragraph 6, as follows:

* * * * *

Protection of Systems from Lightning and High Energy Radio Frequency (RF) Fields

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to: (1) Lightning and (2) high energy radio frequency fields external to the airplane.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning.

(c) For the purposes of the above, the following definitions apply:

(1) *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

(2) *Essential Functions.* Functions whose failure would contribute to or would cause a hazardous failure condition that would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

* * * * *

6. Water Operation

For water operation, part 23 through amendment 23–34 applies, except that:

(a) Instead of complying with § 23.51(d)(5), the following applies: For the approved takeoff surface conditions; and

(b) Instead of complying with § 23.53(c)(1), the following applies: The takeoff decision speed, V_1, is the calibrated airspeed at which, as a result of engine failure or other reasons, the pilot is assumed to have made a decision to continue or discontinue the takeoff. The takeoff decision speed, V_1, must be selected by the applicant, but may not be less than the greater of the following:

(1) 1.10 V_{SI};

(2) 1.10 V_{MC} established in accordance with § 23.149;

(3) A speed at which the airplane can be shown adequate to safely continue the takeoff, using normal piloting skill, when the critical engine is suddenly made inoperative; or

(4) V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant that the critical engine fails and the instant at which the pilot recognizes and reacts to the engine failure as indicated by the pilot's application of the first retarding means during the accelerate-stop determination of § 23.55.

(c) Section 23.53(c)(4) does not apply.

(d) Section 23.53(c)(5) does not apply.

(e) Instead of complying with § 23.53(c)(6), the following applies: It must be shown that the takeoff can be safely continued from the point at which the airplane is 35 feet above the takeoff surface at a speed not less than 5 knots less than the established V_2 speed.

(f) Instead of complying with § 23.55(a)(2), the following applies: Decelerate to speed of 3 knots or less from the point at which V_1 is reached; assuming that, in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed V_1.

(g) Instead of complying with § 23.55(b), the following applies: Suitable retardation means may be used in determining the accelerate-stop distance if that means is available with the critical engine inoperative and if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

(h) Instead of complying with § 23.57(a)(2), the following applies: The airplane must be accelerated to V_{EF}, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(i) Instead of complying with § 23.57(b), the following applies: During the acceleration to speed V_2, the takeoff flight path must be measurably positive in accordance with paragraph (k) of this special condition.

(j) Instead of complying with § 23.57(c)(4), the following applies: Except for automatic propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made until the airplane is 400 feet above the takeoff surface.

(k) Instead of complying with § 23.67(e)(1)(i), the following applies: TAKEOFF, CLEAR OF THE WATER. The minimum steady gradient of climb between the lift-off speed, V_{LOF}, and reaching takeoff safety speed, V_2, must be measurably positive at all points.

(l) Instead of complying with § 23.67(e)(1)(ii), the following applies: TAKEOFF, INITIAL CLIMB. The minimum steady gradient of climb must not be less than 2 percent at the speed V_2 until the airplane is 400 feet above the takeoff surface.

(m) Instead of complying with § 23.1587(d)(2), the following applies: The conditions under which the performance information was obtained including the takeoff surface condition and the airspeed at the 50-foot height used to determine the landing distance as required by § 23.75.

Issued in Kansas City, Missouri, on November 8, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 90–27265 Filed 11–19–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90-NM-14-AD; Amdt. 39-6813]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, which initially requires repetitive Nondestructive Test (NDT) inspections to detect corrosion in the lower wing skins of the inboard and outboard fuel tanks, and repair, if necessary; and eventual removal of inboard fuel tank foam blocks and wing stringer modifications. This amendment is prompted by a recent report of corrosion detected in the lower wing skin, adjacent to the foam blocks, in the fuel tank areas. This condition, if not corrected, could result in degradation of the wing structure.

EFFECTIVE DATE: December 24, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulation to include a new airworthiness directive, applicable to certain de Havilland Model DHC-7 series airplanes, which requires repetitive low frequency eddy current inspections to detect corrosion in the upper and lower wing skins, and repair if necessary, was published in the **Federal Register** on March 9, 1990 (55 FR 8961).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter noted that no significant corrosion has been detected in the upper wing skins and requested that the proposed rule be changed to require inspection of the lower wing skins only. The FAA concurs. The FAA has been provided additional inspection results supporting the need to inspect only the lower wing skins. Therefore, paragraph A. of the final rule has been changed to required inspection of the lower wing skin only.

Another commenter requested that the proposed rule not be adopted because the exact cause of the corrosion is not known. The commenter pointed out that there has been only one documented case of corrosion penetrating the lower wing skin, and suggested that it was likely due to the unique history and operating environment of the airplane involved. The FAA concurs that the exact cause of the wing skin corrosion is not known. The FAA also concurs that there has been only one case where the corrosion penetrated the wing skin. However, there has been at least two other airplanes with fuel tank foam blocks that had significant lower wing skin corrosion either under or adjacent to the inboard fuel tank foam blocks. The evidence indicates that water entrapment under the foam/PRC (Product Research and Chemical Corporation) sealant is responsible for the corrosion. Only airplanes with the foam/PRC sealant have been reported to have significant lower wing skin corrosion. Three airplanes without foam/PRC sealant were reported to have some fuel tank corrosion, but this was found to be due to growth of microbial and fungal contaminants in the fuel. The FAA does not agree that the proposed rule should not be adopted. The requirements of the rule will ensure the detection of corrosion and the removal of the most likely cause of the lower wing skin corrosion. Additionally, removal of the inboard foam blocks opens for visual inspection a four-inch wide strip, running from the front spar to the rear spar. There currently is no method available to inspect this area for corrosion damage until the damage is so severe that the wing skin is penetrated.

This commenter also suggested that the airplane manufacturer be tasked to develop a non-destructive test (NDT) standard so that the four-inch wide strip could be inspected without foam block removal. The FAA does not concur. This area is complicated by inboard nacelle structure and it is questionable that a satisfactory NDT standard can be developed that could be routinely performed satisfactorily by maintenance personnel. Even if possible, development of a satisfactory NDT standard would take considerable development time and is almost certain to require operators to purchase more sophisticated NDT equipment and require maintenance personnel to have additional training.

Additionally, this commenter stressed that the foam block removal process can degrade the integrity of the wing structure due to stringer disbonding and/or marring or scratching of the wing skin. The FAA concurs. However, the FAA considers that the removal procedures described in the referenced de Havilland Service Bulletin 7-57-33, dated July 21, 1989, are adequate to avoid inadvertent structural damage.

Another commenter supported the intent of the proposed AD, but indicated that the proposed requirements for inboard and outboard fuel tank foam block removal essentially demanded accomplishment of both within a year to best utilize airplane downtime. This commenter suggested that a better approach would be to allow repetitive inspections to continue longer so that removal of the foam blocks could coincide with some other lengthy and scheduled maintenance outage, such as a D-check. The FAA agrees with the commenter in principal:

Service history on this subject indicates that one airplane was found to have severe corrosion in the four-inch strip area to the extent that the wing skin was penetrated. However, on four other airplanes, the inboard fuel tank foam blocks were removed and the area visually inspected, and no significant corrosion was found. Based on these inspection results, the FAA has determined that removal of the inboard tank foam block and modification of the stringers may be postponed for up to three years if no external corrosion is apparent. During this extended time, however, the areas outside the four-inch strip covered by foam block must continue to be repetitively NDT inspected at intervals not to exceed 12 months. This final rule has been revised accordingly.

Upon further review of additional technical data, the FAA has also determined that mandatory removal of the foam block from the outboard tanks is not necessary, since the entire wing skin area under the foam block can be inspected by NDT procedures. Repetitive NDT inspections, conducted every year, are adequate to detect corrosion and ensure continued airworthiness. Removal of the outboard fuel tank foam block would not be required until corrosion is detected in the area. Accordingly, the final rule has

been revised to specify that removal of the foam block may be postponed until corrosion is found, if a repetitive NDT inspection of the area is accomplished at intervals not less than one year.

New paragraphs D. and E. have been added, to specify certain actions which, if accomplished, would constitute terminating action for the required repetitive inspections of both the inboard and outboard fuel tank lower skins. These terminating actions consist of the removal of the fuel tank foam blocks and modification of the stringer.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,200 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $576,000.

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

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

List of Subjects in 14 CFR Part 39

Air tranportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing of Canada, Ltd., De Havilland Division: Applies to Model DHC-7 series airplanes, Serial Numbers 1 through 10, and 12 through 27, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent corrosion and reduced structural capability of the wings accomplish the following:

A. Within 180 days after the effective date of this AD, and thereafter at intervals not to exceed one year, perform a low frequency eddy current inspection of the inboard and outboard fuel tank lower wing skins in accordance with the procedure specified in Part 6, Chapter 57-10-01, of the de Havilland DHC-7 Nondestructive Testing (NDT) Manual, PSM 1-7-7A.

B. If corrosion is found as a result of the inspections required by paragraph A. of this AD, accomplish the following. Accomplishment of these actions constitutes terminating action for the repetitive inspections of the inboard and/or outboard fuel tank area, as appropriate, required by paragraph A. of this AD.

1. If corrosion is found in the inboard fuel tank, prior to further flight, permanently remove the inboard fuel tank foam blocks, restore any corroded areas, and modify the stringers in accordance with the Accomplishment Instructions, Steps 3, 4, and 5, of de Havilland Service Bulletin 7-57-33, dated July 21, 1989.

2. If corrosion is found in the outboard fuel tank, prior to further flight, permanently remove the outboard fuel tank foam blocks, restore any corroded areas, and modify the stringers in accordance with the Accomplishment Instructions, Steps 3, 4, and 5, of de Havilland Service Bulletin 7-57-33, dated July 21, 1989.

C. If no corrosion is found, within three years after the effective date of this AD, permanently remove the inboard fuel tank foam blocks and modify the stringers in accordance with the Accomplishment Instructions, Steps 3 and 5, of de Havilland Service Bulletin 7-57-33 (), dated July 21, 1989.

D. Accomplishment of the removal and modification actions specified in paragraph C. of this AD, constitutes terminating action for the repetitive inspections of the inboard fuel tank lower wing skins required by paragraph A. of this AD.

E. Accomplishment of the removal and modification actions specified in the Accomplishment Instructions, Steps 3 and 5, of de Havilland Service Bulletin 7-57-33 (), dated July 21, 1989, for the outboard fuel tanks, constitutes terminating action for the repetitive inspections of the outboard fuel tank lower wing skin required by paragraph A. of this AD.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), FAA, New England Region.

Note: The request should be submitted directly to the Manager, New York ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective December 24, 1990.

Issued in Renton, Washington, on November 7, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27267 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 90-NM-81-AD; Amendment 39-6814]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) applicable to all Boeing Model 727 series airplanes, which currently requires repetitive visual inspection for cracks and repair, if necessary, and modification, of the aft pressure bulkhead (Body Station 1183) web and strap. This action would add repetitive visual inspections of airplanes modified

or repaired with blind fasteners. This amendment is prompted by reports of additional cracking in airplanes repaired or modified with blind fasteners. This condition, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: December 26, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707; Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 86-02-06 R1, Amendment 39-5331 (51 FR 21511, June 13, 1986), applicable to Boeing Model 727 series airplanes, to add repetitive visual inspections of airplanes modified or repaired with blind fasteners, was published in the **Federal Register** on June 13, 1990 (55 FR 23945).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter stated that proposed paragraph G., as written, would require repetitive inspections only of airplanes that had accomplished repairs using blind fasteners. The commenter questioned whether this requirement would also apply to airplanes that had accomplished modifications using blind fasteners, and requested clarification on this point. The FAA concurs that clarification is necessary. The FAA has determined that repetitive inspections are necessary for all blind fasteners that are used in either repairs or modifications; that was the intent of the proposed rule and was specifically stated in the "**SUMMARY**" paragraph of the NPRM. Paragraph G. of the final rule has been revised to clearly state that all blind fasteners used for repairs or modification must be repetitively inspected.

Another commenter requested that the repetitive visual inspection of the blind fasteners be changed from the proposed 3,000 to 3,500 flight cycles so that it is compatible with the repetitive inspection times in paragraphs A. through C. of the proposed rule. The FAA concurs with the commenter that it is acceptable to conduct the inspection of the blind fasteners at the same time as the inspections required by paragraphs A. through C. The FAA has reviewed its data and has determined that the repetitive inspection of the blind fasteners can be extended, in this case, to 3,500 flight cycles without adversely affecting safety. Paragraph G. of the final rule has been changed accordingly.

Paragraph H. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,150 airplanes of U.S. registry will be affected by this AD; of these, approximately 35 airplanes have been modified using blind fasteners and will require additional repetitive inspections in accordance with paragraph G. of this AD. These additional inspections will take approximately 6 manhours to accomplish, at an average labor charge of $40 per manhour. Based on these figures, the total cost impact of the additional requirements on U.S. operators is estimated to be $8,400 per inspection cycle.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 86-02-06, Amendment 39-5222 (51 FR 3027; January 23, 1986), as amended by Amendment 39-5331 (51 FR 21511; June 13, 1986), with the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the Body Station 1183 pressure bulkhead web and strap, accomplish the following:

A. For airplanes with 40,000 or more flight cycles on February 6, 1986 (the effective date of Amendment 39-5222), within the next 300 flight cycles, unless accomplished within the last 3,200 flight cycles, and thereafter at intervals not to exceed 3,500 flight cycles, inspect and repair, if necessary, in accordance with paragraph D. of this AD.

B. For airplanes with 33,000 or more flight cycles and less than 40,000 flight cycles on February 6, 1986, within the next 1,500 flight cycles, unless accomplished within the last 2,000 flight cycles, and thereafter at intervals not to exceed 3,500 flight cycles, inspect and repair, if necessary, in accordance with paragraph D. of this AD.

C. For airplanes with fewer than 33,000 flight cycles on February 6, 1986, prior to the accumulation of 30,000 flight cycles or within the next 3,500 flight cycles after February 6, 1986, whichever occurs later, and thereafter at intervals not to exceed 3,500 flight cycles, inspect and repair, if necessary, in accordance with paragraph D. of this AD.

D. Accomplish a close visual inspection of the web in accordance with Figure 1 of Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or Revision 2, dated December 14, 1989. If cracks are detected, prior to further flight, repair in accordance with paragraph E. or F. of the Accomplishment Instructions of the service bulletin.

E. For airplanes repaired by the installation of the doubler in accordance with Boeing Service Bulletin 727-53A0171, Original Issue, within the next 15,000 flight cycles after that repair, incorporate the vertical reinforcing strap and spacers described in paragraph F.

of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or Revision 2, dated December 14, 1989.

F. The following constitutes terminating action for the repetitive inspections required by paragraphs A., B., and C. of this AD:

1. The preventive modification described in paragraph D. of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or Revision 2, dated December 14, 1989.

2. The repairs described in paragraphs E. and F. of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or Revision 2, dated December 14, 1989.

G. For airplanes repaired or modified with blind fasteners: Within 3,500 flight cycles after the effective date of this AD, and thereafter at intervals not to exceed 3,500 flight cycles, accomplish a visual inspection for cracks and loose or missing fasteners, in accordance with Boeing Alert Service Bulletin 727-53A0171, Revision 2, dated December 14, 1989. If cracks are detected, prior to further flight, repair in accordance with the service bulletin. If loose or missing fasteners are detected, prior to further flight, replace with protruding head solid fasteners. Replacement with protruding head solid fasteners constitutes terminating action for the repetitive inspections required by this paragraph.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-5331, AD 86-02-06 R1.

This amendment becomes effective December 26, 1990.

Issued in Renton, Washington, on November 8, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27268 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-231-AD; Amdt. 39-6815]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection of the flap track forward end clevis lugs, and replacement of the flap track, if necessary. This amendment is prompted by reports of cracked or failed clevis lugs on two flap tracks. This condition, if not corrected, could result in separation of the wing trailing edge flap track from the airplane and reduction in the controllability of the airplane.

EFFECTIVE DATE: December 5, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2781. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: One operator reported finding a cracked forward clevis lug on the number 5 flap track on a Boeing Model 747 series airplane that had accumulated approximately 38,500 flight hours and 6,400 flight cycles. Another operator found both lugs broken on the number 1 flap track on an airplane that had accumulated 61,172 flight hours and 20,224 flight cycles. The flap track was held to the airplane by the flap track fail-safe strap. The analysis of the cracks showed that the cracks originated from a corrosion pit in the lug bore. Another operator of a large Model 747 fleet has reported bushing migration and/or corrosion at this location on other flap tracks. Analysis by the manufacturer indicates that the fail-safe straps have the required regulatory ultimate strength, but lack durability; therefore, they may not perform their intended function, which is to provide support to the failed flap tracks until failure is detected by normal inspection. Failure of the fail-safe strap, in the event that the failure of the flap track remains undetected, could lead to the separation of the flap track from the airplane and thereby cause reduction in the controllability of the airplane.

The FAA has determined that the flap tracks which have the old design fail-safe straps are the subject of immediate concern.

The FAA has reviewed and approved Boeing Service Bulletin 747-57-2231, Revision 2, dated September 27, 1990, which describes procedures for the inspection and modification of the flap track forward clevis lugs and replacement of the flap track if cracks are found. The airplanes that have the old design fail-safe straps are identified as Group 1 in the service bulletin. The airplanes that have the new design fail-safe straps are identified as Group 2 and 3 in the service bulletin.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the flap track forward clevis lugs and replacement of the flap track, if necessary, in accordance with the service bulletin previously described. The Group 1 airplanes require inspection within 30 days after the effective date of this AD. The Group 2 and 3 airplanes require inspection within 120 days after the effective date of the rule.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedure

(44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-57-2231, Revision 2, dated September 27, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the flap tracks, accomplish the following:

A. Visually inspect the forward end clevis lugs of flap tracks for evidence of cracking, in accordance with Boeing Service Bulletin 747-57-2231, Revision 2, dated September 27, 1990, and in accordance with the following schedule:

1. For Group 1 airplanes: Perform the inspection at flap track positions 1 through 8 within the next 30 days after the effect date of this AD.

2. For Group 2 airplanes: Perform inspection at flap track positions 1, 2, 7, and 8 prior to the later of the following:

a. Prior to the accumulation of 30,000 flight hours or 8 years after airplane delivery, whichever occurs first; or

b. Within 120 days after the effective date of this AD.

3. For Group 3 airplanes: Perform the inspection at flap track positions 1 through 8 prior to the later of the following:

a. Prior to the accumulation of 30,000 flight hours or 8 years after airplane delivery, whichever occurs first; or

b. Within 120 days after the effective date of this AD.

B. If cracking is found, replace the flap track prior to further flight, in accordance with Boeing Service Bulletin 747-57-2231, Revision 2, dated September 27, 1990.

C. If no cracking is found, repeat the inspection required by paragraph A. of this AD, at intervals not to exceed 300 flight cycles for Group 1 airplanes, and 1,200 flight cycles for Group 2 and Group 3 airplanes.

D. Accomplishment of the modification of the forward end clevis lugs of flap tracks as specified in Boeing Service Bulletin 747-57-2231, Revision 2, dated September 27, 1990, constitutes terminating action for the inspections required by paragraphs A. and C. of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 5, 1990.

Issued in Renton, Washington, on November 8, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27266 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances; Corrections to Ranges of Comparability for Refrigerators, Refrigerator-freezers, and Freezers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by issuing corrections to the ranges of comparability that were published on October 2, 1990 [1] for use on required labels for refrigerators, refrigerator-freezers and freezers.

This notice publishes the corrected range figures, which, under §§ 305.10, 305.11 and 305.14 of the rule, must be used on labels on refrigerators, refrigerator-freezers, and freezers manufactured on and after February 19, 1991, and in advertising of refrigerators, refrigerator-freezers, and freezers in catalogs printed after February 19, 1991. Properly labeled refrigerators, refrigerator-freezers, and freezers manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

EFFECTIVE DATES: The withdrawal of the final rule published October 2, 1990 (55 FR 40161) is effective November 20, 1990, and the remaining amendments are effective February 19, 1991.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: New ranges of comparability for refrigerators, refrigerator-freezers, and freezers, which were calculated using the 1990 representative average energy cost for electricity (7.88 cents per kilowatt-hour) published by DOE on March 12, 1990,[2] were duly published in the **Federal Register** by the Commission on October 2, 1990. The staff of the Commission has learned since then that there were several inadvertent errors in all three categories of those ranges. The staff has corrected the errors, and the new ranges published today reflect the corrections. For the sake of clarity, the Commission is republishing the complete set of ranges in their corrected form. The changes are in the following capacity groupings in the applicable categories:

Refrigerators: 6.5 to 8.4 cu. ft., 16.5 cu. ft. and over

Refrigerator-freezers: 20.5 to 22.4 cu. ft., 28.5 cu. ft. and over

Freezers: 7.5 to 9.4 cu. ft., 19.5 to 21.4 cu. ft., 21.5 to 23.4 cu. ft., 23.5 to 25.4 cu. ft., 29.5 cu. ft. and over

In consideration of the foregoing, the Commission amends appendices A-1, A-2 and B of its Appliance Labeling Rule by publishing the following corrected ranges of comparability for use in the labeling and advertising of refrigerators, refrigerator-freezers, and freezers beginning February 19, 1991.

[1] 55 FR 40161.

[2] 55 FR 9184. The Commission published these figures on April 10, 1990, at 55 FR 13264.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: Section 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In appendices A1, A2 and B, paragraph 1 of each and the introductory text in paragraph 2 of each are revised to read as follows:

Appendix A1 to Part 305—Refrigerators

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 2.5	$21	$29
2.5 to 4.4	25	34
4.5 to 6.4	22	49
6.5 to 8.4	28	33
8.5 to 10.4	33	39
10.5 to 12.4	39	53
12.5 to 14.4	39	44
14.5 to 16.4	55	56
16.5 to over	47	64

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 7.88¢ per kilowatt hour.

* * * * *

Appendix A2 to Part 305—Refrigerator-Freezers

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 10.5	$36	$57
10.5 to 12.4	52	75
12.5 to 14.4	55	88
14.5 to 16.4	58	89
16.5 to 18.4	60	88
18.5 to 20.4	66	116
20.5 to 22.4	74	114
22.5 to 24.4	82	126
24.5 to 26.4	82	123
26.5 to 28.4	98	133
28.5 and over	105	127

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 7.88¢ per kilowatt hour.

* * * * *

Appendix B to Part 305—Freezers

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 5.5	$23	$51
5.5 to 7.4	26	43
7.5 to 9.4	26	33
9.5 to 11.4	28	56
11.5 to 13.4	30	81
13.5 to 15.4	36	86
15.5 to 17.4	34	74
17.5 to 19.4	48	88
19.5 to 21.4	40	85
21.5 to 23.4	46	86
23.5 to 25.4	(*)	(*)
25.5 to 27.4	51	62
27.5 to 29.4	100	100
29.5 and over	133	212

*No data submitted.

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 7.88¢ per kilowatt hour.

* * * * *

3. The final rule published in the Federal Register on October 2, 1990 (55 FR 40161), amending appendices A1, A2 and B, which was to become effective on December 31, 1990, is being withdrawn.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90–27187 Filed 11–19–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplement provides for extended treatment times for use of fenbendazole Type A medicated articles for making Type C medicated swine feeds for use as an anthelmintic.

EFFECTIVE DATE: November 20, 1990.

FOR FURTHER INFORMATION CONTACT: John L. Olsen, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206 North, Somerville, NJ 08876, has filed a supplement to NADA 131–675 which provides for use of SAFE-GUARD® Type A medicated articles (fenbendazole) for making Type C medicated swine feed. In addition to the previously approved conditions of use, the supplement provides for extending treatment time from 3 days to 3 to 12 days for removal of larvae (L3, 4 stages—liver, lung, intestinal forms) of the large roundworm (*Ascaris suum*), and larvae (L2, 3, 4 stages—intestinal mucosal forms) of the whipworm (*Trichuris suis*). The supplement was previously approved for treatment times of 3 to 12 days for other species and stages of worms.

Fenbendazole is a new animal drug used in a Type A medicated article to make a Type C medicated feed. Fenbendazole is a Category II drug which, as provided in 21 CFR 558.4(e), requires an approved Form FDA 1900 for making a Type C medicated feed as in approved NADA 131–675 and in amended 21 CFR 558.258(c)(1).

The supplement is approved as of November 20, 1990, and the regulations are amended in 21 CFR 558.258(c)(1)(i) and (c)(1)(ii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

As provided under the Generic Animal Drug and Patent Term Restoration Act of 1988 and section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(c)(2)(F)(iii)), this supplement qualifies for 3 years of marketing exclusivity beginning November 20, 1990, for the extended treatment. The studies supporting approval of the supplement qualify as "new clinical or field controlled efficacy studies" as defined in the above section of the act.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.258 is amended by revising paragraphs (c)(1)(i) and (c)(1)(ii) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(c) * * *

(1) * * *

(i) *Amount.* A total of 9 milligrams per kilogram of body weight given over a 3- to 12-day period.

(ii) *Indications for use.* For the removal of: adult stage lungworms (*Metastrongylus apri* and *M. pudendotectus*); adult and larvae (L3, 4 stages—liver, lung, intestinal forms) large roundworms (*Ascaris suum*); adult stage nodular worms (*Oesophagostomum dentatum, O. quadrispinulatum*); small stomach worms (*Hyostrongylus rubidus*); adult and larvae (L2, 3, 4 stages—intestinal mucosal forms) whipworms (*Trichuris suis* ; adult and larvae kidney worms (*Stephanurus dentatus*).

* * * * *

Dated: November 8, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-27289 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7-R]

Freedom of Information Act (FOIA) Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule; correction.

SUMMARY: This document revises § 286.7(i)(9) and makes an administrative correction to the amendatory language for correction number 9 that was previously published on November 8, 1990 (55 FR 46950).

EFFECTIVE DATE: October 3, 1990.

ADDRESSES: Office of the Assistant Secretary of Defense (Public Affairs), Washington, DC 20301-1400.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, telephone (703) 697-1180.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of information.

PART 286—[AMENDED]

Accordingly, 32 CFR part 286 is amended as follows:

1. The authority citation for part 286 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 286.7 [Amended]

2. Section 286.7(i)(9) is revised to read as follows:

§ 286.7 Policy.

* * * * *

(i) * * *

(9) On occasion, the Department of Defense receives FOIA requests for General Accounting Office documents containing DoD information. Even though the GAO is outside the Executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received either from the public, or on referral from the GAO, will be processed under the provisions of the FOIA.

Appendix B to Part 286 [Corrected]

The amendatory language for correction number 9 (55 FR 46950, Nov. 8, 1990) is corrected to read as follows:

"9. Appendix B to part 286, paragraph 2.a. is amended by bringing 'Defense Systems Management College, National Defense University, Armed Forces Staff College, Department of Defense Dependent Schools, and Uniformed Services University of the Health Sciences' out to the margin."

Dated: November 15, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90-27294 Filed 11-19-90; 8:45 am]

BILLING CODE 3810-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-90-79]

Special Local Regulations for Marine Events; Holidays in the City Boat Parade; Town Point, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501, for the Holiday in the City Boat Parade and Fireworks Display. The event will consist of a boat parade with approximately 75 vessels and a fireworks display at the conclusion of the parade. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 5 p.m. to 9 p.m., November 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

DRAFTING INFORMATION: The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

DISCUSSION OF REGULATION: The Downtown Norfolk Council submitted an application dated October 1, 1990 to hold the Holidays in the City Boat Parade and Fireworks Display. The boat parade will be held in the Elizabeth River in the Town Point area between the Banana Landmass and the Berkley Bridge. The fireworks display will be launched from the Banana Landmass, Town Point Park, Norfolk, Virginia, and will burst over the Elizabeth River. Since many spectator vessels are expected to be in the area to watch the boat parade and fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The waterways will be closed during the fireworks display. Since the waterway

will not be closed for an extended period, commercial traffic should not be severely disrupted.

In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: November 9, 1990.

P. A. Welling,

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

[FR Doc. 90-27253 11-19-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-90-22]

Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Fort Myers the Coast Guard is changing the operating regulations for the Edison Memorial drawbridge across the Caloosahatchee River (Okeechobee Waterway) at Fort Myers, Florida, by extending the afternoon regulated period for one hour from 4 p.m. to 6 p.m. with openings at 4:30 p.m. and 5:30 p.m. This action will accommodate current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney (305) 536-4103.

SUPPLEMENTARY INFORMATION: On May 30, 1990, the Coast Guard published proposed rule (55 FR 21886) concerning this amendment with a comment limit date of July 16, 1990. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated September 6, 1990. The comment period was subsequently extended to 15 October 1990.

Drafting Information

The drafters of this notice are Ian MacCartney, project officer, and Lt. Genelle Tanos, project attorney.

Discussion of Comments

No comments were received about the proposed rule. The final rule is, therefore, unchanged from the proposed rule published on May 30, 1990.

Federalism

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

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.317(j) is revised to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(j) Edison Memorial (US 41) bridge, mile 134.5 at Fort Myers. The draw shall open on signal; except that from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays, the draw need open only at 4:30 p.m. and 5:30 p.m. Exempt vessels shall be passed at any time.

* * * * * *

Dated: November 2, 1990.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 90-27255 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD5-90-076]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA.

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the Virginia Department of Transportation, the Coast Guard is issuing a temporary rule governing the operation of the Centerville Turnpike drawbridge across the Albemarle and Chesapeake Canal, mile 15.2 in Chesapeake, Virginia. This rule will limit bridge openings 24-hours a day, seven days a week, in order to reduce unnecessary wear and tear on the structure while still providing for the reasonable needs of navigation.

DATES: This temporary rule is effective from October 29, 1990, through December 31, 1990, unless amended or terminated before that date.

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

SUPPLEMENTARY INFORMATION: The Commander, Fifth Coast Guard District published this temporary rule as a Public Notice 5-726 dated October 23, 1990.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and Capt. M.K. Cain, project attorney.

Discussion of Temporary Rule

At the request of the Virginia Department of Transportation, the Coast Guard is issuing a temporary rule governing the operation of the drawbridge across the Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake, Virginia. This rule is being issued because the Virginia Department of Transportation reports that the bridge's drive controls are still being operated in the emergency mode and that there are several equipment malfunctions in the drive system which

have been temporarily bypassed. The Virginia Department of Transportation has indicated that a system-wide failure could occur and could place the bridge out of service for several months if draw openings are to occur more frequently than every two hours. Opening the draw every two hours on the even half hour will reportedly enable the bridge owner to accomplish balancing the wheels and adjusting the wheel and the rack assembly of the bridge. Also a number of anchor bolts on the bridge rack reportedly need to be replaced. Based on all the above, the Centerville Turnpike Bridge will being operating under a temporary schedule which restricts bridge openings to the even half-hour, once every two hours, 24-hours a day, with additional openings at 7:30 a.m., 3:30 p.m., and 5:30 p.m., for vessels waiting to pass, from October 29, 1990, to December 31, 1990, during which time the bridge will continue to undergo rehabilitation and repair work. After December 31, 1990, the Centerville Turnpike Bridge will be returned to its normal operating schedule. Since this temporary schedule is necessary for the safety of the bridge, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Federalism Assessment

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

Economic Assessment and Certification

This temporary rule is not considered to be major under Executive Order 12291 on Federal Regulation nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citations for part 117 continue to read as follows:

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

2. A new § 117.T996 is temporarily added to read as follows:

§ 117.T996 Albemarle and Cheseapeake Canal.

The draw of the S.R. 170 bridge, mile 15.2, at Chesapeake, shall open on the even half-hour, once every two hours, 24 hours a day, with additional openings at 7:30 a.m., 3:30 p.m., and 5:30 p.m. for vessels waiting to pass.

3. This rule is effective from October 29, 1990 to December 31, 1990, unless amended or terminated before that date.

Dated: November 5, 1990.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 90–27256 Filed 11–19–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–3862–3]

National Emission Standards for Hazardous Air Pollutants and Standards of Performance for New Stationary Sources; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On August 21, 1990, the Knox County Department of Air Pollution Control in the State of Tennessee, requested delegation of authority for implementation and enforcement of several standards in 40 CFR part 61, New Source Performance Standards (NSPS), and 40 CFR part 60, National Emission Standards for Hazardous Air Pollutants (NESHAPS). In a letter dated October 29, 1990, EPA delegated four (4) of the requested standards to the Knox County Department of Air Pollution Control.

EFFECTIVE DATE: The effective date of delegation is October 29, 1990.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation may be examined during normal business hours at the Agency's Regional Office, 345 Courtland St., NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (identified below) should be submitted to the Knox County Department of Air Pollution Control, City/County Building, suite 459, Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Carla E. Pierce of the EPA Region IV Air Programs Branch at the above address and telephone number 404–347–2864 or FTS–257–2864.

SUPPLEMENTARY INFORMATION: Sections 111(c)(1) and 112(d)(1) of the Clean Air Act authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS), and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS).

On August 21, 1990, the Knox County Department of Air Pollution Control requested delegation of several new and revised NSPS and NESHAPS standards. The following standards were requested by Knox County (the revised standards are designated by "(R)"):

40 CFR Part 60 Subpart

KKK—Onshore Natural Gas Processing—VOC (R)

SSS—Magnetic Tape Coating Facilities

40 CFR Part 61 Subpart

H—Radionuclide Emissions from Department of Energy (DOE) Facilities (R)

I—Radionuclide Emissions from DOE Facilities Licensed by the Nuclear Regulatory Commission (NRC) and Federal Facilities not covered by subpart H (R)

K—Radionuclide Emissions from Elemental Phosphorus Plants (R)

Q—Radon Emissions from DOE Facilities

R—Radon Emissions from Phosphogypsum Stacks
T—Radon Emissions from the Disposal of Uranium Mill Tailings
W—Radon Emissions from Licensed Uranium Mill Tailings (R)
BB—Benzene Emissions from Benzene Transfer Operations
FF—Benzene Emissions from Benzene Waste Operations (R)

In reference to Knox County's request for delegation of 40 CFR part 61, subparts H, I, K, Q, R, T, and W, EPA does not presently delegate NESHAPS regulations for radionuclides and radon. Therefore, EPA denied delegation approval of these referenced categories.

After a thorough review of the remaining categories requested for delegation, the Regional Administrator determined that delegation of NSPS, subparts KKK and SSS, and NESHAPS, subparts BB and FF was appropriate with all the conditions set forth in the initial delegation letters of May 20, 1977; December 13, 1985; July 1, 1986; June 1, 1988; and May 16, 1989.

EPA, thereby, delegated its authority for 40 CFR part 60, subparts KKK and SSS, and 40 CFR part 61, subparts BB and FF (excluding § 61.358) on October 29, 1990. Subpart FF contains a delegation restriction under § 61.358 for alternative means of emission limitation.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirement of section 4 of Executive Order 12291.

Authority: Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: November 9, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 90-27303 Filed 11-19-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6895]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1878, E.O. 12127

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligible—Regular Program Conversions			
Texas: Lake Bridgeport, city of, Wise County	481616	Oct. 9, 1990	Mar. 19, 1990.
Georgia: Patterson, city of, Pierce County	130457	Oct. 11, 1990	Apr. 17, 1989.
Indiana:			
Grabill, town of, Allen County	180499	Oct. 17, 1990	Sept. 28, 1990.
Monroeville, town of, Allen County	180498	....do	Do.
Woodburn, city of, Allen County	180500	....do	Do.
Missouri: Johnson County, unincorporated areas	290809	Oct. 26, 1990	Apr. 2, 1990.
New Eligible—Emergency Program			
Iowa: Rockwell, city of, Cerro Gordo County	190352	Oct. 11, 1990	Mar. 26, 1976.
Georgia: Fannin County, unincorporated areas	130249	....do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Indiana: Madison County, unincorporated areas	180422	Oct. 23, 1990	June 23, 1978.
Texas: Lakeside City, city of, Archer County	481496	do	July 3, 1979.
Georgia: Bartow, town of, Jefferson County	130115	Oct. 22, 1990	Aug. 22, 1975.
Indiana: Madison County, unincorporated areas	180442	Oct. 23, 1990	June 23, 1978.
Iowa: Eldridge, city of, Scott County	190574	Oct. 30, 1990	Aug. 6, 1976.
Reinstatements—Regular Program			
Minnesota:			
Lake of the Woods County, unincorporated areas	270654	July 19, 1974, Emerg., Sept. 5, 1990, Reg., Sept. 5, 1990, Susp., Oct. 11, 1990, Rein.	Sept. 5, 1990.
Murray County, unincorporated areas	270645	May 24, 1974, Emerg., May 3, 1990, Reg., May 3, 1990, Susp., Oct. 11, 1990, Rein.	May 3, 1990.
Idaho: Middleton, city of, Canyon County	160037	May 22, 1975, Emerg., Sept. 3, 1980, Reg., Sept. 28, 1990, Susp., Oct. 11, 1990, Rein.	Sept. 28, 1990.
New Hampshire: Allenstown, town of, Merrimack County	330103	Sept. 3, 1975, Emerg., Apr. 2, 1979, Reg., May 3, 1990, Susp., Oct. 18, 1990, Rein.	Apr. 2, 1979.
Pennsylvania: Beech Creek, township of, Clinton County	420321	Aug. 3, 1973, Emerg., Sept. 5, 1990, Reg., Sept. 5, 1990, Susp., Oct. 29, 1990, Rein.	Sept. 5, 1990.
West Virginia: Ritchie County,[1] unincorporated areas	540224	Sept. 1, 1976, Emerg., Aug. 15, 1990, Susp., Oct. 5, 1990, Rein.	Dec. 11, 1981.
Pennsylvania: Donegal, township of, Westmoreland County	422187	Jan. 2, 1981, Emerg., Oct. 16, 1990, Reg., Oct. 16, 1990, Susp., Oct. 25 1990, Rein.	Oct. 16, 1990.
Region III—Regular Program Conversions			
Pennsylvania:			
Rockland, township of, Venango County	422113	Oct. 16, 1990, suspension withdrawn	Oct. 16, 1990.
Sandycreek, township of, Venango County	422541	do	Do.
Region V—Minimal Conversion			
Illinois: Dwight, village of, Livingston County	170423	Nov. 1, 1990, suspension withdrawn	Nov. 1, 1990
Region I—Regular Program Conversions			
Massachusetts: Boston, city of, Suffolk County	250286	Nov. 2, 1990, suspension withdrawn	Nov. 2, 1990
Region II			
Pennsylvania:			
Benzinger, township of, Elk County	421607	do	Do.
Chester Hill, borough of, Clearfield County	420299	do	Do.
Fox, township of, Elk County	421608	do	Do.
Glenburn, township of, Lackawanna County	421754	do	Do.
Greene, township of, Franklin County	421649	do	Do.
Hillsgrove, township of, Sullivan County	422064	do	Do.
Virginia: Claremont, town of, Surry County	510158	do	Do.
Region IV			
Tennessee: Jefferson County, unincorporated areas	470097	do	Do.
Region V			
Ohio:			
Belle Valley, village of, Noble County	390429	do	Do.
Morgan County, unincorporated areas		do	Do.
Rutland, village of, Meigs County	390670	do	Do.
Region VII			
Missouri: Portageville, city of, New Madrid County	290259	do	Do.
Region X			
Nevada: Nye County, unincorporated areas	320018	do	Do.

[1] Emergency Program Reinstatement.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein—Reinstatement.

Issued: November 9, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-27285 Filed 11-19-90; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6894]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42

U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 *et seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II—Regular Program Conversions				
New York: Evans Mills, village of, Jefferson County	360337	Sept. 18, 1975, Emerg.; Feb. 5, 1986, Reg.; Dec. 5, 1990 Susp.	Dec. 5, 1990	Dec. 5, 1990.
Region III				
Pennsylvania: Wilmore, borough of, Cambria County.	420244	Dec. 8, 1976, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Virginia:				
New Kent County, unincorporated areas	510306	Aug. 19, 1975, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Smithfield, town of, Isle of Wight County	510081	Sept. 24, 1974, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do
Region IV				
Florida:				
Ponce De Leon, city of, Holmes County	120117	Oct. 30, 1975, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Westville, town of, Holmes County	120118	Nov. 14, 1975, Emerg.; June 1, 1987, Reg.; Dec. 5, 1990, Susp.	do	Do.
Georgia:				
Harris County, unincorporated areas	130338	Dec. 3, 1986, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do
Troupe County, unincorporated areas	130405	Sept. 19, 1975, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Kentucky: Richmond, city of, Madison County	210157	June 20, 1975, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Tennessee: Blaine, city of, Grainger County	470398	Nov. 26, 1988, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Michigan:				
Chassell, township of, Houghton County	260411	Apr. 13, 1978, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Manistique, city of, Schoolcraft County	260595	Oct. 7, 1976, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Ohio:				
Putnam County, unincorporated areas	390465	Apr. 18, 1984, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp..	do	Do.
Springdale, city of, Hamilton County	390877	Oct. 1, 1980, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Region VI				
Texas: Hebron, town of, Denton County	481495	Mar. 18, 1986, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp..	do	Do.
Region I				
Massachusetts: Russell, town of, Hampton County	250148	Aug. 8, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	Dec. 15, 1990	Dec. 15, 1990.
Region II				
Pennsylvania:				
Shrewsbury, township of, Lycoming County	421148	Apr. 9, 1974, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Troy, township of, Bradford County	421114	Aug. 22, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Virginia: King George County, unincorporated areas.	510312	May 16, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
West Virginia:				
Hardy County, unincorporated areas	540051	May 16, 1978, Emerg.; June 19, 1985, Reg.; Dec. 15, 1990, Susp.	do	Do.
Moorefield, town of, Hardy County	540052	May 12, 1975, Emerg.; July 1, 1987, Reg.; Dec. 15, 1990, susp.	do	Do.
Region IV				
Florida:				
Graceville, city of, Jackson County	120127	Apr. 2, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Jackson County, unincorporated areas	120125	Aug. 18, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Marianna, city of, Jackson County	120129	May 1, 1987, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Georgia:				
Buchanan, city of, Haralson County	130336	Apr. 9, 1976, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Carroll County, unincorporated areas	130464	May 28, 1985, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Dawson County, unincorporated areas	130304	Apr. 29, 1985, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Mississippi: Covington County, unincorporated areas.	280291	Aug. 1, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
South Carlina:				
Laurens County, unincorporated areas	450125	Dec. 26, 1973, Emerg.; Nov. 2, 1983, Reg.; Dec. 15, 1990, Susp.	do	Do.
Newberry County, unincorporated areas	450224	July 2, 1975, Emerg.; Sept. 17, 1986, Reg.; Dec. 15, 1990, Susp.	do	Do.
Region V				
Michigan: Three Rivers, city of, St. Joseph County	260206	Apr. 28, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Ohio:				
Glenmont, Village of, Holmes County	390277	July 8, 1981, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Holmes County, unincorporated areas	390276	Oct. 25, 1977, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Holmesville, village of, Holmes County	390278	June 5, 1975, Emerg.; Sept. 1, 1986, Reg.; Dec. 15, 1990, Susp.	do	Do.
Millerburg, village of, Holmes County	390280	Jan. 31, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Region VI				
Oklahoma: Burlington, town of, Alfalfa County	400005	July 25, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Minimal Conversion				
Florida: Malone, town of, Jackson County	120623	Oct. 30, 1984, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	.....do.....	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: November 6, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-27286 Filed 11-19-90; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6896]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), but will be suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, then the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: As shown in fourth column.

FOR FURTHER INFORMATION CONTACT: Mr. Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at saving lives and protecting new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the NFIP criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt, and submit the required documentation of, legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine whether or not a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator, Federal Insurance Administration, FEMA, finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses on both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Regular Program Communities			
Colorado:			
Fruita, town of	Mesa	080194	Dec.5, 1990.

State and community name	County	Community No.	Effective date
Delaware:			
Dagsboro, town of	Sussex	100033	Do.
Frankford, town of	Sussex	100037	Do.
Frederica, town of	Kent	100009	Do.
Greenwood, town of	Sussex	100039	Do.
Laurel, town of	Sussex	100040	Do.
Leipsic, town of	Kent	100014	Do.
South Carolina:			
Chester County	Unincorporated areas	450047	Dec. 15, 1990.
Columbia, city of	Richland	450172	Do.
Lancaster County	Unincorporated areas	450120	Do.

Issued: November 14, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-27284 Filed 11-19-90; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-17; RM-7113]

Radio Broadcasting Services; Pacific Grove and Soledad, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 286B1 for Channel 285A at Pacific Grove, California, and modifies the license of Station KOCN(FM) to specify operation on the higher powered channel, as requested by C. R. Pasquier Properties, Inc. Also, in order to accommodate the modification at Pacific Grove, Channel 292A is substituted for Channel 287A at Soledad, and the permit issued to Soledad Radio Limited Partnership (File No. BPH-8806020C); is modified accordingly. *See* 55 FR 4632, February 9, 1990. Coordinates for Channel 286B1 at Pacific Grove are 36-30-38 and 121-43-57. Coordinates for Channel 292A at Soledad are 36-22-48 and 121-12-57. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 31, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-17, adopted October 30, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by removing Channel 285A and adding Channel 286B1 at Pacific Grove, and by removing Channel 287A and adding Channel 292A at Soledad.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90-27325 Filed 11-19-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-303; RM-7291]

Radio Broadcasting Services; Harlan, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John Talbott d/b/a KNOD, substitutes Channel 287C3 for Channel 288A at Harlan, Iowa, and modifies the license of Station KNOD(FM) to specify operation on the higher powered channel. See 55 FR 24908, June 19, 1990. Channel 287C3 can be allotted to Harlan in compliance with the Commission's minimum distance separation requirements and can be used at Station KNOD(FM)'s licensed transmitter site. The coordinates for Channel 287C3 are North Latitude 41-37-00 and West Longitude 95-16-10. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-303, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 288A and adding Channel 287C3 at Harlan.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90-27225 Filed 11-19-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-443; RM-6827]

Radio Broadcasting Services; Lake Arthur, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 297C3 for Channel 297A at Lake Arthur, Louisiana, and modifies the construction permit for Channel 297A to specify operation on Channel 297C3 in response to a petition filed by Jefferson Davis Broadcasting Corporation, See 54 FR 42807, October 18, 1989. The coordinates for Channel 297C3 are 30–07–01 and 92–51–35.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–443, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 297A and adding Channel 297C3 at Lake Arthur.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–27226 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–317; RM–7312]

Radio Broadcasting Services; Nags Head, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Coastal Radio, Inc., substitutes Channel 223C3 for Channel 222A at Nags Head, North Carolina, and modifies the construction permit of Station WNHW to specify operation on the higher powered channel. See 55 FR 26707, June 29, 1990. Channel 223C3 can be allotted to Nags Head in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.7 kilometers (4.8 miles) south to avoid a short-spacing to Station WYFL, Channel 223C, Henderson, North Carolina. The coordinates for Channel 223C3 at Nags Head are North Latitude 35–53–22 and West Longitude 75–35–54. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 30, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–317, adopted October 30, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 222A and adding Channel 223C3 at Nags Head.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–27326 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–232; RM–7223]

Radio Broadcasting Services; Dickinson, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dickinson Broadcasting Corporation, allots Channel 256C1 to Dickinson, North Dakota, as the community's second local FM service. See 55 FR 21403, May 24, 1990. Channel 256C1 can be allotted to Dickinson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 256C1 are North Latitude 46–52–48 and West Longitude 102–47–18. Canadian concurrence has been received since Dickinson is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective December 31, 1990; The window period for filing applications will open on January 2, 1991 and close on February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–232, adopted October 31, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Channel 256C1 at Dickinson.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–27327 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90-14; RM-7193]

Radio Broadcasting Services; Eldorado and Lawton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Communicorp, Inc., licensee of Station KQLI(FM), Channel 232A, Lawton, Oklahoma, substitutes Channel 246A for unoccupied and unapplied for Channel 232A at Eldorado, Oklahoma. *See* 55 FR 4207, February 7, 1990. Channel 246A can be allotted to Eldorado in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 246A at Eldorado are North Latitude 34-28-24 and West Longitude 99-38-54. The substitution of channels at Eldorado will enable Station KQLI(FM) to increase power from its present 3 kW to 6 kW. Communicorp's counterproposal to substitute Channel 232C3 for Channel 232A at Lawton, Oklahoma, and the deletion of Channel 232A from Elk City, Oklahoma, was not considered because the petitioner failed to provide an engineering study demonstrating that the channel allotment could be accomplished in compliance with the Commission's minimum distance separation requirements. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-14, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 232A and adding Channel 246A at Eldorado.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90-27224 Filed 11-19-90; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 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 1205

[CN-90-001]

Amendment to the Regulations Governing the Cotton Research and Promotion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the Rules and Regulations issued under the Cotton Research and Promotion Act and Order regarding the imposition of interest and late payment charges imposed on collecting handlers who fail to remit assessments to the Cotton Board when due and to establish procedures for the publication of the names of collecting handlers who fail to submit collecting handler reports or to remit assessments. Additionally, such publication may include letters to individual producers informing them that the collecting handler has not remitted assessments to the Cotton Board as required.

This amendment would modify the existing procedures under which interest and late payment charges would be imposed on collecting handlers who do not remit assessments to the Cotton Board when due. Handlers who have been sent a second notice of delinquency would be subject to these procedures. Also, this proposed rule would further specify the date from which these charges will be applied. In specifying the conditions under which interest charges and late payments would be applied, this proposal would encourage handlers to remit assessments when due, thereby aiding in the compliance process.

This amendment would also establish procedures for the publication of the names of collecting handlers who fail to submit collecting handler reports or remit the assessments when due. The publication of the names of these collecting handlers would further encourage handlers to remit the assessments and submit the reports to the Cotton Board when due, thereby further aiding in the compliance process.

DATES: Comments to the proposed amendment must be received on or before December 20, 1990.

ADDRESSES: Written comments concerning the proposed rule should be sent in triplicate to: Craig Shackleford, Cotton Division, AMS, USDA, P.O. Box 96456, room 2641–South, Washington, DC 20090–6456. All written comments will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page of the **Federal Register** publication.

FOR FURTHER INFORMATION CONTACT: Craig Shackleford (202) 447–2259.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non—major" since it does meet the criteria for a major regulatory action as stated in the order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed changes would merely: (1) Modify the existing procedures under which interest and late payment charges would be imposed on handlers delinquent in remitting assessments; and (2) allow for publication of the name of any collecting handler who fails to submit collecting handler reports or remit assessments. The proposed changes impose no additional requirements on those regulated under the order.

There would be no change in the reporting or recordkeeping requirements of those subject to the order as a result of this proposed rule.

The information collection requirements contained in the sections of the regulations that would be amended by this proposed rule have been previously approved by the Office of Management and Budget and assigned OMB control number 0581–0115 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Interest and Penalty Charges

This proposed amendment would amend § 1205.514(d) of 7 CFR part 1205 by specifying the circumstances under which interest and late payment penalties would be charged to collecting handlers who do not remit assessments to the Cotton Board when due and the date from which these charges would be applied. Handlers delinquent in remitting assessments would be charged interest on these assessments at a rate prescribed by the Cotton Board with the approval of the Secretary if the handler is sent a second certified mail notice of past-due assessments from the Cotton Board in any one marketing year (August 1–July 31). Late payment charges would be imposed on collecting handlers who do not remit the assessments on which interest is being charged within 10 days after the close of the next reporting period. Both interest and late payment charges would be applied from the first working day on or following the 20th day of the month in which the assessments were due.

The proposed change specifies the condition that allow for the imposition of interest and late payment charges. The amendment would impose these charges on collecting handlers who have been sent two notices that they have failed to remit assessments when due.

Publication of Handlers Names Who Fail to Remit Assessments and Submit Reports

The amendment would also add to § 1205.515 of 7 CFR part 1205 criteria for publication of the names (including location) of collecting handlers who fail to submit collecting handler reports or remit assessments and would describe procedures for the publication of these names. Additionally, the Cotton Board would notify producers that their assessments have not been remitted by the collecting handler to the Cotton Board as required. The names of collecting handlers who: (1) Receive a second certified mail notice of past-due assessments from the Cotton Board in any one marketing year (August 1–July 31); or (2) are required by the Cotton Board to establish an escrow account for depositing assessments due to previous failures to remit assessments when due and do not comply with the deposit and withdrawal procedures established by the Cotton Board with the approval of the Secretary; are subject to the publication and notification procedures.

It is intended that collecting handlers subject to publication would be notified by the Cotton Board that they are so subject prior to their names being published. The names of all collecting handlers who are determined to be subject to publication would be published in a monthly listing during the primary cotton marketing season (September through March) and a bi-monthly listing during the remainder of the year by the Cotton Board with the approval of the Secretary. The published listing also would be distributed by the Cotton Board to all agricultural trade associations and publications included on a list supplied by the Cotton Board and approved by the Secretary.

Also, it is proposed that the authority citation be revised for clarity.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1205 be amended as follows:

1. The authority citation for part 1205 is revised to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.514, paragraph (d) is revised to read as follows:

§ 1205.514 Reports and remittance to the Cotton Board.

* * * * *

(d) *Interest and late payment charges.* (1) There shall be an interest charge, at rates prescribed by the Cotton Board with the approval of the Secretary, on any handler who: is sent a second certified mail notice of past-due assessments from the Cotton Board in any one marketing year (August 1–July 31).

(2) In addition to the interest charge specified in paragraph (d)(1) of this section, there shall be a late payment charge on any handler whose remittance has not been received by the Cotton Board within 10 days after the close of the reporting period in which interest charges were first accrued. The late payment charge shall be 5 percent of the unpaid balance before interest charges have accrued.

(3) The interest and late payment charges on the unremitted assessments for a particular reporting period will be applied from the first working day on or following the 20th day of the month in which the assessments were due.

3. In § 1205.515 paragraph (d) is added to read as follows:

§ 1205.515 Failure to report and remit.

* * * * *

(d) Publication of a collecting handler's name in accordance with the following provisions:

(1) The name of any collecting handler will be subject to publication if the collecting handler:

(i) Is sent two certified mail notices of past due assessments and/or collecting handler reports from the Cotton Board in any one marketing year (August 1–July 31), or

(ii) is required by the Cotton Board to establish an escrow account for depositing assessments, in accordance with paragraph (b) of this section, and does not comply with the deposit precedures established by the Cotton Board with approval of the Secretary.

(2) The names of any collecting handler who is subject to publication will be published by the Cotton Board with the approval of the Secretary in a monthly listing during the primary cotton marking season (September through March) and a bimonthly listing during the remainder of the year. The published listing will be distributed by the Cotton Board.

(3) The Cotton Board, with approval of the Secretary, may notify individual producers that the assessments collected by such producer's collecting handler, whose name is subject to publication in accordance with the provisions of paragraph (d)(1)(i) of this section, have not been remitted to the Cotton Board as required.

Dated: November 14, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90–27206 Filed 11–19–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-214-AD]

Airworthiness Directives; Boeing Model 747–200, 747–300, and 747–400 Series Airplanes Equipped With General Electric CF6–80C2 PMC and CF6–80C2 FADEC Engines, and Pratt and Whitney PW4000 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747–200, 747–300, and 747–400 series airplanes, which would require inspection of each outboard engine fuel feed line in the engine strut to determine if interference with an adjacent pneumatic duct clamp has caused damage, and, if necessary, repair or replacement of the fuel feed tube. In addition, this proposal would require inspection and replacement of the adjacent pneumatic duct clamp with a non-rotating type clamp if a non-rotating clamp is not already installed. This proposal is prompted by reports of a fuel leak in the number 4 engine strut, due to a punctured fuel feed line that had chafed as a result of contact with the clamp. This condition, if not corrected, could result in an engine fire.

DATES: Comments must be received no later than January 10, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–214–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S; telephone (206) 227–2686. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-214-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

An operator of a Boeing Model 747 series airplane reported a fuel leak in the number 4 engine strut. Investigation of the fuel leak revealed that the leak was caused by a punctured fuel feed tube. The fuel tube was punctured as a result of chafing with the clamp, which is used to connect the flap drive duct to the pneumatic duct in the number 4 strut upper gap area. The investigation also disclosed that the tube retainer clamp for the flap drive duct could rotate around the flange and allow the screw to ride and chafe the fuel tube. Because of a similar design configuration, this same condition could possibly exist in the number 1 engine strut gap area. This condition, if not corrected, could result in an engine fire.

The FAA has reviewed and approved Boeing Service Bulletin 747-36A2097, dated August 16, 1990, which provides instructions for inspecting and replacing the fuel tube and installing non-rotating clamps.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the upper gap area in engine strut numbers 1 and 4, and if necessary, repair or replacement of the fuel tube, in accordance with the service bulletin previously described. Installation of non-rotating clamps, if not installed, is also required.

There are approximately 42 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 9 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts will be provided at no cost by the manufacturer. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,160.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747 series airplanes, equipped with General Electric CF6-80C2 PMC and CF6-80C2 FADEC engines, and Pratt and Whitney PW4000 Engines, as listed in Boeing Service Bulletin 747-36A2097, dated August 16, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential of an engine fire due to a punctured fuel feed line, accomplish the following:

A. Within the next 60 days or 450 hours time-in-service after the effective date of this AD, whichever occurs first, inspect the upper gap area in the engine strut numbers 1 and 4 to determine if interface with the adjacent pneumatic duct clamp has caused damage to the fuel feed tube, such as chafing or punctures. If any such damage is found, prior to further flight, repair or replace the fuel tube. If a non-rotating clamp is not installed, prior to further flight, install a non-rotating clamp one inch from the existing stationary clamp in accordance with Boeing Service Bulletin 747-36A2097, dated August 16, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 7, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27269 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 110

[CGD8-89-12]

Anchorage Grounds; Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; Withdrawal.

SUMMARY: The Coast Guard is withdrawing proposed rules for establishment of an anchorage area on the lower Mississippi River near the Belmont Crossing. The proposal is being withdrawn because there is no systematic evidence available indicating that the current anchorage inventory is inadequate. There was also significant adverse public comment to the proposal.

FOR FURTHER INFORMATION CONTACT: LCDR E. N. FUNK, Project Officer, c/o Commander (oan), Eighth Coast Guard District, Hale Boggs Federal Building, room 1209, 501 Magazine Street, New Orleans, LA 70130-3396, (504) 589 4686.

SUPPLEMENTARY INFORMATION: A temporary anchorage was established at the Belmont Crossing in April, 1982. Following a one year evaluation period

a notice of proposed rulemaking to establish a permanent deep draft anchorage was published on April 11, 1983, and subsequently withdrawn on September 22, 1983, for lack of compelling need. The withdrawal statement noted that the proposed anchorage could be reconsidered in the future should a need for additional anchorages develop.

The U.S. Army Corps of Engineers is responsible for Mississippi River bank and levee stabilization projects. Revetment by placing articulated concrete mats on the river banks is a common method of stabilization. Ships are prohibited from anchoring directly over revetted areas. The proposed anchorage area near the Belmont Crossing is the only area above New Orleans which would not require additional revetment in the next four years and which is of sufficient depth to accommodate deep draft ships at anchor.

According to Corps of Engineers waterborne commerce statistics, tonnage shipped to or from facilities located between miles 168–253 Above Head of Passes increased 7% from 1987 to 1988. During the same period, the number of all self-propelled ships calling at ports in that area decreased by 6%.

On November 7, 1989, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (54 FR 46736). Interested persons were requested to submit comments. The public comment period was extended twice, (55 FR 1679 and 55 FR 29637), and ended on August 31, 1990. A public hearing was advertised (55 FR 13917) and held in the St. James Parish, LA, Courthouse on May 3, 1990. The majority of comments received were in opposition to the anchorage, centering on perceived adverse impact to the local environment.

As published on November 7, 1989, the proposed anchorage was described as along the Left Descending Bank, mile 153.3 to mile 155.5 Above Head Of Passes (AHOP), Lower Mississippi River (LMR). From mile 153.3 to mile 154.5 AHOP it would have a 700 foot width measured 100 feet from the riverward edge of the Belmont Revetment located 300 feet from the Low Water Reference Plane (LWRP). From mile 154.5 to mile 155.5 the anchorage was to have a width of 1100 feet as measured from the LWRP. Based on navigation safety concerns of marine interests, the proposal was modified to locate the anchorage farther from the navigation channel. As published on April 13, 1990, the limits of the anchorage were changed to mile 153.3 to mile 154.7 AHOP along the Left Descending Bank LMR. From mile 153.3 to mile 154.5 it would have a width of 700 feet measured 100 feet riverward of the Belmont Revetment. From mile 154.5 to mile 154.7 the anchorage would have a width of 700 feet measured from the LWRP.

The Coast Guard received voluminous comments on the proposed anchorage, the overwhelming amount of which were negative. A significant portion of the commentary addresses environmental concerns from Manresa House, a religious retreat house, and Oak Alley, a historic plantation mansion. In the case of the commentary from Oak Alley, it should be noted that numerous comments were manufactured from visitors to the historic house, encouraged to do so in campaign form on literature available to visitors touring the facility. The Coast Guard does not agree with the conclusions reached by those with environmental concerns. In fact; the situation with respect to those concerns is not materially different from the 1982–3 experience. The two midstreaming operations located about one mile upriver which were identified as producing distracting noise are still in operation.

This proposal is being withdrawn primarily because information on the utilization of existing anchorages did not indicate they were being used to capacity. Further, no management scheme exists to actively manage the anchorages, nor is there even data collected that would facilitate such management. The Coast Guard is now working with the New Orleans Board of Trade to study potential anchorage management systems and to improve information collection. That effort will extend to encouraging better operations management at shoreside facilities in order to reduce the uncertainty associated with the length of time ships remain at anchor. The proposed New Orleans Vessel Traffic Service, if reestablished, could facilitate anchorage management and information collection.

An environmental assessment checklist completed by the Coast Guard indicated that an Environmental Impact Statement (EIS) would be required to proceed with establishment of the anchorage. Preparation of the EIS was expected to cost $250,000 and take 18 months to complete. Given the lack of comprehensive data on anchorage utilization, it would be premature to commit time and money to the effort.

The Coast Guard will discuss revetment-anchorage conflict with the Corps of Engineers. Alternative methods of revetment or alternative methods of mooring ships might be feasible.

Drafting Information

The drafters of these regulations are LCDR E. N. FUNK, project officer, Aids to Navigation Branch, and LT J. A. WILSON, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Comments

A total of 227 written comments were received; 9 in favor of the anchorage, 212 opposed, and 6 neutral.

Three written comments in favor of the anchorage cited navigation safety concerns; three cited improved facilitation of commerce, more efficient use of the waterway and more efficient use of bulk commodity facilities; and three cited the perceived lack of anchorage space.

The neutral comments were requests to consider various information such as potential effects of the anchorage on the flood plain, tourism, etc.

Of the written comments opposed to the anchorage, 108 were essentially form letters similar to the one originating from Oak Alley. Elementary school students who visited Oak Alley on a field trip submitted 63 negative letters. Of the remaining 41 negative written comments, 23 addressed perceived adverse impact on the Oak Alley plantation (including visual distraction, noise, light, water and air pollution); 7 cited concern for the impact on tourism in general; 4 expressed concern for perceived increases in crime and vehicular traffic; 3 expressed concern about increased noise; 3 commented on perceived degradation of navigation safety; and 1 opposed the anchorage because the commenter felt that an anchorage would preclude further commercial development of the land adjacent to the anchorage.

During the public hearing, 22 people made statements; 19 were opposed and 3 were in favor of the anchorage. Eleven people cited perceived increases in pollution in their statements; 9 referred to potential noise pollution; 4 speakers mentioned concerns about increased crime; 3 felt that bank erosion would increase; 2 were opposed to any development along the river; 2 expressed concern for increased vibration; 2 were opposed, but gave no specific reasons; and 1 cited perceived increases in vehicular traffic.

All 3 speaking in favor of the anchorage cited enhanced navigation safety and 2 mentioned increased competitiveness of Mississippi River ports and the potential loss of trade.

The Coast Guard does not agree with the conclusions reached by those expressing environmental concerns. The

Coast Guard does not think the situation is materially different from that of 1982–3, but the Coast Guard realizes that an Environmental Impact Statement (EIS) will be required to proceed. Given the lack of comprehensive data on anchorage utilization, the Coast Guard will not commit time and money to the EIS effort at this time.

Notice of proposed rulemaking CGD8–89–12 is withdrawn. No further rulemaking of this subject is under consideration, however the matter may be reopened should the need for additional anchorages be clearly demonstrated in the future.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Dated: November 8, 1990.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 90–27254 Filed 11–19–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3861–8]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Revised Regulations for Controlling Volatile Organic Compound Emissions and Adoption of a Continuous Emissions Monitoring Regulation

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. These revisions consist of revised volatile organic compound (VOC) emissions regulations applicable in the entire State of Rhode Island and a regulation for continuous emissions monitoring (CEM). The intended effect of this action is to propose approval of Rhode Island's revised VOC regulations to make amendments to Rhode Island's Ozone Attainment Plan and to fulfill commitments to adopt a CEM regulation. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before December 20, 1990. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection by appointment during normal business hours at the U.S. Environmental Protection Agency, Region I, One Congress Street, Tenth Floor, Boston, MA and the Division of Air and Hazardous Materials, Department of Environmental Protection, 291 Promenade Street, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565–3248; FTS 835–3248.

SUPPLEMENTARY INFORMATION: On November 3, 1989, November 21, 1989, February 1, 1990, and September 19, 1990, the Rhode Island Department of Environmental Management (DEM) submitted revisions to its SIP. The revisions consist of revised VOC emissions regulations and a revised regulation requiring CEM.

Background

In the **Federal Register** on November 24, 1987, EPA's Proposed Post–1987 Policy for Ozone and Carbon Monoxide stated that air quality monitors revealed continued exceedances of the ozone standard in Rhode Island and that a SIP call would be issued. (See 52 FR 45044.) A SIP call is a finding by EPA under Clean Air Act section 110(a)(2)(H) that the SIP does not provide for attainment by the required date, and thus amounts to a revocation (for certain purposes) of EPA's approval of the SIP and the attainment demonstration. Since publishing this notice, the review of data from air quality monitors in the State has revealed additional exceedances of the standard during 1987, 1988, and 1989. On May 25, 1988, EPA sent a letter to Edward DiPrete, Governor of Rhode Island, pursuant to section 110(a)(2)(H) of the Clean Air Act as amended, notifying him that the Rhode Island SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the entire state. EPA requested the State to respond to the SIP call in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. The first phase of the response to the SIP call consists of (1) correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the area's base year emissions inventory.

On June 16, 1988, EPA sent a letter to the Chief of the Rhode Island Department of Environmental Management's (DEM) Division of Air and Hazardous Materials outlining the changes that needed to be made to Rhode Island's existing VOC regulations to make them consistent with EPA national guidance. On November 3, 1989, November 21, 1989, February 1, 1990, and September 19, 1990, the Rhode Island DEM submitted revised VOC regulations in response to EPA's May 25 and June 16, 1988 letters.

Additionally, the State of Rhode Island adopted a CEM regulation consistent with 40 CFR 51.214 and part 51, appendix P. The CEM regulation was adopted pursuant to an EPA requirement that CEM be installed on certain sources as outlined in appendix P. A complete discussion of all of EPA's requirements and Rhode Island's Regulations is available in the Technical Support Document prepared for this revision.

Finally, Rhode Island requested that EPA approve versions of the regulations that were not explicitly approved by their Secretary of State. The difference between the version approved by the Secretary of State and version the DEM has requested that EPA approve is that the former regulates compounds which EPA has exempted from control because of negligible photochemical reactivity. EPA will not approve regulation of these negligibly reactive compounds as part of the SIP. Rhode Island's intentions were clearly explained in the cover letter submitting its SIP proposal to EPA and, in all cases, Rhode Island's adopted version of the regulations is as stringent as EPA's requirements. However, EPA can not approve the version of the regulation which was not officially adopted by the State. Therefore, EPA proposes to act on those portions of the adopted version of the State regulations which are approvable. EPA will take no action on the sections of the regulations which the DEM clearly did not intend to submit for EPA approval.

Content of Regulations

Revised VOC Regulations

The Rhode Island DEM made the following changes to VOC Regulation Numbers 11, 15, 18, 19, and 21:

1. The applicability levels of Rhode Island's "bulk gasoline terminal" regulation and "bulk gasoline plant" regulation which are found at 11.3 and 11.4, respectively were changed such that they are now based on a 30-day rolling average. In addition, the bulk gasoline terminal regulation now states

that once a loading rack exceeds the applicability cutoff of 20,000 gallons per day, it will always be subject to the 80 grams per 1000 liters of liquid loaded emission limitation. Correspondingly, the "bulk plant" regulation now states that once a loading rack exceeds 4000 gallons per day, it will always be subject to the bulk plant requirements.

2. The applicability level of Rhode Island's "Service stations—Stage I" regulation (subsection 11.5) was changed such that it is based on a rolling 30-day throughput. Any request for exemption must have been made no later than May 1, 1981.

3. The applicability of the surface coating regulations for paper, fabric, and vinyl in Regulation 19, the graphic arts Regulation Number 21, and 100 ton per year non-CTG Regulation Number 15.5 were changed such that facilities are now subject to emission limitations representative of RACT if facility-wide emissions have or ever had the potential to emit 100 tons per year of VOC. Rhode Island's previous Ozone Attainment Plan demonstrated attainment by December 31, 1982. EPA policy required that only these larger facilities be controlled in such an area. Facilities whose actual emissions have always been below 100 tons per year may be eligible for a permit restricting their emissions to below 100 tons per year in an enforceable document.

4. The emission limitations in Regulation Number 19 were changed to list limits in "pounds of VOC per gallon of coating (minus water)" and in "pounds of VOC per gallon of solids."

5. Rhode Island's generic bubble rules in 15.4, 19.4, and 21.5 were revised such that all of the applicable requirements of EPA's Emission Tracing Policy (51 FR 43814) are met. Rhode Island will not issue any bubbles while the State is a nonattainment area lacking an approved demonstration of attainment for ozone.

Further, Regulation 15.4.1(d) contains an allowable emissions formula for emission trades structured around the premise that an emission limitation be based on a unit of production. Subsection 15.3, however, requires an 85 percent control requirement for certain facilities using a "highly photochemically reactive VOC," an emission limit not expressed in units of production. EPA understands that sources subject to a percent reduction reqirement, such as under Regulation 15.3, are not eligible for an emissions trade. Additionally, EPA understands that allowable emissions, as determined by subsection 15.4.1(d), must be recalculated daily based on that day's number of units actually processed, and the appropriate emission limitation, to determine whether allowable emissions were less than actual emissions (and in violation) under the bubble for that day. EPA will enforce this regulation according to these interpretations, and EPA proposes to approve this provision conditioned on the understanding that Rhode Island's DEM will do the same.

6. The following terms were either defined or the definition of the term was revised to reflect current EPA guidance: daily throughput, best extent possible, volatile organic compound, potential emissions, emission baseline, enforceable document, person, equivalent control, and refrigerated chiller.

7. Rhode Island's regulations were changed such that the appropriate compliance averaging periods for the following emission limitations and/or requirements are now stated: (a) The "80 grams per 1000 liters of liquid loaded" limit for bulk gasoline terminals; (b) the emission reduction and capture efficiency requirements for add-on control equipment on printing equipment at graphic arts facilities; and (c) the emission reduction and capture efficiency requirements for surface coating sources using add-on control equipment.

8. Recordkeeping requirements were adopted or revised for surface coating sources, graphic arts facilities, fixed and external floating roof tanks, tank trucks used for gasoline marketing, bulk gasoline terminals and plants, degreasers, and gasoline service stations.

9. Rhode Island's tank Truck Certification program was revised to be consistent with all EPA requirements for the source category. Requirements of the program were not part of Regulation Number 11, and are not listed in 11.8.

10. Continuous monitoring requirements were adopted for major stationary sources using terminal incenerators, catalytic incinerators, condensers or refrigeration systems, or carbon adsorbers.

11. The most current EPA-approved VOC test methods were incorporated into the regulations for determining the VOC content of surface coatings and inks, the reduction efficiency of add-on control devices, the total seal gap for floating roofs, leak tightness, the efficiency of control devices at bulk gasoline terminals, and leaks from gasoline tank trucks. Furthermore, Rhode Island has committed to adopt EPA approved test methods or guidance for the determination of capture efficiency into its appropriate regulations, when available.

12. The following existing exemptions and/or variances have been changed as noted: (a) Alternative methods of control for fixed roof tanks (Regulation 11.2) now require at least a 95 percent efficiency without requiring EPA approval; (b) Any use of alternative methods of control at service stations (Regulation 11.5) or external floating roof tanks (Regulation 11.6) requires EPA approval as a SIP revision; (c) variance provisions for non-CTG RACT determinations (Regulation 15) were eliminated; (d) "equivalent control" (Regulation 18.1.9) was defined for degreasers such that EPA and DEM approval is required for any alternative methods of control; and (e) compliance date extensions and/or alternative emission limitations for either paper, vinyl, or fabric coaters (Regulation 19.3); or graphic arts facilities (Regulation 21.4) require EPA aproval as a SIP revision.

13. Miscellaneous provisions of EPA's model regulations (i.e., EPA-905/2-78-001 and EPA-450/2-79-004) for the Group I and II control techniques guidance (CTG) documents were added to the following regulations: (a) The storage of petroleum liquids in fixed roof tanks; (b) bulk gasoline terminals; (c) external floating roof tanks; (d) tank truck certification for leak tightness and (e) organic solvent metal cleaning.

14. Subsection 21.5.2(h) describes how allowable emissions are to be determined in an emissions trade for graphic arts sources. A formula to determine allowable emissions in an emissions trade is included and reads, in part, "* * * An = the applicable emission limit equivalent to 0.5 pounds of VOC/pound of solids applied) * * *" (emphasis added). Some courts have interpreted SIP's allowing for "equivalent" emission limits to permit the source and state more flexibility in restructuring emission limits than Rhode Island have intended. Although the term "equivalent to" in subsection 21.5.2(h) is not the same as the provisions those courts interpreted, EPA and DEM wish to avoid any possible confusion about the application of this provision in the SIP. For this reason, Rholde Island submitted an amendment to its SIP submittal dated September 19, 1990 which requests that the term "equivalent to" not be considered part of the submittal. Consequently, the version of Regulation 21 which EPA is proposing to approve does not include "equivalent

to." By removing "equivalent to," the parenthetical simply reads "the applicable emission (0.5 pounds of VOC/pound of solids applied) * * *," which eliminates any potential confusion for the regulated community.

An issue associated with these revisions regards subsection 19.3.2(a). Subsection 19.3.2(a) may allow paper, fabric, or vinyl surface coating sources to come into compliance with RACT by reducing their emissions with add-on control equipment by 85 percent regardless whether the reduction complies with the emission limits of 2.9 pounds of VOC/gallon of coating (minus water) or 3.8 pounds of VOC/gallon of coating (minus water), as appropriate. This was not the DEM's intention. Subsequently, DEM withdrew this subsection from Rhode Island's SIP revision in a letter dated February 1, 1990. Additionally, the DEM has committed to revising this section of the regulation to avoid any confusion created by differing state and federal regulatory language.

CEM Regulation

Regulation Number 6 was revised to require that stationary sources as specified in title 40 of the Code of Federal Regulations (CFR) part 51, appendix P, parts 1–5, as amended shall install, calibrate, operate, and maintain a continuous emission monitoring system in accordance with all requirements set forth or referenced therein. Rhode Island adopted these requirements to fulfill a commitment to require monitoring for these sources.

EPA's review of the SIP submittal indicates that Rhode Island has addressed all of the necessary regulatory amendments in the existing VOC regulations as identified by EPA. EPA is proposing to approve the Rhode Island SIP revisions containing the revised VOC regulations in Rhode Island's Air Pollution Control Regulations Number 11, 15, 18, 19, and 21, which were submitted on November 3, 1989, November 21, 1989, February 1, 1990 and September 19, 1990. EPA is taking no action on those portions of the DEM regulations that include negligibly photochemically reactive VOCs. Additionally, EPA is proposing to approve amendments to Air Pollution Control Regulations Number 6 which now contain requirements for CEM, also included in the above submittals. For additional details on the approvability of each portion of Rhode Island's regulations, see the Technical Support Document prepared on the revision available at the locations listed in the **ADDRESSES** section of this notice. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters.

These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve the SIP revision submitted by Rhode Island on November 3, 1989, November 21, 1989, February 1, 1990, and September 19, 1990. These revisions amend Rhode Island's VOC regulations as part of Rhode Island's Ozone Attainment Plan and adopt requirements for continuous emissions monitoring.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as a permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: November 11, 1990.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 90–27304 Filed 11–19–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW–FRL–3862–4]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Quanex Corporation (Quanex), South Lyon, Michigan, to exclude certain liquid waste generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until January 4, 1991. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with the Director, Characterization and Assessment Division, whose address appears below, by December 5, 1990. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy

should be sent to Jim Kent, Variances Section, Waste Identification Branch, CAD/OSW (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-90-QXDP-FFFFF".

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (OS-330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260 20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities to do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also considered hazardous wastes. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standards for "delisting" a treatment residue or a mixture are the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting termination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). EPA also evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and other additional factors which may characterize the petitioned waste (*e.g.*, the impact of the disposal of the petitioned waste on ground-water quality). Based on this review, the Agency disagrees with the petitioner's claim that the waste is non-hazardous. As a result, EPA today is proposing to deny the petition.

For this delisting demonstration, the Agency identified plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Quanex's petitioned waste on human health and the environment. Specifically, the model was used to predict compliance-point concentrations which were then compared directly to the levels of regulatory concerns for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the acquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very

different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because Quanex is seeking a delisting for waste managed on site in surface impoundments subject to the RCRA ground-water monitoring regulations, ground-water data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to ground water. EPA recently proposed a rule clarifying the Agency's use of ground-water data in delisting decisions (*see* 54 FR 41930, October 12, 1989). Ground-water monitoring data collected from Quanex's monitoring wells helps characterize the impact (if any) of the disposal of Quanex's waste on ground-water quality.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (includng those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Quanex Corp., South Lyon, MI

1. Petition for Exclusion

Quanex Corporation (Quanex), located in South Lyon, Michigan, is engaged in the manufacture of seamless tubing for various industries. Quanex petitioned the Agency to exclude the liquid effluent discharged to and contained in two on-site surface impoundments, presently listed as EPA Hazardous Waste No. K062—"Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332)". The listed constituents for EPA Hazardous Waste No. K062 are hexavalent chromium and lead (*see* 40 CFR part 261, appendix VII).

The spent pickle liquor generated by Quanex's process is sent to its treatment plant and neutralized with lime prior to being sent to the surface impoundments. On June 5, 1984, the sludge portion of the lime-treated waste was excluded from hazardous waste regulation under 40 CFR 261.3(c)(2)(ii)(A). See 49 FR 23284. Specifically, this exemption includes sludges generated by the lime neutralization of spent pickle liquor from the iron and steel industry (K062) unless the sludge exhibits one or more of the characteristics of a hazardous waste. The Agency promulgated this exemption after determining that lime neutralization of such spent pickle liquor, when properly conducted, consistently generates a sludge waste that does not meet the criteria of the original listing. The remaining liquid portion of the lime-treated waste, hereafter referred to as the petitioned effluent, is a hazardous waste and is the subject of Quanex's petition.

Quanex petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Quanex claims that the effluent is not hazardous because the constituents of concern remain in insignificant concentrations following treatment of the spent pickle liquor with lime. Quanex also believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to deny this petition for exclusion is the result of the Agency's evaluation of Quanex's petition.

2. Background

Quanex petitioned the Agency to exclude its waste on February 5, 1986 and subsequently provided additional information. In support of its petition, Quanex submitted (1) Detailed descriptions of its manufacturing process, including schematic diagrams; (2) total constituent data for the EP toxic metals, nickel, and cyanide for representative waste samples; (3) total oil and grease analysis data for representative waste samples; and (4) test data and explanations regarding the characteristics of ignitability, corrosivity, and reactivity.

Quanex's seamless steel tubing manufacture process involves the heating of solid cylindrical bars of steel, piercing the steel bars over a point to produce a hollow shell, cooling the shells, cleaning the shells with dilute sulfuric acid to remove any surface scale (iron oxide), rinsing to remove acid residue, sizing the steel tubes, rinsing with water, and drying. The sizing of the tubes involves immersing the tubes in sulfuric acid; rinsing with water; cleaning the surface with zinc phosphate solution; coating the tubes with sodium stearate, a lubricant; and cold drawing the tubes to reduce the diameter and the wall to size. The cleaning, lubrication, and cold drawing steps are repeated until the specified size is achieved. Quanex claims that 85 percent of the tubing produced at the South Lyon facility is manufactured from carbon or alloy steel and only 15 percent is manufactured from specialty steel.

The spent pickle liquor and the associated rinse waters are sent to Quanex's wastewater treatment facility and neutralized by the addition of a lime slurry. The lime treatment of the spent pickle liquor is achieved using an automated system which monitors the pH level of the liquid. Compressed air is bubbled through the waste to promote oxidation and motorized rotary blades facilitate rapid mixing. The lime-treated waste is discharged to the first of two surface impoundments (in series). The retention time of the effluent in the surface impoundments is estimated by Quanex to be 2.2 days. The impoundment overflow is discharged from the second surface impoundment to the Yerkes Drain under a National Pollutant Discharge Elimination System (NPDES) permit. The non-hazardous sludge that settles out is removed periodically (usually annually) from the impoundments and sent to one of two drying beds.

For waste treatment units like Quanex's surface impoundments, petitioners are usually requested to divide each unit into quadrants and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce composite samples. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530–SW–85–003), April 1985. Quanex, however, chose to modify these sampling procedures because the petitioned waste is a liquid and, thus, the composition of the waste is less likely to exhibit spatial variation.

In February 1986, Quanex submitted analytical data for samples of the petitioned effluent collected using a two-phase approach. During Phase I, Quanex collected four grab samples of the petitioned effluent at various points during the treatment of separate batch dumps of two wastes. Specifically, samples were collected of the petitioned effluent (1) Prior to each batch dump, (2) after each batch dump, (3) at the midpoint of treatment of each batch dump, and (4) at the end of treatment. A total of eight grab samples of the petitioned effluent were collected in Phase I, four for each batch treated In

Phase II, Quanex sampled the petitioned effluent during production and non-production shifts using a two-step process: (1) A grab sample was collected at the beginning of the day to represent non-production conditions; and (2) grab samples were collected every thirty minutes during production hours and composited daily. Quanex repeated both steps of the Phase II procedure every day for a ten-day period. Ten grab samples and ten composite samples were collected from Phase II of Quanex's sampling procedure. All samples were collected at the point of discharge into the first surface impoundment and were not filtered. All samples were preserved with nitric acid.

Quanex analyzed the eighteen grab samples and ten composite samples for the total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the EP toxic metals and nickel. Quanex also analyzed the ten grab samples and ten composite samples from Phase II for total oil and grease content and total cyanide.

In November 1986, Quanex submitted additional sampling and analysis data for the petitioned waste. Quanex re-sampled the petitioned waste using the procedures followed in Phase II of the previously described sampling event. Quanex repeated both steps of this procedure every day for ten-day period in August 1986. (The tenth grab sample was collected in September 1986.) All samples were again collected at the point of discharge into the first surface impoundment. However, in this second sampling event all samples were field filtered (0.45 microns) before being preserved with nitric acid. Quanex filtered these samples because it believed that the sampling data submitted in February 1986 reflected the presence of the previously exempt sludge which might be redissolved by the nitric acid preservative. Quanex analyzed the ten grab samples and ten composite samples collected in August/September 1986 for the total constituent concentrations of the EP toxic metals and nickel.

Although the Agency agreed to the use of the 0.45 micron filter, the Agency now questions if the filter might have removed particles which were suspended in the petitioned waste. The Agency believes that, because Quanex petitioned the Agency to exclude the liquid effluent discharged to its on-site surface impoundments, Quanex's petition should have characterized this waste in its "to be disposed" state. At the point of discharge, Quanex's liquid effluent still contains suspended solids. In accordance with 40 CFR 260.22(b), a facility seeking an exclusion for a waste that is a mixture of solid and listed hazardous wastes must demonstrate that the waste is not hazardous with respect to the waste mixture as a whole. Therefore, because Quanex's liquid effluent is a mixture of a solid waste (*i.e.*, the sludge generated by the lime neutralization of spent pickle liquor) and a listed hazardous waste (*i.e.*, the spent pickle liquor), the Agency does not believe that it is appropriate for Quanex to "remove" the solids portion of the waste before analysis. By filtering the waste, Quanex has neglected to characterize the solid waste portion of the liquid effluent as required under 40 CFR 260.22(b). Further, although the solids portion of Quanex's liquid effluent settled out in the on-site surface impoundments in the past, if delisted, Quanex may not choose to discharge the liquid effluent to its on-site surface impoundments (*i.e.*, Quanex might dispose of the liquid effluent in a manner which would not include solids removal). For these reasons, both filtered and unfiltered data have been considered in today's notice.

During the review of the petition, the Agency obtained ground-water monitoring information relevant to the surface impoundments from the Michigan Department of Natural Resources and EPA Region V authorities. The ground-water monitoring information received included: (1) Well location information; (2) boring logs and well construction information; (3) water levels and water level contour maps; and (4) results of the analysis of ground-water samples.

3. Agency Analysis

Quanex used "Methods for Chemical Analysis of Water and Wastes (MCAWW)" Methods 206.2–272.1 and 335.3 to quantify the total constituent concentrations of the EP toxic metals, nickel, and cyanide in the February 1986 samples of the petitioned waste. Quanex used SW–846 Methods 7061–7950 to quantify the total constituent concentrations of the EP toxic metals and nickel in the November 1986 samples of the petitioned waste. Samples of the petitioned waste were analyzed only for total constituent concentrations because the waste is a liquid. For liquid wastes, the extraction procedure (EP) leachate concentration (*i.e.*, mass of a particular constituent per unit volume of extract) is considered equivalent to the total concentration.

Table 1 presents the maximum total constituent concentrations of the EP toxic metals, nickel, and cyanide from the unfiltered and filtered samples of the petitioned effluent (the February and November 1986 samples, respectively).

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) PETITIONED EFFLUENT

Constituents	Total Constituent Analyses	
	Unfiltered samples	Filtered samples
Arsenic	0.04	0.0066
Barium	3.0	1.1
Cadmium	<0.01	0.02
Chromium	4.6	<0.05
Lead	<0.05	<0.05
Mercury	0.0016	0.0016
Nickel	3.2	0.18
Selenium	1.1	<0.005
Silver	0.04	0.03
Cyanide	0.04	NA

< Denotes that the constituent was not detected at the detection limit specified in the table.
NA: The filtered samples were not analyzed for cyanide.

The detection limits presented in Table 1 are sufficient to evaluate the concentrations of hazardous constituents in the petitioned waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using Method 413.1 from "Methods for Chemical Analysis of Water and Wastes," U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA–600/4–79–020), Quanex determined that the effluent had a maximum oil and grease content of 0.015 percent. Quanex claims that the petitioned waste is neither ignitable nor reactive because the waste is aqueous; is automatically adjusted to a pH between 6.5 and 9.5; is comprised solely of non-contact cooling waters and process rinse waters; is not a sulfide- or a cyanide-bearing waste; and has no flammable liquid materials introduced to the waste stream. Quanex also submitted test data demonstrating that the pH of the petitioned waste ranges between 7.70 and 9.60 and, therefore, is not corrosive. See 40 CFR 261.21, 261.22, and 261.23.

Quanex indicated that thiourea, a hazardous constituent listed in 40 CFR part 261, Appendix VIII, is a component of a pickling additive used in the production process. Quanex submitted mass balance calculations for thiourea to quantify the maximum possible concentration of this constituent in the petitioned waste. This demonstration indicated that the maximum total concentration of thiourea that could be present in the waste is 0.16 ppm.

Quanex submitted a signed certification that (1) The maximum annual rate of effluent discharged to the surface impoundments is 325 million gallons per year (approximately 1.4 million cubic yards), and (2) the maximum volume of effluent contained in the surface impoundments at any one time is 5.8 million gallons (approximately 24,200 cubic yards). The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Quanex's certified estimate of 1.4 million and 24,200 cubic yards for the volume of effluent discharged annual and contained in the surface impoundments, repectively.

The Agency conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the delisting petitions. As part of this program, the Agency conducted a spot-check sampling visit to Quanex. The results of this visit, including chemical analysis of waste and ground-water samples, are discussed later in this notice.

4. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for liquid effluents like Quanex's and decided that disposal in a surface impoundment could be a reasonable, worst-case scenario for this waste. The major exposure route of concern for wastes managed in surface impoundments may be ingestion of contaminated ground water. The Agency evaluated Quanex's petitioned effluent using its vertical and horizontal spread (VHS) landfill model. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in grounds water at a hypotetical receptor well or compliance point (*i.e.*, the model estimates the dilution of a toxicant within the aquifer for a specific volume of waste). As explained below, the Agencty feels that the VHS model, at this time, is adequate to evaluate the petitioned waste. The Agency requests comments on the use of the VHS model as applied to the evaluation of Quanex's waste.

The primary difference expected between the VHS model (used for the petitioned waste) and a model developed to evaluate the potential behavior of wastes managed in surface impoundments is the consideration (in the impoundment model) of hydraulic head, sorption and retardation, and clogging. Hydraulic head is expected to cause higher compliance-point concentrations.[1] Sorption and retardation and clogging, on the other hand, are expected to result in lower compliance-point concentrations of the contaminants.[2] To some extent, the mechanisms of sorption and retardation and clogging will counteract hydraulic head. Until a surface impoundment model is developed for use in delisting decision-making, it is difficult to predict what impact, if any, these competing mechanism will have on the calculation of compliance-point concentrations. To delay petition evaluation until such time as other analytical tools (such as a surface impoundment model) are developed would result in curtailing delisting petition processing where liquids are involved. Delay is particularly unwarranted where, as here, it is not clear that the new analytical tool whould perdict different constituent concentrations and/or change EPA's conclusion.

Furthermore, EPA believes that the VHS model is currently adequate to access the reasonable worst-case disposal scenario of wastes at surface impoundments because the VHS model is conservative in most of its assumptions. Specifically, the VHS landfill model does not accont for the likely reduction in the total concentrations of hazardous constituents occurring through degradation or sorption, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment. Consequently, the Agency believes that the application of the VHS model, in this case, adequately protects human health.

Specifically, the Agency used in the VHS model to evaluate the concentration of hazardous inorganic constiutents detected in Quanex's waste (*see* Table 1). The Agency's evaluation, using Quanex's estimated volume of effluent and the maximum reported total constituent concentrations, generated the compliance-point concentrations shown in Table 2. The Agency did not evaluate the remaining hazardous inorganic constituents (*i.e.*, cadmium and lead in the unfiltered samples; and chromium, lead, and selenium in the filtered samples) from Quanex's waste because they were not detected in the effluent using the appropriate analytical methods. The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

[1] Hydraulic head tends to force leachate into the aquifer, displacing ground water, and resulting in potentially higher concentrations at the receptor well (*i.e.*, compliance point).

[2] Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentration of the contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or fine material settles on the bottom of the impoundment. A potential result of clogging is the lowing of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

TABLE 2.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) PETITIONED EFFLUENT

[Compliance-Point Concentrations]

Constituents	Unfiltered samples	Filtered samples	Levels of regulatory concern [1]
Arsenic	0.006	0.001	0.05
Barium	0.5	0.2	1.0
Cadmium	ND	0.003	0.01

TABLE 2.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) PETITIONED EFFLUENT—Continued

[Compliance-Point Concentrations]

Constituents	Unfiltered samples	Filtered samples	Levels of regulatory concern [1]
Chromium	0.7	ND	0.05
Mercury	0.0002	0.0002	0.002
Nickel	0.5	0.03	0.7
Selenium	0.2	ND	0.01
Silver	0.006	0.005	0.05
Cyanide	0.006	NA	0.7

ND: Denotes that constituent was not detected in the petitioned waste (see Table 1) and, therefore, not evaluated by the VHS model.
NA: The filtered samples were not analyzed for cyanide.
[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

The unfiltered waste samples exhibited chromium and selenium levels at the compliance point above the health-based levels used in delisting decision-making. Thirteeen of the twenty-eight unfiltered samples exhibited chromium levels which failed the VHS model evaluation. Five of the twenty-eight unfiltered samples exhibited selenium levels which failed the VHS model evaluation. The unfiltered waste samples exhibited arsenic, barium, mercury, nickel, silver, and cyanide levels at the compliance point below the health-based levels used in delisting decision-making.

The filtered waste samples exhibited arsenic, barium, cadmium, mercury, nickel, and silver levels at the compliance point below the health-based levels used in delisting decision-making.

As reported in Table 1, the maximum concentration of total cyanide in Quanex's waste is 0.04 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the Agency believes that the maximum level of reactive cyanide in the petitioned waste also will not exceed 0.04 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency also evaluated the concentration of thiourea estimated (using a mass balance demonstration) to be present in Quanex's petitioned waste. The VHS model predicted a thiourea concentration of 0.025 ppm at the compliance point, which exceeds the delisting health-based level of 0.00002 ppm for thiourea. The Agency also reviewed Quanex's raw material list and Material Safety Data Sheets to determine whether other hazardous constituents (*e.g.*, those listed in 40 CFR part 261, appendix VIII) could be present in the petitioned waste. This review indicated that 2-propyn-1-ol, an appendix VIII constituent, is a component of the same pickling additive containing thiourea and may be present in the petitioned waste. The Agency did not request additional information regarding the use of thiourea or 2-propyn-1-o1 in Quanex's process or data quantifying the presence of these constituents in the petitioned waste because it already had sufficient basis to propose denial of Quanex's petition.

In addition, based on test results and information provided by Quanex, pursuant to 40 CFR 260.22, the Agency does not believe that Quanex's waste exhibits any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

On August 26, 1987, staff under contract to the Agency conducted a site visit to Quanex as part of the Agency's spot-check sampling and analysis program. Eight grab samples of the petitioned effluent were collected (at the point where the treated wastewater is discharged to the first surface impoundment). Four of these eight grab samples were filtered prior to analysis to remove particles greater than or equal to 6 microns in size. Two additional samples were collected from the outfall of the second surface impoundment. Five ground-water monitoring samples also were collected from one upgradient and four downgradient ground-water monitoring wells. While the EPA contract lab analyzed the filtered waste samples, the Agency now believes that filtering does not produce samples that are representative of the waste as it is discharged into the impoundment. As noted previously in this notice, because Quanex petitioned EPA to exclude the effluent discharged to the impoundments, the suspended solids contained in the liquid effluent should also be evaluated as part of the waste mixture. All of the spot-check samples were analyzed according to EPA test methods by a laboratory under contract to EPA. Total constituent analyses of the ten waste samples and five ground-water samples for the EP toxic metals, nickel, antimony, and beryllium were conducted using SW-846 Methods 6010 and 7040-7950. Total cyanide was analyzed using SW-846 Method 9010. In addition, the samples were evaluated according to routine spot-check procedure for the presence of CERCLA Hazardous Substances List (HSL) organics using SW-846 Methods 8270, 8080, and 8240.

Table 3 presents the maximum reported total constituent concentrations of the hazardous inorganic constituents and HSL organic constituents detected in the petitioned effluent (unfiltered and filtered) and outfall spot-check samples.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) SPOT-CHECK SAMPLES

Constituents	Total constituent analyses		
	Unfiltered samples	Filtered samples	Outfall samples
Antimony	<0.5	<0.1	<0.01
Arsenic	0.048	<0.01	<0.01

TABLE 3.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) SPOT-CHECK SAMPLES—Continued

Constituents	Total constituent analyses		
	Unfiltered samples	Filtered samples	Outfall samples
Barium	0.21	0.082	0.057
Beryllium	<0.01	<0.001	<0.001
Bis(2-ethylhexyl)phthalate	0.023	0.056	<0.02
Cadmium	<0.02	<0.005	<0.005
Chromium	10	<0.01	<0.01
Endrin	<0.0001	0.0037	<0.0001
Lead	0.26	<0.05	<0.05
Mercury	<0.0002	<0.0002	<0.0002
Nickel	3.9	0.041	<0.04
Phenol	0.58	0.42	<0.02
Selenium	<0.02	<0.02	<0.02
Silver	<0.01	<0.01	<0.01
Cyanide	<0.01	<0.01	<0.01

< Denotes that the constituent was not detected at the detection limit specified in the table.

The Agency's evaluation of the hazardous constituents detected in the spot-check samples using the VHS model generated the compliance-point concentration shown in Table 4.

TABLE 4.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) SPOT-CHECK SAMPLES

[Compliance-Point Concentrations]

Constituents	Unfiltered samples	Filtered samples	Outfall samples	Levels of regulatory concern [1]
Arsenic	0.008	ND	ND	0.05
Barium	0.03	0.013	0.009	1.0
Bis(2-ethylhexyl) phthalate	0.0036	0.0089	ND	0.003
Chromium	1.6	ND	ND	0.05
Endrin	ND	0.0006	ND	0.0002
Lead	0.04	ND	ND	0.05
Nickel	0.62	0.0065	ND	0.7
Phenol	0.09	0.067	ND	20

ND: Denotes that constituent was not detected in the petitioned waste (see Table 3) and, therefore, not evaluated by the VHS model.
[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

The unfiltered petitioned effluent samples exhibited bis(2-ethylhexyl)phthalate and chromium concentrations above the health-based levels used in delisting decision-making. Bis(2-ethylhexyl)phthalate levels in one of the four unfiltered petitioned effluent samples failed the VHS model evaluation. Chromium levels in all four unfiltered petitioned effluent samples failed the VHS model evaluation. The unfiltered petitioned effluent samples exhibited arsenic, barium, lead, and nickel concentrations at the compliance-point below the health-based levels used in delisting decision-making.

The filtered petitioned effluent samples exhibited bis(2-ethylhexyl)phthalate and endrin concentrations above the health-based levels used in delisting decision-making. Bis(2-ethylhexyl)phthalate levels in one of the four filtered petitioned effluent samples and endrin in another one of the four filtered petitioned effluent samples failed the VHS model evaluation. The filtered petitioned effluent samples exhibited barium, nickel, and phenol concentrations at the compliance point below the delisting health-based levels. The outfall samples exhibited barium concentrations at the compliance point below the delisting health-based level for barium.

The Agency did not evaluate the remaining hazardous inorganic constituents (*i.e.*, antimony, beryllium, cadmium, mercury, selenium, silver, and cyanide in the unfiltered samples; antimony, arsenic, beryllium, cadmium, chromium, lead, mercury, selenium, silver, and cyanide in the filtered samples; and antimony, arsenic, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, and cyanide in the outfall samples) because they were not detected in the spot-check samples using the appropriate analytical test methods (*see* Table 3).

The Agency also reviewed the ground-water monitoring information available for the surface impoundments. EPA Region V has determined that Quanex's ground-water monitoring system is compliant with the applicable ground-water monitoring requirements of 40 CFR part 264, subpart F. Data from the analysis of samples collected from the existing ground-water monitoring system for the two surface impoundments indicate that the petitioned waste may have contributed to ground-water contamination. Specifically, hazardous constituents were detected in ground water downgradient of the surface impoundments at concentrations that exceed the health-based levels used in delisting decision-making. Table 5 presents the hazardous constituents which were detected at concentrations exceeding the delisting health-based levels in ground-water samples collected from downgradient wells which monitor the surface impoundments. For each of the hazardous constituents listed in Table 5, the maximum concentration of the constituent reported for the upgradient well (Well #1) is presented for comparison. Quanex's ground-water monitoring data base included the

results of metals analyses performed on filtered samples. For the purpose of delisting, filtering ground-water samples is generally not considered an acceptable technique (See Superfund Ground Water Issue—Ground Water Sampling for Metals Analyses in the RCRA public docket for today's notice). As a result, the Agency believes that the concentrations of hazardous constituents in the ground-water may be greater than the concentrations reported by Quanex for these filtered samples.

TABLE 5.—CONCENTRATIONS OF HAZARDOUS CONSTITUENTS IN GROUND-WATER (PPM) SURFACE IMPOUNDMENTS

Parameter and sampling date	Level of regulatory concern[1]	Well no.	Concentration (ppm)
1,1-Dichloroethane	0.0004		
(2)		1	<0.002 (upgradient)*
10-17-86 (Q)		11A	0.006
5-18-87 (Q)			0.003
8-18-97 (Q)			0.0099/0.0052/0.0047**
11-12-87 (Q)			0.0041
2-10-88 (Q) ***			0.0018/<0.0010**
10-17-86 (Q)		11B	0.006
3-11-87 (Q)			0.004
5-18-87 (Q)			0.0021/0.0022/0.0023**
8-18-87 (Q)			0.0061
11-12-87 (Q)			0.0053/0.0055/0.0052**
2-10-88 (MDNR)			0.0040
2-10-88 (Q)			0.0035
8-18-87 (Q)		14A	0.0011
11-12-87 (Q)			0.0012/0.0014/0.0011**
2-10-88 (Q) ***			0.0012
8-18-87 (Q)		14B	0.0011
Methylene Chloride	0.005		
9-24-85 (Q)		1	0.020 (upgradient)*
9-24-85 (Q)		2	0.021
9-24-85 (Q)		3	0.014
9-24-85 (Q)		4	0.011
Trichloroethene	0.005		
(2)		1	<0.002 (upgradient)*
8-26-87 (EPA)		16A	0.0069
Barium	1.0		
10-23-85 (Q)		1	1.04 (upgradient)*
10-23-85 (Q)		13A	1.10
10-23-85 (Q)		14B	1.10
Cadmium	0.01		
(2)		1	<0.01 (upgradient)*
3-11-87 (Q)		11D	0.05 (filtered)
3-11-87 (Q)		Field Blank	0.82
Chromium	0.05		
3-14-84 (Q)		1	0.005 (upgradient)*
8-26-87 (EPA)		15A	0.090
8-26-87 (EPA)		16A	0.13
Lead	0.05		
6-20-84 (Q)		1	0.02 (upgradient)*
9-27-84 (Q)		2	0.06
8-26-87 (EPA)		11A	0.11
8-26-87 (EPA)		15A	0.22
8-26-87 (EPA)		16A	0.14
Selenium	0.01		
2-10-88 (Q)		1	0.0024 (upgradient)* (filtered)
9-27-84 (Q)		2	0.017
2-10-88 (Q)		12A	0.010/0.011/0.011**

(EPA) EPA Delisting Spot-check Data
(MDNR) Michigan Department of Natural Resources (MDNR) Data
(Q) Quanex Data
* The maximum concentration, or detection limit, of the constituent reported in samples collected from the upgradient well (#1).
** Values represent results of replicate analyses.
*** MDNR value <0.0010 ppm
[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.
[2] Upgradient well concentration was below level of detection on numerous sampling dates.

With regard to the ground-water monitoring data presented in Table 5, the Agency wishes to make the following observations: (1) Data for the upgradient well presented in Table 5 indicate that methylene chloride, although detected downgradient of the surface impoundments at concentrations exceeding the health-based level, may not originate from the surface impoundments. Methylene chloride was detected in samples from upgradient Well #1 at a concentration similar to that reported in the three downgradient wells. Furthermore, Quanex believes, based on additional sampling, that they have demonstrated that the methylene chloride detected in ground-water samples collected on September 24, 1985 is attributable to sample contamination during sampling and/or analysis. (2) Data for the upgradent well presented in Table 5 indicate that barium, although detected downgradient of the surface

impoundments at concentrations exceeding the health-based level, may not originate from the surface impoundments. Specifically, barium concentrations reported in upgradient Well #1 are similar to those reported downgradient of the surface impoundments. Consequently, the barium results presented in Table 5 may be attributable to another source of barium at the Quanex facility, or sampling or analytical error. (3) The field bank data for cadmium indicate that the cadmium value reported for Well 11D may be the result of sample contamination. Quanex asserts that during the March 11, 1987 sampling event, distilled water used for decontamination was carried to the site in a steel drum, thus contaminating the water with small amounts of cadmium and subsequently causing contamination of the ground-water sample from Well 11D. (4) Although not presented in Table 5, the Agency notes that State officials have expressed concern that concentrations of arsenic detected in wells downgradient of the surface impoundments are statistically greater than background arsenic concentrations. (For more details, see the RCRA public docket for a copy of the June 23, 1988 Comprehensive Monitoring Evaluation (CME) conducted at Quanex.) Quanex believes that the detected arsenic occurs naturally in ground water at the facility, and thus is not of concern.

While the existing data suggest that detected levels of some constituents (*e.g.*, methylene chloride, barium, and cadmium) may not be significant due to possible sample contamination or high background levels, EPA believes that the data clearly show that a variety of hazardous constituents, including the listed constituents for EPA Hazardous Waste No. K062 (lead and chromium), are present in ground water above delisting health-based levels.

5. Conclusion

The Agency believes that Quanex has failed to demonstrate that the effluent discharged to and contained in its two on-site surface impoundments is not hazardous. The Agency believes that data from the analyses of samples collected from Quanex's ground-water monitoring system indicate that the petitioned waste may have contributed to ground-water contamination. The ground-water monitoring data from the existing well system are not adequate to eliminate the surface impoundments as a source of ground-water contamination and, to the contrary, provide a basis for concluding that the waste in the surface impoundments is contributing to ground-water contamination. Furthermore, the petitioned waste's potential to contribute to ground-water contamination is a sufficient basis for denial because the Agency, in its evaluation of a petition, must determine whether factors (including additional constituents) could cause the petitioned waste to be hazardous (*see* 40 CFR 260.22(a)(2)).

Both filtered and unfiltered waste sample analyses have been presented in today's notice. Although the Agency originally agreed to Quanex's use of a 0.45 micron filter for those samples collected during the November 1986 sampling event, the Agency now believes that the filter may have removed particles which were suspended in the petitioned waste. The Agency's evaluation of the petitioned effluent (unfiltered samples) using the VHS model indicated that chromium and selenium may be present at levels of regulatory concern (at the compliance point). Concentrations of both of these constituents were detected in ground water downgradient of the surface impoundment at concentrations that exceed the delisting health-based levels. In addition, the Agency believes that the petitioned waste may contain significant levels of bis(2-ethylhexyl)phthalate and endrin.

The Agency proposes to deny Quanex Corporation's petition for exclusion of the waste described in its petition as EPA Hazardous Waste No. K062 and discharged to and contained in its two on-site impoundments at its South Lyon, Michigan facility. The petitioned waste should continue to be subject to regulation under 40 CFR parts 260 through 268 and the permitting standards of 40 CFR part 270.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this denial should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed denial of this petition, if promulgated, would not impose an economic burden on this facility because prior to submitting and during review of the petition, this facility should have continued to handle its waste as hazardous. The denial of the petition means that they are to continue managing their waste as hazardous in the manner in which they have been doing, economically, and otherwise. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Section 3001 RCRA, 42 U.S.C. 6921.

Dated: October 6, 1990.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 90-27305 Filed 11-19-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6990]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 55 FR 19961 on May 14, 1990. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of El Paso County, Texas.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in El Paso County, previously published at 55 FR 19961 on May 14, 1990, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The entries under El Paso County (Unincorporated Areas) are corrected to read as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Shallow Flooding:	
On the east side of Mesa Spur Drain from approximately 0.6 mile downstream of Moon Road to approximately 0.4 mile upstream of the apex of Stream 4	1
On the east side of Mesa Spur Drain from approximately 0.4 mile upstream of the apex of Stream 4 to approximately 0.5 mile downstream at the apex of Stream 5	2
At the apex of Stream 3	2
At the apex of Stream 4	2
On the east side of Salatral laterial from approximately 0.6 mile downstream of the confluence of Ysleta Lateral to approximately 2.7 miles downstream of Celum Road	1
From approximately 0.2 mile upstream of the apex of Stream 6 to approximately 0.4 mile downstream of the apex of Stream 7	2
From approximately 500 feet upstream of the apex of Stream 8 to approximately 500 feet downstream of the apex of Stream 9	2

Issued: November 6, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-27287 Filed 11-19-90; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-539, RM-7181]

Radio Broadcasting Services, Howland, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal filed by Bay Communications, Inc., requesting the substitution of Channel 280C for 280A at Howland, Maine. Petitioner also requests modification of its construction permit for Channel 280A to specify Channel 280C. We have received concurrence of the Canadian Government for allotment of Channel 280C as a specially negotiated short-spaced allotment. The coordinates for Channel 280C are 45-07-46 and 68-21-28.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert J. Rini, Brown, Finn & Nietert, Chartered, 1920 N Street, NW., Suite 660, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-539, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90-27230 Filed 11-19-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-544, RM-7527]

Radio Broadcasting Services; Walker, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Thomas E. Ferebee proposing the substitution of

Channel 256C1 for Channel 256C2 at Walker, Minnesota, and modification of the construction permit for Station KLLR-FM to specify operation on the higher class channel. Canadian concurrence will be requested for the allotment of Channel 256C1 at Walker at coordinates 47–12–42 and 94–55–02.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Clifford M. Harrington, Matthew P. Zinn, Fischer, Wayland, Copper and Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037–1125 (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–544, adopted October 31, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–27328 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

48 CFR Part 73

[MM Docket No. 90–543, RM–7530]

Radio Broadcasting Services; Ripley, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by James P. Gray seeking the substitution of Channel 258C3 for Channel 258A at Ripley, Ohio, and the modification of his construction permit for Station WXKD to specify operation on the higher powered channel. Channel 258C3 can be allotted to Ripley in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.1 kilometers (12.5 miles) southwest of the community to avoid a short-spacing to Station WNXT–FM, Channel 257A, Portsmouth, Ohio, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 258C3 are North Latitude 38–37–30 and West Longitude 84–01–05. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 258C3 at Ripley or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James P. Gray, 10 Trinity Place, Fort Thomas, Kentucky 41075 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–543, adopted October 31, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–27329 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–545, RM–7504]

Radio Broadcasting Services; Copperas Cove, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Cove Broadcasting Company seeking the substitution of Channel 276C3 for Channel 276A at Copperas Cove, Texas, and modification of the license of Station KOOV to specify operation on the higher powered channel. Channel 276C3 can be allotted to Copperas Cove in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.8 kilometers (9.2 miles) southwest to avoid a short-spacing to Channel 277C3, Clifton, Texas. Grant of this request is also contingent upon the issuance of a license to cover the construction permit of Station KCRM on Channel 280C2 in lieu of its present Channel 276A. The coordinates for Channel 276C3 at Copperas Cove are North Latitude 31–03–19 and West Longitude 98–02–00.

DATES: Comments must be filed on or before January 7, 1991 and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

as follows: Richard A. Helmick, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW., suite 600, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn Wilderson, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–545, adopted October 31, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–27330 Filed 11–19–90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 90–537, RM–7455]

Radio Broadcasting Services; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Alton Lloyd Finley, Jr., seeking the allotment of FM Channel 241A to Amarillo, Texas, as that community's tenth local FM broadcast service. Coordinates for this proposal are 35–16–00 and 101–47–37.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Alton Lloyd Finley, Jr., Rural Route #5, Box 442–M, Seneca, SC 29678.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–537, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is a available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230),1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–27228 Filed 11–19–90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 90–538, RM–7508]

Radio Broadcasting Services; Tomah, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jamie Lee Westpfahl, proposing the substitution of Channel 233C3 for Channel 233A at Tomah, Wisconsin, and modification of the construction permit for Station WZFR, Channel 233A to specify operation on Channel 233C3. The coordinates for Channel 233C3 are 43–57–19 and 90–19–20.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Riley & Bergquist, P.A., 5200 Willson Road, Suite 308, Edina, Minnesota 55424, (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–538, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–27229 Filed 11–19–90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 90-500; FCC 90-349]

Broadcast Service, Definition of Congested Areas in the Broadcast Auxiliary Services and the Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making (Notice) grants a petition for rule making (petition) filed by the Society of Broadcast Engineers (SBE) to initiate a rule making to amend part 74 of the Commission's rules to define precisely those geographical areas that are considered "subject to frequency congestion." The action is needed to supplement rules that require all fixed auxiliary and cable television relay stations to employ antennas meeting minimum standards after October 1, 1991.

DATES: Comments are due by January 4, 1991, and reply comments are due by January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, Policy and Rules Division (202) 632-9660.

SUPPLEMENTARY INFORMATION:

1. This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 90-500, FCC 90-349, adopted October 16, 1990, and released November 14, 1990.

2. The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

3. This Notice responds to the petition filed by SBE requesting that part 74 of the rules be amended to define precisely those geographical areas that are considered "subject to frequency congestion" for purposes of supplementing the rules (§§ 74.536, 74.641, and 78.105) that require all stations to employ antennas meeting minimum standards after October 1, 1991.

4. Minimum antenna standards were first applied only to those stations operating in the 13 GHz band, and were later extended to stations operating in the 2, 7, 18, and 31 GHz bands. Currently, these rules require that all new point-to-point fixed link stations employ directional transmitting antennas with radiation patterns that meet or exceed that of the "Category B" performance level. Additionally, they require that stations operating in areas subject to frequency congestion employ more efficient antennas that meet or exceed the "Category A" performance level, thus further reducing the potential for interference by confining the signal to a smaller area. The antenna standards rules provided a 10-year "grandfathering" period during which then-existing stations would be permitted to continue use of previously installed antennas until October 1, 1991. When the original rules were adopted, we stated that we would develop criteria to designate areas subject to frequency congestion in a subsequent rule making. In this Notice, we undertake that task.

5. SBE noted that the concentration of stations serving a particular area is usually directly related to the population of that area, and that areas considered to be frequency congested therefore tend to occur in locations determined by the Department of Commerce (based on the U.S. Census) to be Metropolitan Statistical Areas (MSAs). SBE documented its petition with tables and maps depicting where the MSAs are geographically located. It accurately depicts the advantages of adopting this method of defining congested areas. The petition is included in the docket file and indicates where the proposed areas are located relative to broadcast markets. We believe that determining whether a radio link is located within an MSA is a reasonable method of deciding whether or not it is in a congested area. Such an approach appears to meet the requirements that the definition be concise and easy to use. MSAs are precisely defined and easily understood by both technical and non-technical personnel. Equally important, MSA information enjoys wide distribution, is used for many different purposes, and is periodically updated. This attribute is very attractive because it does not require expenditure of any additional resources on the part of the Commission or the industry to implement and it would automatically adjust to include new areas of congestion as they develop. SBE proposed that, because MSAs for New England States are composed of New England County Metropolitan Areas (NECMAs). For administrative convenience, county boundaries in the New England States likewise be used to determine congested areas. Accordingly, reference within the remainder of this document to MSAs encompasses both MSAs and county boundaries corresponding to NECMAs.

6. There are numerous MSAs that are subject to congestion. On the other hand, smaller MSAs may not be experiencing frequency congestion. We are sensitive to this possibility and we do not want to impose any unnecessary burdens in such cases. Thus, while the SBE proposal to include all MSAs appears to be a reasonable initial approach, we invite comment on which, if any MSAs should be excluded, the basis for such exclusion, and criteria which could lead to their future inclusion should circumstances appear to warrant it. We also seek comment on whether and how we might exclude portions of those MSAs which are extraordinarily large and encompass substantial rural areas.

7. The Commission tentatively finds SBE's proposal to constitute a reasonable course of action in this matter, therefore first proposes a new definition in §§ 74.2 and 78.5 of the Commission's rules which would designate areas subject to frequency congestion for mass media stations to include all MSAs. Under this proposal, a station would be required to comply with congestion standards if any portion of the link path falls within a designated congested area, and existing stations would have 1 year to upgrade from the date an area is designated as congested. We note that the 13, 18, and 31 GHz bands are shared with non-broadcast services which have their own standards for determining congestion. We seek comment as to whether the application of different standards in different services will lead to practical difficulties.

8. The Commission further proposes that the Chief, Mass Media Bureau maintain a list of areas not within MSAs where congestion is considered to be a problem and, if necessary, a list of excluded MSAs. These lists would be revised at the discretion of the Bureau Chief under delegated authority. The Commission proposes to review the list on an annual basis and use a Public Notice to solicit changes that appear appropriate. To establish an initial list of such special areas, we request interested parties to submit descriptions of such areas outside MSAs which they believe deserve consideration, as well as justification for such designation.

9. In the interest of simplyfying the administrative process for stations upgrading to higher category antennas, we propose to consider such upgrades as a minor modification of the license provided that the overall height above

ground level of the antenna tower structure and the elevation above ground of the antenna's center of radiation remain the same, there are no other major modifications to the license within the 1 year upgrade period, and the local frequency coordinator is advised of the upgrade prior to any change.

Paperwork Reduction Act Statement

10. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and have been found to contain no new or modified recordkeeping requirements.

Ex Parte Consideration

11. This is a non-restricted proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Comment Information

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 4, 1991, and reply comments on or before January 22, 1991. No extension of these comments periods is anticipated. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Initial Regulatory Flexibility Act Analysis

13. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, this proceeding should have a beneficial impact by ultimately providing a clear and easily understood definition of geographical areas considered subject to frequency congestion. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

14. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Inquiry, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.*, (1981)).

15. Authority for this action may be found at sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

List of Subjects in 47 CFR Part 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-27227 Filed 11-19-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Petitions for Rulemaking, Defect and Noncompliance Orders

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Petition for rulemaking; denial.

SUMMARY: This notice announces the denial of a rulemaking petition to amend Standard No. 206, Door Locks and Door Retention Components, to (1) ensure adequate structural strength for the door latch assembly, and (2) extend the present side door requirements to doors other than side doors, such as hatchback and other rear doors. Since the agency has an ongoing rulemaking proceeding relating to strengthening door latch assemblies, and because the petitioner is not requesting action different from that being considered in that proceeding, the first request in this petition is denied.

In regard to the second request in the petition, the agency has conducted an in-depth analysis of accident data relating to this issue and of information received from nine manufacturers regarding design specifications of back doors. Based upon this analysis, the agency has decided to deny this request also.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590 (202) 366-0842.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 206, Door Locks and Door Retention Components, specifies performance requirements for front and rear side door locks and side door retention components, including latches and hinges in passenger cars, multipurpose passenger vehicles and trucks. The purpose of these requirements is to minimize the likelihood of occupants being ejected from the vehicle as a result of a crash. The standard does not cover back doors, including car hatchbacks, van rear doors, and pickup truck tailgates.

On June 19, 1990, the Insurance Institute for Highway Safety (IIHS) petitioned this agency to amend Standard No. 206 to (1) ensure adequate structural strength for the door latch assembly, and (2) extend the present side door requirements to doors other than side doors, such as hatchbacks and other rear doors.

Door Latch Assemblies

NHTSA has an ongoing rulemaking proceeding with respect to the first request in this petition. On August 19, 1988, the agency issued two Advanced Notices of Proposed Rulemaking (ANPRMs) concerning side impact protection (53 FR 31712, 31716). In both ANPRMs, the agency stated that stronger door latches may reduce the risk of ejection. Further, the agency discussed a number of approaches that could be considered in developing enhanced performance requirements for door latches. Additionally, a number of questions were posed, seeking information or comments on issues associated with door latch performance.

On the basis of comments received, the agency is conducting further research on the issue of improved door latch performance. Since the agency has an ongoing rulemaking proceeding relating to strengthening door latch assemblies, and since the petitioner is not requesting action different from that being considered in that proceeding, the first request in this petition is denied.

Back Doors

With regard to the second request in the IIHS petition, the agency conducted an in-depth accident analysis and requested information from nine manufacturers regarding design specifications for back doors.

NHTSA's accident analysis was conducted using 1982-1988 National Accident Sampling System (NASS) data and 1988 Fatal Accident Reporting System (FARS) data relating to door openings and ejections in towaway crashes. The results of this analysis were published on April 5, 1990 in a report entitled "Hatchback, Tailgate, and Back Door Opening in Crashes and Occupant Ejection through the Back Area." A copy of this report is available

in Docket 90-08-GR. Interested persons can review this report for more details of the analysis.

The agency determined that back doors open in 5-6 percent of towaway crashes, of vehicles so equipped, compared to only 1-2 percent of such crashes for side doors. Of passenger cars so equipped, an estimated 36,244 hatchbacks and tailgates opened in towaway crashes in 1988. This represents about 3 times the rate of front side door openings and about 7-8 times the rate of rear door openings. During the same year, an estimated 4,986 van back doors opened in towaway crashes. This represents about 4 times the rate of front side door openings and about 2 times the rate of right-rear side door openings in vans so equipped. (Very few passenger vans have left-rear side doors, and there were no instances of left-rear door openings investigated by NASS in 1988.)

Despite the greater frequency of back door openings, occupant ejection occurred in only 1 percent of the crashes involving back door openings. By contrast, ejections occurred in 8-13 percent of the crashes involving a front side door opening. In addition, based upon 1988 NASS data, it appears that even in crashes in which a back door opens, there are more ejections through the left front side door than through the back door. This is because there is almost always an occupant, the driver, seated next to the left front side door.

Since ejection occurs less frequently when a back door opens than when a side door opens, back door openings account for only a small percentage of ejection fatalities. According to FARS data, in 1988 there were 8,343 light vehicle occupant fatalities associated with ejections. Of these, approximately 2,200 of the ejections were from vehicles with a back door. By using ejection route percentages obtained from the NASS data, NHTSA estimates that approximately 100 of these fatalities were ejected through a back door. (See, report "Hatchback, Tailgate, and Back Door Opening in Crashes and Occupant Ejection through Back Area", Docket 90-08-GR, pages 14, 15.)

On April 5, 1990, NHTSA sent a letter to nine manufacturers (Chrysler, Ford, General Motors, Honda, Mazda, Nissan, Toyota, Volkswagen, and Volvo) requesting information on design specifications used for production of back door latch/lock systems. All manufacturers responded to this request.

None of the responding manufacturers indicated that their back door latch/lock systems currently meet the requirements of Standard No. 206. Further, none of them supported extending the standard to back door latch/lock systems. In general, the manufacturers indicated that proper use of safety belts is the most effective method for ejection reduction. Agency examination of 1982-1988 NASS files indicates that, of the 25 back door ejections investigated, only one person was using an occupant protection device. Therefore, the agency agrees that increased seat belt use in rear seats would be a more effective means of reducing back door ejections.

In conclusion, the agency has determined that there is not a safety need significant enough to justify the proposed rulemaking. In addition, the agency has determined that extending the present side door requirements to back doors would not be the most effective means of reducing back door ejections. Therefore, the agency concludes that there is no reasonable possibility that a rule extending the present side door requirement to back doors would be issued at the conclusion of the proposed rulemaking. Accordingly, NHTSA has decided to deny this second request also.

Issued on November 15, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-27310 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking from the State of Texas requesting NHTSA to amend Federal Motor Vehicle Safety Standard (FMVSS) 213, Child Restraint Systems, to require that the instructions provided by manufacturers for installing add-on child restraint systems be written in English and Spanish. Standard 213 currently requires that the installation instructions be in English only. NHTSA is denying the petition because information does not show that a requirement for bilingual instructions is warranted. The petitioner's concerns are also capable of being met by means other than an FMVSS, such as voluntary measures taken by manufacturers to provide bilingual instructions, and State actions providing public education and information.

FOR FURTHER INFORMATION CONTACT: Mr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone: (202) 366-4919.

SUPPLEMENTARY INFORMATION:

Background

Safety Standard No. 213 specifies requirements for child seats to reduce the number of children killed or injured in motor vehicle crashes and in aircraft. Data on vehicle crashes show that child seats are highly effective in reducing a child's risk of death or serious injury in a crash. (The term "child seat" as used in this notice means any device considered to be a "child restraint system" as defined in paragraph S4 of Standard 213.)

Standard 213 requires manufacturers to provide installation instructions in English with each child seat. The instructions, which include diagrams, must be permanently labeled on the seat. (Paragraphs S5.5 and S5.6.) The purpose of the instructions is to encourage the correct use of child seats.

Mr. Jim Mattox, the Attorney General of Texas, petitioned NHTSA on behalf of Texas to amend Standard 213 to require manufacturers to provide bilingual installation instructions (in Spanish and English) for add-on (*i.e.*, portable) child seats. Mr. Mattox supports his petition by stating that bilingual instructions are provided with cameras, televisions, radios and other products. The petitioner believes bilingual instructions are needed because "Spanish speaking drivers and their children are not accorded the full protection intended by Texas and its sister states."

Discussion

The agency believes that installation instructions for a child seat help ensure that the seat is correctly used and that correct usage is important for achieving the maximum safety benefits for the seat. However, to justify requiring bilingual instructions for every child seat sold in this country, NHTSA must conclude that there is a safety problem of sufficient magnitude to warrant such a requirement to an FMVSS.

The agency considered the magnitude of the safety improvement that may possibly be achieved by bilingual instructions. Because a high percentage of the population speaks English, NHTSA did not find that the improvement would be sufficiently large.

The 1980 Census of Population (the latest available census) shows that a

very high percentage of the total population reads English. (The census includes the entire 1980 resident population, and therefore includes minorities.) The data indicate that 90 percent of the U.S. population between the ages of five and 44 speak English as their only or primary language. Data also show that, of the remaining 10 percent of the population that speak another language as their primary language, most are able to speak and read English. These Census data indicate that the magnitude of the population that could be served by bilingual instructions and of the potential benefits of those instructions does not appear to be sufficiently large to warrant mandating bilingual instructions for all child seats.

NHTSA believes a need for Spanish installation instructions can be met in ways other than a Federal requirement mandating bilingual instructions for all child seats sold in this country. The manufacturers may be willing to voluntarily provide bilingual instructions with their child seats, particularly in those areas of the country with substantial numbers of Hispanics. The agency contacted several child safety seat manufacturers to determine their practices in providing multilingual instructions. Those manufacturers selling seats in Canada indicated that they provide English and French instructions with their seats. At least two manufacturers indicated that they are considering having trilingual (English, French and Spanish) instructions with their seats sold in the United States. The agency is sending a letter to the major child seat manufacturers informing them of Mr. Mattox's concerns about bilingual instructions and suggesting that individual manufacturers consider providing instructions in more than one language. The agency hopes the manufacturers will work with interested groups in providing bilingual instructions.

Although there are no current efforts by manufacturers involving the translation of individual child safety seat installation instructions into Spanish, some States have ongoing bilingual passenger safety programs, including those for child passenger safety. For example, under a Federal grant program administered by NHTSA (section 402 of the Highway Safety Act), the California State Office of Traffic Safety has numerous bilingual child passenger safety programs. These include a program in Monterey County, directed at the rural Spanish population, to distribute child safety educational materials in four foreign languages, including Spanish. In addition, the California Highway Patrol has an ongoing Spanish education program and has produced about 20.public service announcements for television during the past year, several of which addressed child passenger protection specifically. Similar programs exist in Texas.

A number of other States have already developed public information and education materials on child seats for the Spanish speaking and other non-English-speaking communities, using § 402 funds. (A NHTSA information sheet entitled, "Resource List of Spanish Language Materials on Traffic Safety," July 1988, is available from NHTSA's Office of Occupant Protection, NTS-11, at the address provided at the beginning of this notice.) Individual States have the flexibility to decide whether a particular population of the State has a special need concerning child seat instructions, and assuming there is such a need, how best to meet it.

With respect to the petitioner's statement that bilingual instructions are provided with various consumer products, the agency notes that these instructions are not required by Federal law. Manufacturers of these products may be providing bilingual instructions for a variety of reasons that are unrelated to safety. For example, providing instructions in several languages may be done for reasons of competition and convenience in international marketing.

The agency also notes that Standard 213 requires child safety seats to have diagrams that indicate the procedure for installing the seat in a motor vehicle, securing the seat in the vehicle, positioning a child in the seat, and adjusting the seat to fit the child. The existing requirement for diagrams reduces the need for printed installation instructions in languages other than English to ensure that child safety seats are correctly used.

Absent information or analysis justifying an FMVSS requirement for bilingual instructions, the agency will not mandate them. NHTSA has concluded that there is no reasonable possibility that a rule along the lines requested in Mr. Mattox's petition would be issued at the conclusion of the requested rulemaking proceeding. Mr. Mattox's petition for rulemaking is, therefore, denied.

PART 571—[AMENDED]

Authority: 15 U.S.C. 1392, 1407, and 1410a; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on November 15, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-27309 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 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

Office of the Secretary

National Plant Genetic Resources Board; Renewal

The Department of Agriculture has renewed the National Plant Genetic Resources Board for a 2-year period.

The Board was originally established in July 1975 by the Secretary and was last renewed on April 4, 1988.

The purpose of the Board is to advise the Secretary of Agriculture and officers of the National Association of State Universities and Land-Grant Colleges in order to assess national needs and identify high-priority programs for conserving and utilizing plant genetic resources, including such things as collection, maintenance and documentation of genetic stocks, and utilization of the stocks in plant improvement programs.

The Secretary has determined that continuation of the Board is necessary and in the public interest in order to assure adequate supplies of food, feed, and fiber by minimizing the genetic vulnerability of the crops.

Done at Washington, DC, this 9th day of November 1990.

Adis M. Vila,

Assistant Secretary for Administration.

[FR Doc. 90-27244 Filed 11-19-90; 8:45 am]

BILLING CODE 3410-33-M

Forest Service

Trout Mountain Timber Sales and Roads, Rio Grande National Forest, CO

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to implement timber sales and roadbuilding activities near Trout Mountain.

DATES: Comments concerning the scope of the analysis should be received in writing by October 30, 1991.

ADDRESSSES: Send written comments to James B. Webb, Forest Supervisor, Rio Grande National Forest, 1803 W. Highway 160, Monte Vista, Colorado 81144.

FOR FURTHER INFORMATION CONTACT: District Ranger Thurman Wilson, Del Norte District Ranger, Box 40, Highway 160, Del Norte, Colorado 81132. (719) 657-3321.

SUPPLEMENTARY INFORMATION: The proposed timber harvest and roadbuilding projects are expected to have long-term effects on the character of the area. The Trout Mountain area is currently unroaded, and there could be significant impacts to recreation and visual qualities of the area.

The Rio Grande National Forest Land and Resource Management Plan (Forest Plan) was approved January 4, 1985. The Forest Plan identified the Trout Mountain area as one scheduled to have timber and roadbuilding activities for 1994. The implementation of the Forest Plan in the Trout Mountain area relates to issues identified during the scoping process of the environmental analysis for the Forest Plan. One issue raised was how the Forest can best support local dependent timber industries. Another issue related to the Forest and its ability to provide for primitive and semi-primitive recreation opportunities in the future. These issues were addressed in chapters III and IV of the final environmental impact statement for the Forest Plan.

The Trout Mountain area is located in the central part of the Rio Grande National Forest-West Part, just west of South Fork, Colorado. The area comprises about 40,000 acres of forest and rangeland that is relatively undeveloped. The Trout Mountain area (Decker-Deep Creek) was considered for inclusion into the Wilderness System during the Roadless Area Review (RARE II) study of the 1970's. It was not included, and that decision was not appealed.

A range of alternatives will be presented and analyzed for environmental impacts. One of these will be the no-action alternative, whereby no new projects would be started in the area. Alternatives will include a reasonable range of management alternatives. Projects would be timber sales for fiber production and utilization and the roads necessary for access. Federal, State, local agencies, concerned citizens, and other interested publics will be invited to share their issues and concerns regarding the Trout Mountain projects. This scoping process will include:

Identification of potential issues through public meetings, media, citizens participation groups, newsletters, open houses, and personal contacts.

Identification of issues to be dealt with in depth.

Elimination of insignificant issues.

Determination of potential cooperating agencies.

A citizen work group committee will be established to assist in the environmental analysis process.

Dated: November 9, 1990.

James B. Webb,

Forest Supervisor.

[FR Doc. 90-27280 Filed 11-19-90; 8:45 am]

BILLING CODE 3410-11-M

Correction; Timber Management and Road Construction in the Ladder Compartment, Trinity County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent: correction.

SUMMARY: This is a correction of error in the date for input to the Environmental Impact Statement for timber management and road construction in Ladder Compartment located on the Lower Trinity Ranger District, Six Rivers National Forest, Trinity County, California. The document was published October 19, 1990, Vol. 55, page 42418. The date for input by interested and affected individuals was published as December 21, 1991. The date should have read December 21, 1990.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hereford, Planning Forester, Lower Trinity Ranger District, P.O. Box 68, Willow Creek, California 95573, phone 916-629-2118 or Julie Ranieri, Environmental Coordinator, Six Rivers National Forest, 500 Fifth St., Eureka, California 95501-1033, phone 707-442-1721.

SUPPLEMENTARY INFORMATION: The notice of intent to prepare an Environmental Impact Statement for

timber management and road construction in the Ladder Compartment, Trinity County, California, contained an error. The notice was published Friday, October 19, 1990, in Vol. 55, No. 203 of the Federal Register.

On page 42418 in the third column under the fifth line the year should be changed from "1991" to "1990" so that the section reads as follows: **DATES:** Interested and affected individuals should make their input by December 21, 1990.

Dated: November 9, 1990.

James L. Davis, Jr.,

Forest Supervisor.

[FR Doc. 90-27281 Filed 11-19-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-032]

Large Power Transformers From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on large power transformers from Japan. The review covers three manufacturers of this merchandise to the United States and various periods from September 1, 1975 through May 31, 1987. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATES: November 20, 1990.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1986, the Department of Commerce (the Department) published in the **Federal Register** (51 FR 21197) the final results of its last administrative review of the antidumping finding on large power transformers from Japan (37 FR 11773, June 14, 1972). Westinghouse Electric Corporation, petitioner, requested that we conduct an administrative review for various periods from September 1, 1975 through May 31, 1987, in accordance with 19 CFR 353.53a (1985). We published notices of initiation on November 27, 1985 (50 FR 48825), July 17, 1986 (51 FR 25923), and July 17, 1987 (52 FR 27036). The Department is now conducting these reviews in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of large power transformers; that is, all types of transformers rated 10,000 kVA (kilovolt/amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt rectors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. During the review period covered merchandise was classifiable under item numbers 682.0755, 682.0765, and 682.0775 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) items 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover three manufacturers/exporters of transformers, Fuji Electric Corporation (Fuji), Toshiba Corporation, and Hitachi Electric Corporation, and various periods from September 1, 1975 through May 31, 1987.

United States Price

In calculating United States price the Department used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the duty-paid, delivered packed price paid by unrelated purchasers in the United States. We made adjustments, where applicable, for U.S. and foreign inland freight, ocean freight, insurance, handling charges, brokerage charges, and U.S. duties. In addition, we deducted for the cost of oil when included in the contract and supervisory charges. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the ex-factory price.

Due to the technical complexity of these products, we used the procedure developed in previous reviews to calculate the antidumping margin. We determined the theoretical price of the U.S. and home market units according to the 1968 Westinghouse Electric Corporation price rules (WPR) and found the U.S./home market ratio. We then adjusted each actual sales price to account for differences between the actual home market unit price and theoretical price of that unit, including commissions to unrelated parties, credit, installation, spare parts, and items not covered by the WPR. Further, we made an adjustment for differences in efficiency; that is, differences in internal transformer power losses. We then applied the theoretical ratio to the new home market transformer price. Finally, we converted the adjusted home market price to U.S. dollars and made circumstance of sale adjustments, added the cost of non-WPR parts which were part of the U.S. sale, and added the cost of packing the U.S. units. No other adjustments to foreign market value were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/ exporter	Period	Margin (percent)
Fuji Electric Corp.	9/1/75-5/31/85	7.98
Do	6/1/85-5/31/86	*7.98
Do	6/1/86-5/31/87	0.00
Hitachi	6/1/86-5/31/87	*9.8
Toshiba	6/1/86-5/31/87	*9.39

*No shipments; margins from last administrative review in which there were shipments.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Requests for an

administrative protective order must be made no later than 5 days after the date of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comment or at a hearing.

The Department shall determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties, based on the above margins, shall be required for the subject merchandise entering the United States. For Fuji, the cash deposit rate will be zero percent, based on the most recent review of its entries. For any future entries of this merchandise from an exporter not covered in this or in prior reviews, whose first shipments of the merchandise occurred after May 31, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of zero percent shall be required. These deposit requirements are effective for all shipments of Japanese transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 14, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27331 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-DS-M

Short-supply Determination; Certain Steel Plate

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination: certain steel plate.

SHORT-SUPPLY REVIEW NUMBER: 29.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a request for a short-supply allowance of 10,999.8 net tons of certain steel plate for the fourth quarter of 1990 under article 8 of the U.S.-E.C. steel arrangement.

EFFECTIVE DATE: November 14, 1990.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-4037 (202) 377-0159.

SUPPLEMENTARY INFORMATION: On October 23, 1990, Berg Steel Pipe Corporation ("Berg") submitted an adequate petition requesting a short-supply allowance for 10,999.8 net tons of steel plate, 73.918 inches in width and 0.576 inch in thickness that meets or exceeds American Petroleum Institute specification X-60, to be delivered during the fourth quarter of 1990. This steel plate will be used by Berg to manufacture certain 24-inch diameter pipe. The request was made under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. Berg's petition alleges that no mill in the United States is capable of meeting the required specifications for this plate and that its potential foreign supplier for this material does not have sufficient available quota to supply this order. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

Action

On October 23, 1990, the Secretary established an official record on this short-supply request (Case Number 29) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. On October 31, 1990, the Secretary published a notice in the **Federal Register** announcing its review of this request and soliciting comments from interested parties. Comments were required to be received no later than November 7, 1990, and interested parties were invited to file replies to any comments not later than November 13, 1990. In order to determine whether this product could be supplied to Berg during the fourth quarter of 1990, the Secretary sent questionnaires to Bethlehem Steel Corporation ("Bethlehem"), Oregon Steel Mills ("Oregon"), and USX Corporation ("USX"), the three potential U.S. producers of this product. The Secretary received questionnaire responses from Bethlehem and USX and no comments to the **Federal Register** notice.

Questionnaire Responses

Bethlehem and USX indicated that they would not be viable suppliers of the subject plate during the fourth quarters of 1990. Bethlehem noted that it would not be able to produce a product to meet the required X-60 steel plate specifications. USX initially indicated that it could produce and supply 2,000 net tons of this material to Berg within six to eight weeks, but subsequently revised its questionnaire response to indicate that it could not supply the subject plate. USX states that its inability to supply the requested product is due to the ultrasonic testing requirement and its limited experience producing the requested plate combined with its holiday schedule at the end of the year. Oregon did not respond to the questionnaire.

Conclusion

The potential domestic suppliers of X-60 grade steel plate did not indicate a willingness or ability to supply this material to Berg during the required time frame. Furthermore, sufficient quota is unavailable to the foreign supplier for this steel plate. Therefore, the Secretary determines that short supply exists with respect to the requested product. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Procedures (19 CFR 357.102), the Secretary grants Berg a short-supply allowance for 10,999.8 net tons of the requested plate for the fourth quarter of 1990.

Dated: November 14, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27332 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Marine Mammals; Correction to Permit Application

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of Correction to Application for Scientific Research Permit, Walter H. Munk, Scripps Institution of Oceanography (P470).

SUMMARY: This notice revises the third paragraph under the "Summary" section previously published in the **Federal Register** October 24, 1990 (55 FR 42869–42870) as follows:

1. On page 42870, column 1, first paragraph, following "Antarctic fur seal (*Arctocephalus gazella*)," are inserted the following:

"Spectacled porpoise (*Australophocaena dioptrica*)
Strap-toothed whale (*Mesoplodon layardi*)."

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–27245 Filed 11–19–90; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for public display permit, Lake Superior Zoological Gardens (P468).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Public Display Permit to obtain two female captive born harbor seals from the Denver Zoo and one male captive born harbor seal from Hogle Zoo, Salt Lake City as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Basil D. Norton, Director, Lake Superior Zoological Gardens, 7210 Fremont Street, Duluth, Minnesota 55807.

2. *Type of permit:* Public Display.

3. *Name and number of animals:* Three (3) captive born harbor seals (*Phoca vitulina*).

4. *Type of take:* The Applicant proposes to transport and obtain two female captive born harbor seals from the Denver Zoo, and one male captive born harbor seal from Hogle Zoo, Salt Lake City for public display and educational purposes. The Applicant also requests a permit to obtain polar bears. The National Marine Fisheries Service does not issue permits for polar bears. The Applicant has been informed that the U.S. Fish and Wildlife Service is responsible for issuing permits for polar bears.

5. *Location and duration of activity:* Animals will be provided for at the Lake Superior Zoological Gardens for an indefinite period of time. Arrangements and facilities for transporting and maintaining the marine mammals requested in this application have been inspected by certified veterinarians who have acknowledged that such arrangements and facilities are adequate for the well-being of the marine mammals involved. The Lake Superior Zoological Gardens is not yet licensed by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, to maintain marine mammals. The facility that is to be used for marine mammals is currently under construction and will be inspected and approved by APHIS upon its completion before any permit may be issued by the National Marine Fisheries Service.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors. Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by inerested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930.

Dated: November 11, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–27246 Filed 11–19–90; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Modification; Dr. Bernd Würsig and Mr. Salvatore Cerchio (P36B)

Notice is hereby given that Dr. Bernd Würsig, Professor and Director, Marine Mammal Research Program, Texas A&M Univ., Galveston, TX 77553–1675, and Mr. Salvatore Cerchio, Moss Landing Marine Laboratories, Moss Landing, CA 95039–0450, requested a modification of Permit No. 663 issued on January 11, 1990 (54 FR 8231), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 663 (as modified) authorizes the take by inadvertent harassment of up to 250 humpback whales (*Megaptera novaeangliae*) during photographic studies. The Permit Holder requests authorization to increase the number of whales to be taken by harassment to 500 annually. The increase is required because of the unusually large number of humpbacks off Kauai. During 1990, 244 hours were spent on the water over four months time due to poor weather conditions and 200 whales were approached for photographic identification. Since the Permit Holder(s) plans to spend twice that amount of time on the water in good weather, it is probable that twice as many animals may be approached.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Protected Species Coordinator, Pacific Area Office, Southwest Region, 2570 Dole Street, Honolulu, HI 96822.

Dated: November 9, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90-27247 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 14, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China establishes limits for the 1991 agreement year. The limits for Categories 200, 239, 336/339, 338-S/339-S, 347/348, 369-S, 611, 638/639 and 642 are being reduced for carryforward used in 1990.

Importers are advised that overshipments of Category 369-S will likely result in the limit being filled upon opening. There may be additional charges made to 1991 quotas pending the outcome of ongoing investigations and consultations regarding possible Chinese transshipments.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pusuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: November 14, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following levels of restraint:

Category levels not subject to a group	Twelve-month restraint limit
200	554,973 kilograms.
218	9,991,817 square meters.
219	2,023,298 square meters.
226	9,187,248 square meters.
237	1,521,635 dozen.
239	2,430,142 kilograms.
300/301	3,419,286 kilograms.
313	37,635,186 square meters.
314	42,655,556 square meters.
315	149,031,492 square meters.
317/326	17,206,034 square meters, of which not more than 3,291,853 square meters shall be in Category 326.
331	4,448,375 dozen pairs.
333	77,561 dozen.
334	274,129 dozen.
335	352,042 dozen.
336	142,055 dozen.
338/339	2,142,622 dozen of which not more than 1,614,872 dozen shall be in knit shirts other than T-shirts and tank tops in Categories 338-S/339-S.[1]
340	768,690 dozen of which not more than 384,345 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling, excluding napped shirts in Category 340-Z.[2]
341	608,369 dozen of which not more than 365,022 dozen shall be in blouses made from fabric with two or more colors in the warp and/or the filling in Category 341-Y.[3]
342	239,070 dozen.
345	118,111 dozen.
347/348	2,191,819 dozen.
350	131,969 dozen.
351	428,321 dozen.
352	1,633,009 dozen.
359-C [4]	480,327 kilograms.
359-V [5]	738,522 kilograms.
360	6,376,007 numbers, of which not more than 4,349,053 numbers shall be in Category 360-P.[6]
361	3,565,637 numbers.
363	27,163,588 numbers.
369-D [7]	4,139,660 kilograms.
369-H [8]	4,176,341 kilograms.
369-L [9]	2,625,449 kilograms.
369-S [10]	561,511 kilograms.
410	1,882,296 square meters of which not more than 1,508,863 square meters shall be in Category 410-A;[11] and not more than 1,508,863 square meters shall be in Category 410-B.[12]
433	22,151 dozen.
434	12,621 dozen.
435	23,182 dozen.
436	14,424 dozen.
438	25,242 dozen.
440	36,061 dozen of which not more than 20,606 dozen shall be in men's shirts, in Category 440-M.[13]
442	40,182 dozen.
443	129,818 numbers.
444	192,995 numbers.
445/466	278,181 dozen.
447	75,022 dozen.
448	21,089 dozen.
607	2,726,089 kilograms.
611	4,523,943 square meters.

Category levels not subject to a group	Twelve-month restraint limit
613	6,395,613 square meters.
614	10,050,248 square meters.
615	20,922,790 square meters.
617	14,618,543 square meters.
631	1,012,865 dozen pairs.
634	522,206 dozen.
635	545,489 dozen.
636	465,701 dozen.
638/639	2,162,992 dozen.
640	1,347,104 dozen.
641	1,184,482 dozen.
642	271,797 dozen.
645/646	777,515 dozen.
647	1,368,137 dozen.
648	986,992 dozen.
649	763,783 dozen.
650	98,278 dozen.
651	648,182 dozen of which not more than 114,117 dozen shall be in Category 651-B.[14]
652	2,190,110 dozen.
659-C [15]	354,598 kilograms.
659-H [16]	2,373,017 kilograms.
659-S [17]	525,715 kilograms.
669-P [18]	1,604,500 kilograms.
670-L [19]	13,265,973 kilograms.
831	428,643 dozen pairs.
833	22,950 dozen.
835	107,171 dozen.
840	416,899 dozen.
842	229,505 dozen.
845	2,281,385 dozen.
846	152,982 dozen.
847	1,118,835 dozen.
863-S [20]	7,518,950 numbers.
Group II	
330, 332, 349, 353, 354, 359-O,[21] 431, 432, 439, 459, 630, 632, 633, 643, 644, 653, 654 and 659-O,[22] as a group.	113,890,580 square meters equivalent.
Sublevels in Group II	
330/630	5,035,056 dozen.
633	39,412 dozen.
643	448,255 numbers.
Group III	
201, 220, 222-225, 227, 229, 362, 369-O,[23] 400, 414, 464-469, 600, 603, 604-O,[24] 606, 618-622, 624-629, 665, 666, 669-O [25] and 670-O,[26] as a group.	305,025,445 square meters equivalent.
Group IV	
832, 834, 836, 838, 839, 843, 844, 850-852, 858 and 859, as a group.	23,900,186 square meters equivalent.
Sublevel in Group IV	
836	223,660 dozen.

[1] Categories 338-S/339-S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018, 6109.10.0023, 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[2] Category 340-Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] Category 359-V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[6] Category 360-P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[7] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.005 and 6302.91.0045.

[8] Category 369-H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[9] Category 369-L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

[10] Category 369-S: only HTS number 6307.10.2005.

[11] Category 410-A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.6001, 5111.30.6001, 5111.90.3000, 5111.90.7000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[12] Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2030, 5112.11.2060, 5112.19.6011, 5112.19.6021, 5112.19.6030, 5112.19.6041, 5112.19.6051, 5112.19.6060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.6011, 5112.90.6091, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[13] Category 440-M: only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6205.90.4020 and 6211.31.0030.

[14] Category 651-B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[15] Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[16] Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060 and 6505.90.8060.

[17] Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[18] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[19] Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

[20] Category 863-S: only HTS number 6307.10.2015.

[21] Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359-C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359-V).

[22] Category 659-O: only HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060, 6505.90.8060 (Category 659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).

[23] Category 369-O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369-D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369-H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.3015, 4202.92.6000 (Category 369-L); and 6307.10.2005 (Category 369-S).

[24] Category 604-O: all HTS numbers except 5509.32.0000.

[25] Category 669-O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669-P).

[26] Category 670-O: all HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

Imports charged to these limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for this period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-27259 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-DR-M

Extension of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

November 15, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, or call (202) 343–6581. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no mutually agreed solution has been reached and to avoid continued market disruption, the limit for Category 614 is being extended for the period which began on October 30, 1990 and extends through October 29, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48295, published on November 22, 1989; and 55 FR 5050, published on February 13, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 23, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 614, produced or manufactured in Thailand and exported during the twelve-month period beginning on October 30, 1990 and extending through October 29, 1991, in excess of 12,747,865 square meters[1].

[1] The limit has not been adjusted to account for any imports exported after October 29, 1990.

Imports charged to the limit for Category 614 for the period October 30, 1989 through October 29, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27257 Filed 11–19–90; 8:45 am]

BILLING CODE 3510–DR–M

Extension of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

November 15, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending limits.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6581. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no mutually agreed solution has been reached and to avoid continued market disruption, the limits for Categories 336/636 and 647/648 are being extended for the period which began on October 31, 1990 and extends through October 30, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48295, published on November 22, 1989; 55 FR 5049 and 55 FR 5050, published on February 13, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1990

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 23, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on October 31, 1990 and extending through October 30, 1991, in excess of the following limits:

Category	12-month restraint limit [1]
336/636	99,414 dozen.
647/648	574,587 dozen.

[1] The limits have not been adjusted to account for any imports exported after October 29, 1990.

Imports charged to these category limits for the period October 31, 1989 through October 30, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set fortth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27258 Filed 11–19–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, December 4, 1990; Tuesday, December 11, 1990; Tuesday, December 20, 1990 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and priviledged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: November 15, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–27295 Filed 11–19–90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Division Advisory Group (DAG) for Electronic Security Command (ESC) will meet 12–13 December 1990 from 8 a.m. to 5 p.m. at San Antonio, TX.

The purpose of this meeting is to address long range planning and ESC ROADMAPS; efforts in Multilevel Security; and the 1990 Summer Study on Technology Options and Concepts for Defeating Enemy Defenses. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–27270 Filed 11–19–90; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting; public forum.

SUMMARY: The National Assessment Governing Board is announcing opportunity for commentary and review of the achievement levels being considered for the 1990 mathematics assessment of the National Assessment of Educational Progress (NAEP). The Board, in accordance with its statutory responsibility to identify "appropriate achievement levels for each * * * grade (and) subject * * * to be tested under the National Assessment" has appointed an ad hoc advisory panel to recommend mathematics achievement levels for grades 4, 8, and 12 to be used in reporting the 1990 NAEP. The Board intends to take final action on these recommendations at a teleconference meeting on November 29, 1990. This document is intended to notify interested individuals and organizations of their opportunity to present oral and/or written views to the Board.

DATE: November 26, 1990.

TIME: 9:30 a.m. to 3 p.m.

PLACE: Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, 1100 L Street, NW., suite 7322, Washington, DC, 20005–4013. *Telephone:* (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 4303 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The National Assessment Governing Board will hold a public forum in Washington on Monday, November 26, 1990, to hear comment on proposed definitions of mathematics achievement levels for grades 4, 8, and 12 to be used in reporting the National Assessment of Educational Progress. The proposed achievement levels are being prepared by an ad hoc advisory panel in accordance with the NAGB resolution of May 11, 1990. The proposals will include detailed descriptions of the subject-matter knowledge and skills proposed for each level, illustrated by representative sample items and scoring protocols.

These proposals are scheduled to be presented to the Board during its quarterly meeting in Atlanta, Georgia on November 16 and 17. Copies will be available for public review on November 19 at the office of the Board at 1100 L Street, NW., suite 7322, Washington, DC, 20005–4013. For copies of information, interested parties may also write to the above address or telephone (202) 357–6938. Persons or organizations wishing to testify are requested to notify the NAGB office in

writing or by telephone at the address or telephone number above by 3 p.m. on November 23. However, every effort will be be made to receive testimony from all persons attending the forum who wish to make a presentation. Written statements should be submitted at the forum or to the Board office by 5 p.m. on November 26. The Board plans to analyze all comments received in response to this announcement. The results of the public comments will be used by the Board in conjunction with other information to fulfill its statutory requirement to establish achievement goals on the National Assessment.

Records are kept of all Board proceedings, and are available for public inspection at U.S. Department of Education, National Assessment Governing Board office from 8:30 a.m. to 5 p.m., Monday through Friday.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-27459 Filed 11-19-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; U.S. and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number DE-SC05-90UEJA-210, for the supply of 22.351 kilograms of uranium, enriched to 45 percent in the isotope uranium-235, for use by the Japanese Atomic Energy Research Institute for fuel for the JRR-2 research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 15, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-27312 Filed 11-19-90; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public L. 96-511, 44 U.S.C. 3501 *et. seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, *e.g.*, new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number or responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.).

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA-178, 191, 191S, 627, 857 and 857S.
3. 1905-0175.
4. Natural Gas Program Package.
5. Revision—Changes to the forms were outlined in a **Federal Register** notice (55 FR 14458) published April 18, 1990. In addition, EIA is proposing to discontinue holding information collected on the EIA-176 as confidential. The EIA-191S and EIA-857S are to be cleared on a standby basis to be used when weather, natural disasters, or other catastrophic events dictate the need for more information on supplies and consumption in given areas. The EIA-191S and EIA-857S are shorter versions of the EIA-191 and EIA-857 and the data would be collected on a weekly basis.
6. Weekly, Monthly, and Annually.
7. Mandatory.
8. State or local government, Businesses or other for profit, Small businesses or organization.
9. 3,313 respondents.
10. 2.4 responses.

11. 5.42 hours per response.
12. 43,179 hours.
13. The Natural Gas Program Package forms collect production, processing, transmission, storage, consumption, and price data. The data are used to address significant energy industry issues. Data from these forms are published in various EIA publications. Respondents are pipeline companies, distributors, storage operators, plant operators, and State agencies.

Statutory Authority: Section 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790.

Issued in Washington, DC, November 14, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90-27314 Filed 11-19-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-107-000, et al.]

Potomac Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 8, 1990.

Take notice that the following filings have been made with the Commission:

1. Potomac Electric Power Co.

[Docket No. ER91-107-000]

Take notice that on November 6, 1990, the Potomac Electric Power Company (PEPCO) tendered for filing revisions to the 1982 agreement for electric service to its full requirements customer, Southern Maryland Electric Cooperative, Inc. (SMECO), including revised agreement terms and rates for the years 1991 through 1993 (increasing in the latter years), and provisions for an additional delivery point. These revisions to the PEPCO-SMECO electric service agreement are the result of extensive negotiations and are supported by both parties. An effective date of January 1, 1991 for the revised rates and terms and November 1, 1990 for the delivery point provisions is requested; waiver of notice to allow these effective dates is requested for good cause.

Comment date: November 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Northern California Power Agency v. Pacific Gas and Electric Co.

[Docket No. EL89-34-000]

Take notice that on November 6, 1990, Northern California Power Agency ("NCPA") tendered for filing an amendment to its complaint against Pacific Gas and Electric Company ("PG&E"). NCPA states that its amendment deals with billing dispute issues connected with PG&E's September 10, 1990 bill to NCPA. NCPA further states that the amendment is submitted by agreement of the parties and that PG&E and other parties to the consolidated dockets have been served with copies of the amendment.

Comment date: December 10, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corp.

[Docket No. ER91-102-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk) on November 5, 1990, tendered for filing an agreement between Niagara Mohawk and New England Power Company (NEP) dated November 1, 1989.

The November 1, 1989 agreement is to provide for the sale by Niagara Mohawk of 80 MW of peaking capacity and related energy to NEP. The term of the agreement was for the period November 1, 1989 through April 30, 1990.

Copies of this filing were served upon NEP and the New York State Public Service Commission.

Comment date: November 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Co.

[Docket No. ER91-105-000]

Take notice that on November 5, 1990, Arizona Public Service Company (APS) tendered for filing Amendment No. 1 to Service Schedule B-1 of the Interconnection Agreement between Utah Power and Light (UP&L) and APS (APS/FPC Rate Schedule No. 26). This Amendment provides for the installation of relay protective and communication equipment at APS' Four Corners Switchyard, where APS and UP&L are interconnected, in order for UP&L to upgade its 345kv transmission system.

APS, with concurrence from UP&I respectfully requests waiver of the Commission's Notice Requirements to permit an effective date of August 27, 1990 for this Amendment.

Copies of this filing have been mailed to UP&L, the Arizona Corporation Commission and the Public Service Commission of Utah.

Comment date: November 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Tampa Electric Co.

[Docket No. ER91-101-000]

Take notice that on November 5, 1990, Tampa Electric Company (Tampa Electric) tendered for filing a revised Exhibit A to the Contract for Interchange Service between Tampa Electric and Florida Power Corporation (Florida Power), describing the points of interconnection between the utilities. The revised Exhibit A is submitted as a supplement to the Contract for Interchange Service, which is designated as Tampa Electric Rate Schedule FPC No. 6, and Florida Power Rate Schedule FPC No. 80. Tampa Electric's filing includes a Certificate of Concurrence executed by Florida Power in lieu of an independent filing.

Tampa Electric proposes an effective date of December 1, 1990, for the revised Exhibit A, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Florida Power and the Florida Public Service Commission.

Comment date: November 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27233 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-277-000, et al.]

Algonquin Gas Transmission Co., et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Co.

[Docket Nos. CP91-277-000]

November 7, 1990.

Take notice that on October 30, 1990, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91-277-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for United Illuminating Company, a marketer, under the blanket certificate issued in Docket No. CP89-948-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Algonquin states that, pursuant to an agreement dated February 2, 1990, under its Rate Schedule AIT-1, it proposes to transport up to 1,000,000 MMBtu per day equivalent of natural gas. Algonquin indicates that the gas would be transported from Mississippi, New York, Connecticut, and New Jersey, and would be redelivered in Connecticut. Algonquin further indicates that it would transport 1,000,000 MMBtu on an average day and 120,000,000 MMBtu annually.

Algonquin advises that service under § 284.223(a) commenced September 1, 1990, as reported in Docket No. ST91-1196-000.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. U-T Offshore System

[Docket No. CP91-305-000, Docket No. CP91-306-000, Docket No. CP91-307-000]

November 7, 1990.

Take notice that U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-305-000 (11-02-90)	V.H.C. Gas Systems, L.P. (Marketer).	400,000 400,000 146,000,000	Offshore Louisiana.....	Cameron Parish, Louisiana.	7-01-90, IT, Interruptible.	ST90-5104-000, 9-06-90.
CP91-306-000 (11-02-90)	Kaztex Energy Management, Inc. (End User).	25,000 25,000 9,125,000	Offshore Louisiana.....	Cameron Parish, Louisiana.	7-01-90, IT, Interruptible.	ST90-5101-000, 9-12-90.
CP91-307-000 (11-02-90)	Oxy U.S.A., Inc. (Producer).	50,000 50,000 18,250,000	Offshore Louisiana.....	Cameron Parish, Louisiana.	7-01-90, IT, Interruptible.	ST90-5102-000, 9-04-90.

3. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-332-000]

November 7, 1990.

Take notice that on November 5, 1990, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-332-000 a request pursuant to §§ 157.205, 157.211 and 284.223 of the Commission's Regulations for authorization to construct and operate a sales tap and to transport natural gas for Kansas Pipeline Partnership, formerly Kansas Pipeline Company, L.P. (Kansas), a shipper and intrastate pipeline of natural gas, under Panhandle's blanket certificates issued in Docket Nos. CP83-83-000 and CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to construct and operate a six-inch hot tap on its thirty-inch transmission Line No. 41-03-003-1200-30" located in Miami County, Kansas. Panhandle estimates that the proposed sales tap would cost $16,000 and states that Panhandle would be reimbursed for this cost. It is stated that the construction of the proposed sales tap is required to provide the requested transportation service for Kansas.

Panhandle proposes to transport on an interruptible basis up to 10,000 dt equivalent of natural gas on a peak day, 10,000 dt equivalent on an average day and 3,650,00 dt equivalent on an annual basis for Kansas. Panhandle states that it would perform the transportation

service for Kansas under Panhandle's Rate Schedule PT. Panhandle indicates that it would transport the gas from various receipt points in Texas, Colorado, Illinois, Kansas, Michigan, Ohio, and Oklahoma, to the proposed delivery point in Miami County, Kansas.

It is explained that the proposed construction and transportation service would begin upon expiration of the 45-day notice period.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of the notice.

4. Northern Natural Gas Co.

[Docket No. CP91-349-000]

November 8, 1990.

Take notice that on November 7, 1990, Northern Natural Gas Company (Northern), P.O. box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-349-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate and maintain an existing delivery point and appurtenant facilities as a sales delivery point under Northern's Rate Schedule CD-1 to Iowa-Illinois Gas and Electric Company (Iowa Illinois) under its blanket certificate issued in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the authorization is requested so that Iowa-Illinois may receive sales service at the existing delivery point in Benton County, Iowa referred to as the Cedar Rapids town border station. It is indicated that the Commission authorized the construction and operation of this delivery point by order issued June 18, 1990, in Docket No. CP89-1841-000. It is stated that at the time of certification, Northern anticipated that Iowa-Illinois would receive volumes at this station that were transported by Northern for Iowa-Illinois under Northern's firm transportation Rate Schedule FT-1. Northern states that Iowa-Illinois now requests that jurisdictional sales service at this point under Rate Schedule CD-1.

Northern states that the volumes to be delivered to Iowa-Illinois at the subject delivery point would be within the currently effective entitlements for Iowa-Illinois as authorized by order issued December 22, 1988, in Docket No. CP88-774-000. It is also stated that the delivery of volumes to the new delivery point would not impact Northern's peak day and annual deliveries. Northern also states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accomplish the proposed changes without detriment or disadvantage to Northern's other customers.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP91-344-000, Docket No. CP91-345-000, Docket No. CP91-346-000]

November 8, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. box 1188 Houston, Texas 77251-1188 (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-344-000 (11-6-90)	PSI Gas Marketing, Inc. (Marketer).	250,000 187,500 91,250,000	Various	TX, KS	9-14-90, IT-1, Interruptible.	ST90-5100, 9-14-90
CP91-345-000 (11-6-90)	Helmerich & Payne, Inc. (Producer).	100,000 75,000 36,500,000	OK, KS, TX, IA, MN, ND	TX, KS, OK, NM	9-23-90, IT-1, Interruptible.	ST91-48, 9-23-90
CP91-346-000 (11-6-90)	Conoco, Inc. (Producer)	50,000 37,500 18,250,000	Various	KS	9-7-90, IT-1, Interruptible.	ST91-90, 9-7-90

6. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-271-000]

November 8, 1990.

Take notice that on November 1, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. box 1642, Houston, Texas 77001, filed in Docket No. CP91-271-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to partially abandon sales service provided to Central Illinois Light Company (CILCO), The Kansas Power and Light Company (KP&L) and Ohio Gas Company (Ohio Gas), all of which are General Service Customers and Battle Creek Gas Company (Battle Creek), a Limited Service Customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that its current sales agreements with both the General Service Customers and the Limited Service Customer expire October 31, 1990. Panhandle further states that pursuant to recent negotiations, the above mentioned customers have executed new service agreements lowering their contract demand quantity. It is indicated that each of these new service agreements would become effective November 1, 1990, and

would continue until March 31, 1991. Depicted below in Table 1 is the current annualized sales CD by customer, the annualized CD reduction, resulting annualized CD and date of the superseded agreement.

TABLE 1

Customer	Current annualized CD(Mcf)	Annualized reduction CD(Mcf)	Resulting annualized CD(Mcf)	Supersedes agreement dated
CILCO	35,845,663	17,770,963	18,074,700	9-20-89
Ohio Gas	11,021,180	8,312,995	2,708,185	9-11-89
KP&L	2,750,445	1,430,252	1,320,193	10-26-88
Battle Creek	1,934,500	804,825	1,129,675	8-26-88

The following Table 2 depicts the current and requested peak day requirements.

TABLE 2

Customer	Current peak day requirements (Mcf)	Resulting peak day requirements (Mcf)
CILCO	158,000	119,700
Ohio Gas	49,560	17,935
KP&L	12,510	8,742
Battle Creek	5,300	3,095

Panhandle states that upon approval of the requested partial abandonment of service, Panhandle would make the appropriate corresponding changes to its FERC Gas Tariff, Original Volume No. 1, to reflect the reduced level of sales service provided to both the General Service Customers and the Limited Service Customer.

Comment date: November 29, 1990, in accordance with Standard paragraph F at the end of this notice.

7. Williams Natural Gas Co.

[Docket No. CP91-325-000]

November 8, 1990.

Take notice that on November 5, 1990, Williams Natural Gas Company (WNG), P.O. box 3288, Tulsa, Oklahoma 74101, filed a request with the Commission in Docket No. CP91-325-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate an additional delivery point in Douglas County, Kansas, for the sale and delivery of natural gas to Kansas Public Service (KPS), under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

WNG states that KPS has requested this additional delivery point in order to serve residential customers who currently use propane in the Lawrence, Kansas, area. WNG states that it would deliver approximately 3,575 Mcf the first year and 50 Mcf on peak days, while increasing to 4,625 Mcf annually and 80 Mcf on peak days by the fifth year. WNG estimates that the proposed delivery point would cost $16,510 to construct, which would be paid from funds on hand. WNG further states that this delivery point is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: December 24, 1990, in accordance with Standard paragraph G at the end of this notice.

8. Natural Gas Pipline Co. of America

[Docket Nos. CP91-293-000,[3] CP91-294-000, CP91-295-000, CP91-296-000]

November 8, 1990.

Take notice that on November 2, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the interruptible transportation service agreement between Natural and the respective shipper, the reference number of the transportation service agreement, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Natural and is included in the attached appendix.

Natural alleges that it would provide the proposed service for each shipper under an executed interruptible transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. trans. agree. (ref. no.)	Applicant	Shipper name	Peak day, avg, annual [1]	Points of Receipt	Points of Delivery	Start up date, rate schedule, service type	Related dockets [2]
CP91-293-000 8-23-90 (IGP-2707)	Natural Gas Pipeline Co. of America.	Enron Gas Marketing, Inc.	200,000 100,000 36,500,000	Various existing points.	Various existing points.	9-1-90, ITS, Interruptible.	ST90-5099-000.
CP91-294-000 8-22-90 (IGP-2604)	Natural Gas Pipeline Co. of America.	ODECO Oil & Gas Company.	75,000 40,000 14,600,000	Various existing points.	Various existing points.	9-1-90, ITS, Interruptible.	ST90-5094-000.

Docket No. trans. agree. (ref. no.)	Applicant	Shipper name	Peak day, avg, annual [1]	Points of		Start up date, rate schedule, service type	Related dockets [2]
				Receipt	Delivery		
CP91-295-000 8-22-90 (IGP-2702)	Natural Gas Pipeline Co. of America.	Torch Energy Marketing, Inc.	10,000 6,000 2,190,000	Various existing points.	Various existing points.	9-1-90, ITS, Interruptible.	ST90-5098-000.
CP91-296-000 11-7-90 (IGP-2147)	Natural Gas Pipeline Co. of America.	Tejas Power Corporation.	100,000 50,000 18,250,000	Various existing points.	Various existing points.	9-1-90, ITS, Interruptible.	ST90-5350-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

9. Tennessee Gas Pipeline Co.

[Docket No. CP91-292-000]

November 8, 1990.

Take notice that on November 1, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-292-000 a request pursuant to §§ 157.205 and 157.212 of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act for authorization to add an additional delivery point, for a sale service presently being rendered, to Delta Natural Gas Company (Delta), under the blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that by a Commission order issued November 24, 1989 at Docket No. CP89-333-000, Tennessee was issued a certificate of public convenience and necessity authorizing sales of up to 1,611 dekatherms (Dth) of natural gas per day to Delta under Tennessee's GS-2 Rate Schedule at two delivery points located in Kentucky (Salt Lick and Farmer's).

Tennessee states that by letter dated August 15, 1990, Delta has requested that Tennessee provide an additional delivery point to be located in Rowan County, Kentucky at Tennessee's Main Line Valve 109 plus 5.4 miles, and to be known as the Kinder delivery point. Deliveries at the Kinder delivery point will not exceed 1,611 Dth per day and the addition of Kinder as a delivery point will not change the existing delivery points or the total daily quantity of 1,611 dekatherms.

Tennessee states that the total quantities to be delivered to Delta will not exceed presently authorized quantities and the change is not prohibited by Tennessee's existing tariff. Tennessee further states that it has sufficient capacity in its system to accomplish delivery of the additional gas to the Kinder delivery point without detriment or disadvantage to any other customer.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. K N Energy, Inc.

[Docket No. CP91-310-000]

November 8, 1990.

Take notice that on November 2, 1990, K N Energy, Inc. (K N), P.O. Box 150265, Lakewood, Colorado, 80215, filed a request with the Commission in Docket No. CP91-310-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for permission and approval to construct and operate sales taps, located in Rock, Seward and Thayer Counties, Nebraska, and Phillips County Colorado, under K N's blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001 and CP83-140-002 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

K N states that the proposed new taps would enable K N to supply an estimated annual quantity of 31,240 Mcf of natural gas to various end users located along its jurisdictional pipelines. It is also stated that the estimated cost of the facilities would be $9,400 which would be partially reimbursed by the customers. Additionally, the proposed facilities would not cause an increase in aggregate or peak requirements and are not prohibited by any existing tariffs.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Co. of America

[Docket No. CP91-321-000]

November 8, 1990.

Take notice that on November 5, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-321-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 1.57.205 and 157.211) for authority to operate an existing delivery point and associated delivery facilities as a sales tap to provide jurisdictional services, including transportation services under subpart G of part 284 of the Commission's Regulations, under its blanket certificate issued in Docket No. CP82-402-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural indicates that the facilities, which consist of a 8-inch tap and a 8-inch backup tap, are located at an interconnection with Reynolds Metals Company, an end-user, in Cook County, Illinois and were used until October 1, 1990, solely for the transportation of natural gas pursuant to section 311(a)(1) of the Natural Gas Policy Act of 1978 (NGPA) and subpart B of the Commission's Regulations.

Natural states that consistent with the Commission's Interim Rule on Transportation under section 311 of the NGPA issued August 2, 1990, in Docket No. RM90-13-000 (Ordere No. 526), the existing transportation agreements were converted on October 1, 1990, from authorization pursuant to subpart B of part 284 to authorization pursuant to subpart G of part 284. It is then indicated that in accordance with Order 526, the facilities originally build to be used solely for section 311 transportation are exempt from the requirements of Section 7(c) of the Natural Gas Act during the period Order 526 is in effect to the extent such facilities are utilized for the section 311 services that have been converted to blanket certificate authorization under subpart G of part 284. Natural states that the exemption may not continue once Order 526 if replaced and a new subpart G transportation services may not commence until the facilities have been authorized under section 7(c) of the Natural Gas Act. Natural states that it is filing this request to seek such authorization.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. High Island Offshore System, High Island Offshore System

[Docket No. CP91-281-000, Docket No. CP91-283-000]

November 8, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223, of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day, avg. annual [1]	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-281-000 10/31/90	High Island Offshore Sys. 500 Renaissance Center.	Reliance Gas Marketing Co..	60,000 60,000 21,900,000	Offshore, TX, LA.....	Offshore, TX, LA.....	IT, Interruptible, 8-31-90.	RM88-14-001, RM88-15-000.
CP91-283-000 10/31/90	High Island Offshore Sys. 500 Renaissance Center.	Tex/Con Gas Marketing Co..	185,000 185,000 67,525,000	Offshore, TX, LA.....	Offshore, TX, LA.....	IT, Interruptible, 8-31-90.	RM88-14-001, RM88-15-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

13. Texas Gas Transmission Corp.

[Docket Nos. CP91-301-000,[5] CP91-302-000, CP91-303-000, CP91-304-000]

November 8, 1990.

Take notice that on November 2, 1990, Texas Gas Transmission Corporation (Applicant), filed in the above referenced dockets, prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 24, 1990, in accordance with Standard paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper Name	Peak Day,[1] avg, annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-301-000 (11-2-90)	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Texaco Gas Marketing, Inc.	200,000 50,000 18,250,000	LA,IN,KY,TX,TN, Off LA, Off TX,IL,AR,OH.	LA.....	10-5-90, IT.....	CP86-686-000, ST91-873-000.
CP91-302-000 (11-2-90)	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Texas Gas Marketing, Inc.	500,000 50,000 18,250,000	LA, IN, KY, TX,TN, Off LA, Off TX, IL, AR, OH.	KY, OH, IN.....	10-1-90 IT.....	CP86-686-000, ST91-872-000.
CP91-303-000 (11-2-90	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	NGC Transportation, Inc.	300,000 20,000 7,300,000	LA, IN, KY, TX, Off LA, TN, Off TX, IL, AR, OH.	TN, MS.....	9-22-90, IT.....	CP86-686-000, ST91-868-000.

Docket No. (date filed)	Applicant	Shipper Name	Peak Day,[1] avg, annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-304-000 (11-2-90)	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	NGC Transportation, Inc.	300,000 20,000 7,300,000	LA, IN, KY, TX, Off LA, TN, Off TX, IL, AR, OH.	OH, KY	10-1-90, IT	CP86-686-000, ST91-869-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

14. Trunkline Gas Co. et al.

[Docket No. CP91-362-000 et al.]

November 9, 1990.

Take notice that on November 8, 1990, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under §§ 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-362-000 (11-8-90)	Bishop Pipeline Corporation (Intra PL).	5,000 5,000 [2] 1,825,000	OLA, OTX, IL, LA, TN, TX.	LA	8-10-90, PT, Interruptible.	ST91-2751-000, 9-1-90.
CP91-363-000 (11-8-90)	Enron Gas Marketing, Inc. (Marketer).	100,000 100,000 [2] 36,500,000	OLA, OTX, IL, LA, TN, TX.	TN	1-7-90, PT, Interruptible.	ST91-2363-000, 9-1-90.
CP91-365-000 (11-8-90)	Arkla Energy Marketing Company (Marketer).	125,000 125,000 45,625,000	LA, AR, IL, TX	LA	8-27-90, ITS, Interruptible.	ST91-16-000, 9-1-90.
CP91-366-000 (11-8-90)	NOARK Gas Marketing Company (Marketer).	75,000 75,000 27,375,000	AR, IL, LA, TX	IL, MO, LA, TX, AR	6-8-90, ITS, Interruptible.	ST91-17-000, 9-1-90.
CP91-367-000 (11-8-90)	O & R Energy, Inc. (Marketer).	40,000 40,000 14,600,000	LA, AR, OK, TX, IL	AR, MO, TX, IL, LA	6-7-90, ITS, Interruptible.	ST90-5295-000, 9-1-90.
CP91-368-000 (11-8-90)	MidCon Marketing Corporation (Marketer).	300,000 10,000 3,650,000	OTX, OLA, TX, LA, MS, AL.	SC, TN, GA	8-15-90, IT, Interruptible.	ST90-5333-000, 9-1-90.
CP91-369-000 (11-8-90)	MidCon Marketing Corporation (Marketer).	300,000 10,000 3,650,000	OTX, OLA, TX, LA, MS, AL.	LA	8-15-90, IT, Interruptible.	ST91-5329-000, 9-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Trunkline's quantities are in Mcf.

Applicant's address	Blanket docket
Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124	CP89-1121-000
Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563	CP88-316-000
Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642	CP86-586-000

15. Natural Gas Pipeline Co.

[Docket Nos. CP91-322-000 and CP91-323-000]

Take notice that on November 5, 1990, Natural Gas Pipeline Company of America (Applicant) 701 East 22nd Street, Lombard, Illinois 60148, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-592-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests

which are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day, avg. annual [1]	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-322-000 11-5-90	Entrade Corporation	10,000 10,000 3,650,000	TX, LA	IL, IA	9-1-90, FTS	ST91-15-000.
CP91-323-000 11-5-90	Bell-InCon Glass Packaging Corp.	3,000 3,000 1,095,000	IL, LA	IL, TX	9-1-90, FTS	ST91-14-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

16. K N Energy, Inc.

[Docket Nos. CP91-341-000, CP91-342-000 and CP91-343-000]

November 9, 1990.

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day avg. annual [1]	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-341-000 (11-06-90)	PSI, Inc.	100,000 100,000 36,500,000	OK, TX	OK, TX	09-01-90, IT-1, IT-2, & IT-3.	ST91-2209-000.
CP91-342-000 (11-06-90)	Landmark Gas Corp.	20,000 15,000 5,475,000	TX, OK	TX	10-01-90, IT-1, IT-2, & IT-3.	ST91-2210-000.
CP91-343-000 (11-06-90)	LL&E Marketing Inc.	50,000 50,000 18,250,000	KS, NE, CO, WY	CO, WY	09-21-90, IT-1, IT-2, & IT-3.	ST91-2208-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

17. Stingray Pipeline Co.

[Docket Nos. CP91-334-000, CP91-335-000 and CP91-336-000]

November 9, 1990.

Take notice that on November 6, 1990, Stingray Pipeline Company (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. RP89-70-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[9]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day, average day annual [1]	Receipt points [2]	Delivery points	Start up date, rate schedule, service type	Related docket, contract date [3]
CP91-334-000 (11-06-90)	Brooklyn Interstate Natural Gas Corp.	100,000 40,000 14,600,000	LA, OLA, OTX	LA, OTX	9-01-90, ITS, Interruptible.	ST90-5351-000, 2-15-90.
CP91-335-000 (11-06-90)	V.H.C. Gas Systems, L.P.	250,000 100,000 36,500,000	LA, OLA, OTX	LA, OTX	9-01-90, ITS, Interruptible.	ST90-5349-000, 3-01-89.
CP91-336-000 (11-06-90)	ODECO Oil & Gas Company.	20,000 10,000 3,650,000	LA, OLA, OTX	LA, OTX	9-01-90, ITS, Interruptible.	ST91-0013-000, 8-22-90.

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX, respectively.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

18. Montana Power Co.

[Docket No. CP91-312-000]

November 9, 1990.

Take notice that on November 2, 1990, Montana Power Company (Montana), 40 East Broadway, Butte, Montana 59701, filed in Docket No. CP91-312-000 an application pursuant to § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Montana agrees to comply with the conditions set forth in § 284.224(e) and understands that any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms, conditions and reporting requirements that would apply if the transactions were authorized for an intrastate pipeline by subparts C, D and E of part 284 of the Commission's Regulations.

Comment date: November 30, 1990, in accordance with Standard Paragraph F at the end of this notice.

19. U-T Offshore System

[Docket No. CP91-347-000]

November 9, 1990.

Take notice that on November 6, 1990, U-T Offshore System (U-TOS), P.O. box 1396, Houston, Texas 77251, filed in Docket No. CP91-347-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7(c) of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-99, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

U-TOS proposes to transport natural gas on an interruptible for UGI Corporation (UGI). U-TOS explains that service commenced September 7, 1990 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-5292-000. U-TOS states that it would transport natural gas on an interruptible basis for UGI. U-TOS explains that the peak day quantity would be 77,464 MMBtu, the average daily quantity would be 77,464 MMBtu, and that the annual quantity would be 28,274,360 MMBtu. U-TOS states that the receipt points for this service are in West Cameron Blocks 116 and 167, offshore Louisiana. U-TOS explains that the delivery points are the interconnections between U-TOS and other pipelines at the Johnson's Bayou Plant, Cameron Parish, Louisiana.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. Natural Gas Pipeline Co. of America

[Docket No. CP91-337-000 and CP91-338-000]

November 9, 1990.

Take notice that on November 6, 1990, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[10]

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[10] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day average day, annual [1]	Receipt points [2]	Delivery points	Start up date, rate schedule, service type	Related docket, contract date [3]
CP91-337-000 (11-6-90)	Anadarko Trading Company	100,000 50,000 18,250,000	AR, CO, IA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, OK, TX, IA, OTX, IL, NM, CO.	9-1-90, ITS Interruptible.	ST90-5095-000, 8-14-90.

Docket No. (date filed)	Shipper name.	Peak day average day, annual [1]	Receipt points [2]	Delivery points	Start up date, rate schedule, service type	Related docket, contract date [3]
CP91-338-000 (11-6-90)	MidCon Marketing Corp	100,000 60,000 21,900,000	AR, CO, IA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, OK, TX, IA, OTX, IL, NM, CO.	9-1-90, ITS Interruptible.	ST91-0738-000, 8-20-90.

[1] Quantities are shown in MMBtu and additional volumes may be accepted pursuant to the overrun provisions of Applicant's Rate Schedule ITS.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

21. U-T Offshore System

[Docket No. CP91-358-000]

November 9, 1990.

Take notice that on November 7, 1990, U-T Offshore System (U-TOS), P.O. box 1396, Houston, Texas 77251, filed in Docket No. CP91-358-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for The Polaris Pipeline (Polaris), a marketing company, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

U-TOS requests authorization to transport, on an interruptible basis, up to a maximum of 46,100 Mcf per day of natural gas for Polaris from receipt points located in Offshore Louisiana to points of delivery in Cameron Parish, Louisiana. U-TOS anticipates transporting 46,100 Mcf of natural gas on an average day and an annual volume of 16,826,500 Mcf. U-TOS advises that service under § 284.223(a) commenced September 13, 1990, as reported in Docket No. CP90-5294-000.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

22. United Gas Pipe Line Co.

[Docket No. CP91-320-000]

November 9, 1990.

Take notice that on November 5, 1990, United Gas Pipe Line Company (United), P.O. box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-320-000, a request pursuant to § 157.211 of the Commission's Regulations under the Natural Gas Act, to construct and operate a two-inch farm tap for interruptible transportation of natural gas to serve Mississippi Valley Gas in Rankin County, Mississippi, pursuant to its blanket certificate, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the new farm tap will enable it to supply a maximum of 12 Mcf/d of natural gas for Mississippi Valley Gas, under United's DG Rate Schedule.

United further states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-272-000]

November 9, 1990.

Take notice that on November 1, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. box 1642, Houston, Texas 77001, filed in Docket No. CP91-272-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order granting permission and approval to partially abandon sales service to Citizens Gas & Coke Utility Company (Citizens) and to provide amended service to Citizens by providing sales service pursuant to Panhandle's Rate Schedule G-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that Citizens is an existing firm jurisdictional gas sales customer of Panhandle pursuant to Panhandle's Rate Schedule LS-1 and a gas sales contract dated August 26, 1988, which expired October 31, 1990. Panhandle further states that its initial service to Citizens was certificated by an order issued June 27, 1950, at Docket No. G-1083.

It is indicated that on March 29, 1989, the Commission issued an order in Docket No. CP88-727-000 authorizing Panhandle to provide firm sales service to Citizens pursuant to Rate Schedule LS-1 as opposed to Rate Schedule G-1. Panhandle states that in accordance with the March 29, 1989, order, service to Citizens commenced November 1, 1989.

Panhandle states that it is requesting authority to amend its service to Citizens by providing sales service pursuant to Panhandle's Rate Schedule G-1 under the terms of a new contract dated October 23, 1990. Panhandle further states that the term of this service would commence November 1, 1990, and would continue in effect until November 1, 1992, or until such time Panhandle has received and accepted a certificate of public convenience and necessity from the Commission authorizing a permanent Gas Inventory Charge. In addition, Panhandle states that it is requesting partial abandonment of Citizens' contract demand as illustrated by the following table.

	Existing contract demand (Mcf)	Requested contract demand (Mcf)
January	100,000	100,000
February	100,000	100,000
March	100,000	100,000
April	100,000	40,000
May	100,000	35,000
June	100,000	25,000
July	100,000	25,000
August	100,000	25,000
September	100,000	35,000
October	100,000	50,000
November	100,000	100,000
December	100,000	100,000

The partial abandonment would reduce the total annual volume to 22,285,000 Mcf from 36,500,000 Mcf.

Comment date: November 30, 1990, in accordance with Standard Paragraph F at the end of this notice.

24. Tennessee Gas Pipeline Co.

[Docket Nos. CP91-351-000 [1] and CP91-352-000]

November 9, 1990.

Take notice that on November 7, 1990, Tennessee Gas Pipeline Company (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket

[1] These prior notice requests are not consolidated.

certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day, avg, annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-351-000 (11-7-90)	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Woodward Marketing, Inc.	700 700 255,500	MS	MS	10-1-90, FT-A	CP87-115-000, ST91-2344-000.
CP91-352-000 (11-7-90)	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Woodward Marketing, Inc.	503 503 183,595	MS	TN	10-1-90, FT-A	CP87-115-000, ST91-2345-000.

[1] Quantities are shown in dekatherms unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 27234 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-20-000]

El Paso Natural Gas Co.; Tariff Filing

November 13, 1990.

Take notice that on November 7, 1990, El Paso Natural Gas Company ("El Paso") tendered for filing and acceptance, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Third Revised Volume No. 2 in recognition of the Commission's Order No. 528. El Paso has requested that the tendered tariff sheets be accepted for filing and permitted to become effective on December 7, 1990.

El Paso states that by Order No. 528 issued November 1, 1990 at Docket No. RM91-2-000, *et al.*, the Commission, effective 30 days after publication of the order in the **Federal Register**, stayed the authority of all pipelines (except certain pipelines identified on appendix A of the order) to collect fixed take-or-pay charges based on a purchase deficiency allocation method. Pipelines which have been excluded from the effectiveness of Order No. 528 are the pipelines which have entered into settlements with their customers, which the Commission has approved and which have been effective, or pipelines that have recovery mechanisms which have become final and nonappealable.

El Paso states that for the reasons more fully explained in a filing made concurrently with its compliance filing, it believes its take-or-pay buyout and buydown recovery mechanism also has become final and nonappealable and therefore should not be subject to the requirements of Order No. 528.

El Paso further states that in the event the Commission denies its request to be excluded from the requirements of Order No. 528, it is filing certain tariff sheets which, when accepted and approved by the Commission, will revise Section 21, Take-or-Pay Buyout and Buydown Cost Recovery, of the General Terms and Conditions contained in its FERC Gas Tariff, Second Revised Volume No. 1, and certain Statement of

Rates tariff sheets in recognition of Order No. 528. El Paso states that the take-or-pay buyout and buydown costs have been allocated among individual sales customers or customer groups based on certain percentages already agreed upon by all of El Paso's sales customers, except the City of Willcox, Arizona and the Arizona Electric Power Cooperative, Inc. ("Willcox"), in its pending offer of settlement of Docket No. RP88-44-000. El Paso also states that it believes that Willcox's claims are without merit and that the tendered tariff sheets should be applied to all customers.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27236 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-21-000]

Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provisions

November 13, 1990.

Take notice that on November 8, 1990, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. RP91-21-000 a petition requesting authorization for waiver of the scheduling penalty provisions of Rate Schedules FTS-1, PTS-1 and ITS-1 of FGT's FERC Gas Tariff for penalties incurred during the month of August 1990.

FGT states that, among other reasons, good cause exists to waive the scheduling penalties because August was the first month of open-access service on FGT's system.

Any person desiring to be heard or to protest to said petition should on or before November 21, 1990 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27235 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-81-000, RP88-221-000, and RP90-119-001 (Phase I/ Rates)]

Texas Eastern Transmission Corp.; Informal Settlement Conference

November 13, 1990.

Take notice that, at the request of Texas Eastern Transmission Corporation, a conference will be convened in this proceeding on December 4, 1990 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of several issues remaining in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation (18 CFR 385.214).

For additional information, contact Dennis H. Melvin (202) 208-0042, or Arnold H. Meltz (202) 208-0737.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27238 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-52-003]

Texas Gas Transmission Corp.; Tariff Filing

November 13, 1990.

Take notice that on November 9, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the tariff sheets listed and attached as appendices A, B, and C, hereto.

This filing is being made in compliance with the Commission's October 4, 1990 "Order Approving Settlement" in Docket No. RP90-52. This order approves the rates and provisions of the Stipulation and agreement filed June 19, 1990, in the referenced docket. The instant filing resolves all issues concerning rates and tariffs which were placed into effect on January 1, 1990, in Docket No. RP90-52.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27237 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed With the Office of Hearings and Appeals During the Week of September 14 Through September 21, 1990

During the Week of September 14 through September 21, 1990, the applications for relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual

notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 14, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 14 through September 21, 1990]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 14, 1990	Texaco/Craig's Texaco Service, Washington, DC	RR321-16	Request for modification/rescission in the Texaco refund proceeding. If granted: The September 7, 1990 Decision and Order (Case No. RF321-34 and RF321-6098) issued to Craig's Texaco Service would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Sept. 18, 1990	Texaco/M&H Texaco, Waco, TX	RR321-17	Request for modification/rescission in the Texaco refund proceeding. If granted: The August 3, 1990 Decision and Order (RF321-636 & RF321-637) issued to M&H Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Sept. 20, 1990	Texaco/Ray's Texaco Service, Hamden, CT	RR321-18	Request for modification/rescission in the Texaco refund proceeding. If granted: The August 13, 1990 Decision and Order issued to Ray's Texaco Service would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of September 14 through September 21, 1990]

Date received	Name of refund proceeding/name of refund applicant	Case number
9/19/90	Anderson Butane Service, Inc./Louisiana	RQ14-564.
9/14/90	Pleasant Street Co.	RF323-15.
9/14/90	Gray Oil Co.	RF323-16.
9/14/90	Yarmouth Fuel Co.	RF323-17.
9/17/90	Otis' Spur	RF309-1415.
9/17/90	Rollins Leasing Corp.	RF315-10047.
9/17/90	Tidewater Barge Lines, Inc.	RF315-10048.
9/17/90	Rollins Leasing Corp.	RF307-10152.
9/18/90	Atlas Oil Corp.	RF323-22.
9/18/90	Deblois Oil Co.	RF323-23.
9/18/90	Chevron U.S.A., Inc.	RF324-4.
9/18/90	Indiana Harbor Belt RR., *et al.*	RF315-10049.
9/18/90	Dusty's Shell Service	RF315-10050.
9/18/90	Wadleigh's, Inc.	RF323-24.
9/20/90	C.W. & G.W. Nightingale Oil	RF323-25.
6/29/90	USX Corp.	RC272-98.
9/17/90	McClellan Fuel Co., Inc.	RF323-18.
9/17/90	Ginn Oil Co.	RF323-19.
9/17/90	Pauline Y. Knox Investment	RF323-20.
9/17/90	Chevron U.S.A., Inc.	RF323-21.
9/14/90 thru 9/21/90	Atlantic Richfield Refund, applications received	RF304-11962 thru RF304-12023.
9/14/90 thru 9/21/90	Texaco Refund, applications received	RF321-9579 thru RF321-9705.
9/14/90 thru 9/21/90	Crude Oil Refund, applications received	RF272-81592 thru RF272-81885.
9/14/90 thru 9/21/90	Gulf Oil Refund, applications received	RF300-12045 thru RF300-12279.

[FR Doc. 90-27315 Filed 11-19-90; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders by the Office of Hearings and Appeals During the Week of October 8 Through October 12, 1990

During the week of October 8 through October 12, 1990, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Interlocutory Order

Economic Regulatory Administration, 10/10/90, LRZ-0009

The Economic Regulatory Administration (ERA) filed a Motion for Order Requiring Production of Documents and for Leave to File a Supplemental Response (ERA Motion), relating to a Proposed Remedial Order (PRO) that was issued by the ERA to Revere Petroleum Corporation (Revere) and Richard E. Dobyns (the Respondents) on August 9, 1983. The ERA Motion sought an order: (1) Requiring the production to the ERA of certain documents which the Respondents received pursuant to a discovery order previously issued in the proceeding, *Gordon Walz*, 13 DOE ¶ 84,009 (1985), and (2) granting leave to the ERA to file a Supplemental Response to the Respondents' Statement of Objections to the PRO. In considering the ERA Motion, the DOE determined that the ERA had failed to establish its necessity for the discovery documents which it sought and that supplementing its Response to the Respondents' Statement of Objections was improper in view of the late stage of the proceedings. Accordingly, the ERA Motion was denied.

Implementation of Special Refund Procedures

Tesoro Petroleum Corp., 10/12/90, KEF-0128

The DOE issued a Decision and Order implementing procedures for the disbursement of $48,500,000, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into with the Tesoro Petroleum Corporation (Tesoro) on January 23, 1989. The DOE determined that the Tesoro funds should be distributed pursuant to subpart V. The DOE also determined that $6,000,000 of the consent order fund should be set aside for refunds to customers that purchased Tesoro refined products during the consent order period January 1, 1973, through January 27, 1981. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07. Purchasers of regulated petroleum products from Tesoro during the consent order period may file Applications for Refund from the Tesoro consent order fund. Applications for Refund must be postmarked by May 31, 1991. Instructions for the completion of refund applications are set forth in the Decision.

Refund Applications

Propst Construction Company, 10/10/90, RF272-58561

The DOE issued a Decision and Order denying an Application for Refund filed by the Propst Construction Company in the subpart V crude oil special refund proceeding. An affiliate, Propst Brothers Distributors, received a refund in the Reseller Stripper Well proceeding. The two companies are affiliated through common ownership, close family connections, and proximity of location.

Regional Ambulance, Inc., 10/11/90, RF272-60898

The DOE issued a Decision and Order granting refund monies from crude oil overcharge funds to Regional Ambulance, Inc. (Regional), based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used unleaded gasoline to fuel its fleet of ambulances. Regional was an end-user of unleaded gasoline and was therefore presumed injured. The company submitted expenditure records instead of gallonage totals in support of its Application for Refund. These dollar figures were converted to a volume total based on the Energy Information Administration's (EIA) historical price data as reported in its 1987 Annual Energy Review. Because the EIA does not report unleaded gasoline prices for 1973-1975, these prices were estimated using the historical price ratio of leaded and unleaded gasoline. After calculating a gallonage total by this method, Regional's Application for Refund was granted. The refund granted to Regional Ambulance, Inc., is $1,014.

Shell Oil Company/Euclid Wash-N-Fill Marginal Enterprises, Inc., 10/10/90; RF315-5555, RF315-10017

The DOE issued a Supplemental Order rescinding a $1,050 refund that was issued to Raymond J. Carabotta in a June 7, 1989, Decision and Order, Shell Oil Company/Bill's Shell. Mr. Carabotta claimed a refund on the basis of the 1976 through 1979 petroleum product purchases of Marginal Enterpises, Inc., a business which he owned and operated during the price control period. The DOE later learned that another applicant in the Shell proceeding, John Attwood, purchased all of the stock of Marginal Enterprises in 1984. Because the right to collect a refund is generally considered to be transferred in a sale of stock, the DOE determined that Attwood, not Carabotta, was entitled to the Shell refund. Accordingly, John Attwood was granted a refund of $3,552, representing $2,759 in principal and $793 in interest, based on the 12,207,697 gallons of petroleum products that Marginal purchased between 1973 and 1981. Raymond Carabotta's $1,050 refund check was rescinded.

Stoneco, Inc., et al., 10/10/90; RF272-31684, et al., RD272-31684, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by three asphalt manufacturing and road construction firms in the subpart V crude oil special refund proceeding. A group of States and Territories (States) objected to the Applications on the grounds that the applicants were able to pass through increased petroleum costs to consumers during the consent order period. The only evidence submitted by the States was an affidavit by an economist stating that, in general, road construction firms were able to pass through increased petroleum costs. the DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive a refund. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate since the States had not presented relevant evidence to rebut the applicants' presumption of injury. The sum of the refunds granted in this Decision is $93,690.

Refund Applications

The Office of Hearings and Appeals granted issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders and available in the Public Reference room of the Office of Hearings and Appeals.

Name	Case no.	Date
Atlantic Richfield Co./ Alamo Service *Et Al.*	RF304-11003	10/12/90
Atlantic Richfield Co./ Lockwood Boat Works, Inc., *Et Al.*	RF304-4007	10/10/90
Brooklyn Union Gas	RF272-515	10/10/90
Diamond State Telephone Co., *Et Al.*	RF272-03137	10/11/90
Evergreen International Corp., *Et Al.*	RF272-58032	10/10/90
Exxon Corp./Farrell Lines, Inc., *Et Al.*	RF307-736	10/11/90
Federal Food Service, Inc., *Et Al.*	RF272-60183	10/12/90
Gulf Oil Corp./Nino's Gulf, *Et Al.*	RF300-11066	10/10/90
Kay Management Co., Inc., *Et Al.*	RF272-58197	10/11/90
Lac Qui Parle Co-Op Oil Co., *Et Al.*	RF272-60408	10/11/90
Placid Oil Co./Wren's Garage & Grocery, *Et Al.*	RF314-41	10/10/90
RPJ Management Corporation.	RA272-30	10/12/90
Sabon P. Milligan *Et Al.*	RF272-3382	10/12/90
Service & Supply Coop..	RF272-54202	10/11/90
Shell Oil Co./Paul's Safety Service, *Et Al.*	RF315-7065	10/10/90
State of Wisconsin	RF272-60251	10/11/90
State of Wisconsin Dept. of Administration.	RF272-77903	
Texaco Inc./Kinerd's Texaco Mike Kinerd's Texaco.	RF321-1653 RF321-5974	10/11/90
Texaco Inc./Sam's Texaco Airline Texaco.	RF321-473 RF321-732 RF321-8822	10/11/90
Texaco Inc./ Winsauer's Texaco, *Et Al.*	RF321-30143	10/12/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Bob Wong's Arco Service Center	RF304-4171
Doug's Gulf Service	RF300-11225
Hastie Shell	RF315-5653
Race & Son Service	RF300-11205
West Metairie Shell	RF315-10010

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence

Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 14, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-27316 Filed 11-19-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Solicitation for Research Grant Proposals

[FRL-3862-2]

AGENCY: Environmental Protection Agency.

ACTION: Revision of dates and topics for the 1991 solicitation for research grants proposals.

SUMMARY: On September 26, 1990 the Environmental Protection Agency's (EPA) Office of Exploratory Research solicited research grants in six environmental disciplines and tentatively announced the issuance of four Request for Applications (RFA) titles (55 FR 39382).

With this notice the 1991 schedule of closing dates for receipt of application is revised as follows:

Discipline	Original closing dates for applications	New closing dates for applications
Biology	3/15/91 and 9/13/91	9/13/91
Health	10/19/90 and 4/12/91	8/16/91
Chem/Physics Air	2/15/91 and 8/15/91	8/16/91
Chem/Physics Water/Soil	1/18/91 and 7/19/91	7/5/91
Engineering	2/8/91 and 8/23/91	8/9/91
Socioeconomics	3/23/91 and 9/20/91	3/22/91

In addition, one of the RFA titles will not be solicited this year, the title being cancelled is "Chemical Microsensors for Environmental Applications (all Media)".

These changes have been made to accommodate the exploratory research grants appropriation for fiscal year 1991.

FOR FURTHER INFORMATION CONTACT: EPA's Office of Exploratory Research at (202) 382-7445.

Dated: November 14, 1990.

Roger Cortesi,

Dir, OER.

[FR Doc. 90-27306 Filed 11-19-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3861-9]

National Drinking Water Advisory Council; Open Meeting

Under section (1)(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (Pub. L. 99-339), will be held at 9 a.m. on December 6, 1990, and at 8:30 a.m. on December 7, 1990, at the St. James Hotel, 950 24th Street NW., Washington, DC. Council Subcommittees will hold their meetings on December 4 and 5, 1990.

The purpose of the meeting will be to seek the Council's advice and comments on the Reauthorization of the Safe Drinking Water Act and the Mobilization efforts of the Office of Drinking Water. They will also receive a briefing on the National Pesticide Survey: Phase I Report. Some other issues that will be discussed include: the Draft Guidance in Developing Health Criteria for Determining Unreasonable Risks to Health; Enforcement; Implementation Strategies for the Surface Water Treatment Rule/Total Coliform Rule, Lead, Phase II, the Lead Ban and the Lead Contamination Control Act; and the Toxic Characteristics Leaching Procedures Guidance.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382-2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before December 3, 1990.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after a meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH-550A), 401 M Street SW., Washington, DC 20460 or at (202) 382-2285.

Dated: November 13, 1990.

Michael B. Cook,

Director, Office of Drinking Water.

[FR Doc. 90-27307 Filed 11-19-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3862-1]

Science Advisory Board; Indoor Air Quality and Total Human Exposure Committee; Open Meeting

Under the provisions of the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given of a public meeting of the Science Advisory Board's Indoor Air Quality and Total Human Exposure Committee. This meeting will be held on December 4-5, 1990 beginning at 9 a.m. on December 4 and ending at 5 p.m. on December 5. The meeting will be held at the Days Inn Crystal City Hotel, 2000 Jefferson Davis Highway, Arlington, Virginia 22202. The phone number at the hotel is (703) 920-8600.

The purpose of the meeting is to review two EPA prepared documents concerning environmental tobacco smoke. These are: (1) Health Effects of Passive Smoking: Assessment of Lung Cancer in Adults and Respiratory Disorders in Children (EPA/600/6-90/006A) ("Risk Assessment"), and (2) Environmental Tobacco Smoke: A Guide to Workplace Smoking Policies (EPA/400/6-90/004) ("Policy Guide"). To obtain single copies of the Risk Assessment, please contact the U.S. EPA, Office of Research and Development Publications Office, CERI-FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, (513) 569-7562 or FTS 684-7562. Please provide your name and mailing address and request the Risk Assessment by title and EPA number. The Policy Guide is available from the U.S. EPA, Office of Air and Radiation, Indoor Air Division (ANR-445W), 401 M Street SW., Washington, DC 20460, (703) 308-8470. These documents are not available from the Science Advisory Board.

The Agency seeks the advice of the SAB on the accuracy and completeness of the Risk Assessment and on the question of whether its conclusions on the weight of evidence of ETS caused cancer and other respiratory disease are well considered based on the data and accepted scientific practices. In addition, the Agency has asked the SAB to address the following specific issues:

A. *Lung cancer in adults*: 1. Has EPA met the requirements stated in its carcinogen guidelines for characterizing ETS in Category A, *i.e.* is the evidence sufficient to conclude the ETS is causally associated with lung cancer? 2. Is spousal smoking a proper measure of ETS exposure to assess lung cancer risk? 3. Are the differences in relative risk observed between studies in the U.S. and those overseas of concern, and if so, to what degree? 4. Is Meta-Analysis an appropriate tool to use in the document and has it been applied correctly? Have the epidemiological studies been properly evaluated and combined using this technique? 5. Have the most important confounders been properly addressed? Has the issue of misclassification (classifying current and former smokers as never smokers) been adequately addressed and the proper adjustments made? Are there other confounders which could be addressed in greater detail? 6. Does the document characterize the uncertainties, both in the weight-of-evidence and the number of attributable deaths, appropriately? 7. Has the quantitative risk of lung cancer been properly assessed? Would it be more properly assessed by a dose response assessment using either cotinine or respirable suspended particulates as surrogate measures of exposure (appendix C)? Would modeling approaches (appendix D)? Should a dose-response model be developed for ETS-radon interaction effects? 8. Should the Draft Report attempt to distinguish between the effects of home vs. workplace exposure to ETS?

B. *Respiratory disorders in children:* 1. Has the weight of evidence for ETS related respiratory disorders in children been properly characterized? A draft report with a detailed description and analysis of 26 recent studies has recently been prepared. Should it be included in a revised report as appendix E? 2. Have confounders in the epidemiologic studies been adequately addressed? 3. Should a meta analysis approach be attempted as in the lung cancer analysis?

The review of the Policy Guide will be limited to how the scientific issues raised in the Risk Assessment are characterized (primarily pages 6–20, inclusive of the Policy Guide).

The meeting is open to the public and seating is on a first come basis. Members of the public wishing to provide oral or written statements at the meeting must contact Mr. A. Robert Flaak, Designated Federal Official for this Committee, at the address given below no later than November 26, 1990 in order to reserve space on the agenda. Each speaker will be limited to a maximum of 5 minutes. At least 20 copies of any written statements must be submitted to Mr. Flaak no later than the time of the meeting. The SAB expects that oral statements will supplement, rather than repeat written statements. If a large number of individuals or groups ask to provide comments the amount of time each may speak may be reduced, the meeting may be extended into the evening to accommodate additional speakers, or we may ask that oral statements be limited and that additional comments be provided in writing.

For further information concerning the meeting or to request time on the agenda to speak, please contact Mr. A. Robert Flaak, Assistant Director, Science Advisory Board, U.S. EPA, (A-101F), 401 M Street SW., Washington, DC 20460. Telephone: (202) 382–2552; FTS 382–2552; FAX; 475–9693. For copies of the Agenda and the Committee Roster, please contact Ms. Carolyn Osborne, Senior Staff Secretary, at the address and numbers listed above. The Risk Assessment and Policy Guide are not available from the Science Advisory Board.

Dated: November 9, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90–27308 Filed 11–19–90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 9, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0053.

Title: Application for Consent to Transfer Control of Corporation Holding Station License.

Form Number: FCC 703.

Action: Revision.

Respondents: Non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 907 responses; .6 hours average burden per response; 544 hours total annual burden.

Needs and Uses: FCC Rules require that applicants in the private Land Mobile, General Mobile, Microwave, Marine, Aviation and Experimental Radio Services submit FCC Form 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a station. The data is used to determine continued eligibility for licensees. Without this information violations of ownership regulations could occur. The reason for the revision is to include fee data in the form.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90–27231 Filed 11–19–90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New Collection.

Title: Community Based Anti-Arson Program.

Abstract: The Community Based Anti-Arson Program has been developed to provide grants to community based organizations (CBO's) interested in mitigating the arson problem in their local jurisdictions. The program is administered by the U.S. Fire

Administration, FEMA. The data collection requirements of the program include the application for a grant, quarterly reporting on approved projects, and quarterly evaluation of each CBO. The data are used to evaluate the effectiveness of the program and the need for continued funding, and to report to Congress when requested.

Type of Respondents: Non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 407 Hours.

Number of Respondents: 20.

Estimated Average Burden Hours per Response: 1.13 Hours.

Frequency of Response: Annually, Quarterly.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: October 26, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90–27290 Filed 11–19–90; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Unalaskal Sea-Land Services, Inc., et. al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or 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 and protests are found in § 560.602 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200439 and 224–200439–001

Title: City of Unalaska/Sea-Land Services, Inc., Terminal Agreement.

Parties: City of Unalaska (City), Sea-Land (Sea-Land).

Filing Party: G. Nanette Thompson, Attorney At Law, 1101 West 7th Avenue, Anchorage, AK 99501.

Synopsis: Agreement No. 224–200439 provides for the lease, improvement, non-exclusive easement, and preferential use of certain City area and facilities. Sea-Land guarantees wharfage payments of $240,000 to the City for each year of the 10-year term of the Agreement. Agreement No. 224–200439–001 sets forth the terms for wharfage, the responsibility for improvement costs, and the use of dock if Sea-Land schedules export service vessels into the City's marine center.

Agreement No.: 224–200440

Title: City of Unalaska/Petro Marine Services, Terminal Agreement.

Parties: City of Unalaska (City), Petro Marine Services (Petro).

Filing Party: G. Nanette Thompson, Attorney At Law, 1101 West 7th Avenue, Anchorage, AK 99501.

Synopsis: The Agreement provides for the lease, improvement, non-exclusive easement, and preferential use of certain City area and facilities. The Agreement also provides that Petro will pay the City a certain fee for fuel delivered to the premises and authorizes Petro to sell gasoline and related marine products to the public. The Agreement's term is for 18 years and may be extended for two additional 10-year terms.

Dated: November 14, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27222 Filed 11–19–90; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers fro Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Reponsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Epirotiki Lines, Inc. and Hellenic Company Overseas Cruise Vessels S.A., 551 Fifth Avenue, New York, NY 10176.

Vessel: World Renaissance.

Dated: November 14, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27221 Filed 11–19–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The Dai-Ichi Kangyo Bank, Ltd., Tokyo, Japan; Application to Underwrite and Deal in Certain Securities to a Limited Extent, Conduct Private Placements of All Types of Securities As Agent, Act as "Riskless Principal" and Engage in Full-Service Brokerage and Other Securities-Related Activities

The Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan ("Applicant"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)("BHC" Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly owned subsidiary, DKB Securities Corporation, New York, New York ("Company"), to engage *de novo* in the following activities:

(1) Underwriting and dealing, to a limited extent, in commercial paper (which will be of prime quality, short-term, sold in minimum denominations of $100,000, and exempt from the registration requirements of the Securities Act of 1933), municipal revenue bonds (including industrial development bonds that are limited to "public ownership" industrial development bonds, where the issuer or the governmental unit on behalf of which the bonds are issued is the sole owner of the financed facility), 1–4 family mortgage-related securities, and consumer receivable-related securities ("ineligible securities");

(2) The private placement, as agent, of all types of securities, including providing related advisory services;

(3) Providing financial and transaction advice to financial and nonfinancial institutions, including (i) Advice and assistance in connection with the structuring, financing and negotiating of domestic and international merger, acquisition, divestiture, joint venture, leveraged buyout,

recapitalization, capital structuring, financing and other corporate transactions, including private and public financings; (ii) Feasibility studies, principally in the context of determining the financial attractiveness and feasibility of particular corporate transactions and financing transactions; (iii) valuation services; (iv) fairness opinions in connection with domestic and international merger, acquisition, divestiture, joint venture, leveraged buyout, recapitalization, financing and other corporate transactions; (v) advice regarding the structuring of, and arranging, loan syndications and similar transactions; (vi) advice regarding the structuring of, and arranging, swaps, caps and similar transactions relating to factors such as interest rates, currency exchange rates, prices and economic and financial indices; (vii) ancillary services or functions incidental to the foregoing advisory activities;

(4) Providing securities brokerage and investment advice on a combined basis ("full-service brokerage") to institutional customers and Company's affiliates;

(5) Buying and selling all types of securities on the order of investors as "riskless principal"; and

(6) Providing investment advisory services to retail and institutional customers and Company's affiliates pursuant to § 225.25(b)(4)(i)–(v) of Regulation Y (12 CFR 225.25(b)(4)(i)–(v)).

Company would conduct the proposed activities on a domestic and international basis.

Applicant also proposes to engage, through Company, as an incident to the underwriting activities described above, in hedging its positions by engaging in forward, futures, options, and options on futures contracts. These hedging activities would be conducted in a manner consistent with the Statement of Policy in § 225.142 of the Board's Regulation Y (12 CFR 225.142).

Company is currently authorized to engage in securities brokerage, dealing and underwriting activities pursuant to §§ 225.25(b) (15) and (16) of the Board's Regulation Y (12 CFR 225.25(b) (15) and (16)).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved the proposed underwriting, to a limited extent, of ineligible securities, and private placement of all types of securities, and Applicant has committed to comply with substantially all of the limitations and conditions set forth in the Board's Orders, as modified for foreign banks. See, e.g., *J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1960) ("*J.P. Morgan*"); *The Toronto Dominion Bank*, 76 Federal Reserve Bulletin 573 (1990) ("*Toronto Dominion*"); *The Sanwa Bank, Limited*, 76 Federal Reserve Bulletin 568 (1990); *The Sanwa Bank, Limited*, 76 Federal Reserve Bulletin ____ (Order dated November 6, 1990).

Applicant has proposed to comply with the conditions of the Board's Orders approving the provision of the proposed financial and transaction advice. See, e.g., *Stichting Amro and Amsterdam-Rotterdam Bank, N.V.*, 76 Federal Reserve Bulletin 682 (1990); *Fuji Bank, Limited*, 75 Federal Reserve Bulletin 577 (1989); *The Nippon Credit Bank, Limited*, 75 Federal Reserve Bulletin 308 (1989).

The Board has previously determined that engaging in full-service brokerage activities is closely related and a proper incident to banking. See, e.g., *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986) ("*Natwest*"). Applicant has commited to conduct these activities subject to substantially all of the limitations in *Natwest*, as they were modified in *Toronto Dominion; The Bank of Tokyo, Limited*, 76 Federal Reserve Bulletin 654 (1990) ("*Bank of Tokyo*"); *Bankers Trust New York Corporation*, 74 Federal Reserve Bulletin 695 (1988); and *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987). Applicant proposes to have one officer of its U.S. branch or agency act as a director of Company, as permitted in *Toronto Dominion*.

Applicant also seeks authority for Company, within defined parameters established by institutional customers, to exercise discretion in buying and selling securities on behalf of institutional customers. This service would be performed solely for institutional customers subject to the conditions in *J.P. Morgan & Company Incorporated*, 73 Federal Reserve Bulletin 810, 811 (1987).

In addition, the Board has previously approved the proposed buying and selling of all types of securities on the order of investors as "riskless principal." See, *e.g., J.P. Morgan; Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) ("*Bankers Trust*"). Applicant commits that Company will conduct this proposed activity using substantially the same methods and procedures established by the Board in these Orders.

Finally, Applicant will conduct the proposed investment advisory services subject to the conditions of § 225.25(b)(4) of the Board's Regulation (12 CFR 225.25(b)(4)).

Applicant states that the proposed activities will benefit the public by promoting competition and providing added convenience to customers and gains in efficiency. Applicant contends that the proposed underwriting and dealing activities in municipal revenue bonds will yield the benefits of reduced costs to the governmental issuers of such securities, which in turn will reduce the public financing burden of the issuer's residents and taxpayers. Company's mortgage-related securities underwriting and dealing activities will increase, in Applicant's view, the availability of financing for home buyers and reduce their financing costs. Similarly, according to Applicant, Company's consumer receivable related securities underwriting and dealing activities will result in public benefits previously identified by the Board. *See Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987). Moreover, Applicant believes that the proposed activities will not result in any unsound banking practices.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 13, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, November 14, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–27252 Filed 11–19–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0274]

American Red Cross Blood Services, Northeastern New York Region, Albany, NY; Revocation of U.S. License No. 190; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice that announced the revocation of the establishment license (U.S. License No. 190) and the product licenses issued to the Albany, NY location of the American Red Cross, the American Red Cross Blood Services, Northeast Region, Albany, NY, published in the **Federal Register** of September 17, 1990 (55 FR 38159). In the document heading and the "**SUMMARY**" paragraph "Northeast Region" is corrected to read "Northeastern New York Region".

DATES: The revocation of the establishment and product licenses became effective July 26, 1990.

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: In FR Doc. 90-21932 appearing at page 38159 in the **Federal Register** of Monday, September 17, 1990, on the same page, in the second column, in the document heading and under the "**SUMMARY**" paragraph, line 8, "Northeast Region" is corrected to read "Northeastern New York Region".

Dated: November 13, 1990.

Janet Woodcock,

Acting Director, Center for Biologics Evaluation and Research.

[FR Doc. 90-27263 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0304]

Points To Consider: Computer Assisted Submissions for License Applications; Biologic Product and Establishment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled, "Points to Consider: Computer Assisted Submissions for License Applications." The points to consider (PTC) document provides biologic product manufacturers and other interested parties with information concerning the Center for Biologics Evaluation and Research (CBER) program for computer assisted submission of product license applications (PLA's) and establishment license applications (ELA's). The PTC document further identifies topics which a manufacturer should be prepared to discuss with CBER, prior to requesting participation in the program. The PTC document was prepared by CBER's Computer Assisted Product License Application Review (CAPLAR) Steering Committee and is dated July 1990.

ADDRESSES: Submit written requests for single copies of the PTC document to the Congressional, Consumer, and International Affairs Staff (HFB-142), Park Bldg., Rm. 158, 5600 Fishers Lane, Rockville, MD 20857, 301-443-7532. Send two self-addressed, adhesive labels to assist that office in processing your requests. Submit written comments on the PTC document to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for, and comments on the PTC document should be identified with the docket number found in brackets in the heading of this document. Copies of the PTC and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for further information about the CAPLAR program should be directed to the CBER contact person listed below.

FOR FURTHER INFORMATION CONTACT: Benjamin P. Lewis, Center for Biologics Evaluation and Research (HFB-3), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-8884.

SUPPLEMENTARY INFORMATION: CBER has instituted a program, referred to as the CAPLAR program, to assess the utility of computer assisted submission of PLA's and/or ELA's by biologic product manufacturers. The general purpose of the CAPLAR program is to evaluate the extent to which computer assisted submission enhances the timeliness, effectiveness, and efficiency of PLA and/or ELA reviews. The specific purpose of the CAPLAR program is to provide both FDA and manufacturers with practical experience in computer assisted license application submission procedures. Such practical experience is anticipated to facilitate the ongoing development, modification, and refinement of these procedures.

The PTC document provides information regarding CBER's CAPLAR program, as currently constituted. Included in the PTC document are the sequence of events to be followed in submitting a computer assisted license application; the directory, text, and graphic formats to be used for computer assisted license submissions; the modes of communication to be used between CBER and a manufacturer once the computer assisted license application has been submitted; and what paperwork needs to accompany the computer assisted license application. The PTC document further identifies topics which a manufacturer desiring to participate in the CAPLAR program should be prepared to discuss with CBER, in advance of a request to submit a computer assisted PLA or ELA.

This PTC document is intended only to provide information to biologic product manufacturers and other interested parties concerning submission of computer assisted license applications. The PTC document has neither explicit nor implicit status or impact in terms of meeting the requirements for the approval of PLA's or ELA's. (At some future date, FDA may develop a separate document and procedure for computer assisted investigational new drug (IND) reviews.)

FDA will review the received comments to determine whether revisions of the PTC document are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Dated: November 9, 1990.

William L. Schwemer,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-27262 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0345]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Pure Milk Co., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food

is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Pure Milk Co., P.O. Box 1097, Waco, TX 76703.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calories labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 100,000 quarts (94,600 liters) of the test product. The test product is to be manufactured at Pure Milk Co., Waco, TX 76703, Plant #48-33-02 and will be distributed in Texas.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

Dated: November 9, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-27336 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0356]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Idlenot Farm Diary, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning of the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Idlenot Farm Dairy, Inc., P.O. Box 10, North Springfield, VT 05150.

The permit covers listed interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 38,250 quarts 36,185 liters) of the test product. The test product will be manufactured at Idlenot Farm Dairy, Inc., River Rd., North Springfield, VT 05150, and will be distributed in Massachusetts, New Hampshire, and Vermont.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

Dated: November 9, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-27335 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0446]

Mobay Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mobay Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dimethyl dicarbonate in dealcoholized and low alcohol wine.

FOR FURTHER INFORMATION CONTACT: Rosalie Angeles, Center for Food Safety and Applied Nutrition (HFF-334), Food

and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 0A4213) has been filed by Mobay Corp., 1575 I St. NW., Washington, DC 20005, proposing that the food additive regulations in § 172.133 *Dimethyl dicarbonate* (21 CFR 172.133) be amended to provide for the safe use of dimethyl dicarbonate in dealcoholized and low alcohol wine.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 9, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–27337 Filed 11–19–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90E–0445]

Determination of Regulatory Review Period for Purposes of Patent Extension; Dipentum®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Dipentum® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Dipentum®. Dipentum® (olsalazine sodium) is indicated for maintenance of remission of ulcerative colitis in patients who are intolerant of sulfasalazine. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Dipentum® (U.S. Patent No. 4,559,330) from Pharmacia AB, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated October 17, 1990, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period. The letter also stated that the approval of the active ingredient, olsalazine sodium, represented the first permitted commercial marketing or use of the human drug product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Dipentum® is 2,828 days. Of this time, 1,763 days occurred during the testing phase of the regulatory review period, while 1,065 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* November 4, 1982. The applicant claims October 27, 1982, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 4, 1982, which was 30 days after FDA receipt of the IND application.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* September 1, 1987. FDA has verified the applicant's claim that the new drug application (NDA 19–715) was filed on September 1, 1987.

3. *The date the application was approved:* July 31, 1990. FDA has verified the applicant's claim that NDA 19–715 was approved on July 31, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extensions. In its application for patent extension, this applicant seeks 592 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 22, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 20, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90-27218 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90E-0267]

Determination of Regulatory Review Period for Purposes of Patent Extension; Interceptor®; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is correcting some inadvertent mathematical errors, in the notice of its determination of the regulatory review period for purposes of patent extension for INTERCEPTOR® (milbemycin oxime), that appeared in the **Federal Register** of October 18, 1990 (55 FR 42272). The notice stated, "FDA has determined that the applicable regulatory review period for Interceptor® is 2,061 days. Of this time, 1,434 days occurred during the testing phase of the regulatory review period, while 627 days occurred during the approval phase." It should have stated, "FDA has determined that the applicable regulatory review period for Interceptor® is 2,125 days. Of this time, 1,500 days occurred during the testing phase of the regulatory review period, while 625 days occurred during the approval phase." This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In FR Doc. 90-24563, appearing on page 42272 in the **Federal Register** of Thursday, October 18, 1990, the following corrections are made: On the same page, in the second column, in the second complete paragraph, in line 3, "2,061" is corrected to read "2,125"; in line 4, "1,434" is corrected to read "1,500"; and in line 6, "627" is corrected to read "625".

Dated: November 13, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90-27217 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90D-0184]

Compliance Policy Guide; Class III Devices Subject to 515(b) Requirements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide (CPG) 7124.18 "Class III Devices Subject to 515(b) Requirements." This CPG establishes criteria for recommending direct reference seizure where an application for premarket approval (PMA) or the equivalent notice of completion of a product development protocol (PDP) has not been filed, or there is no approved investigational device exemption, or FDA has not granted permission to export the device in accordance with section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of CPG 7124.18 "Class III Devices Subject to 515(b) Requirements" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the CPG to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the CPG and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Eric Latish, Center for Devices and Radiological Health (HFZ-323), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1116.

SUPPLEMENTARY INFORMATION: This CPG sets forth criteria for recommending direct reference seizure to the Office of Regulatory Affairs, Division of Case Management and Operations (HFC-210) for devices marketed in violation of the requirement of a regulation requiring premarket approval under section 515(b) of the act (21 U.S.C. 360e), a provision that applies to preamendments devices that are subject to premarket approval and that were not previously regarded as drugs.

When FDA promulgates a final rule under section 515(b), section 501(f) of the act (21 U.S.C. 351(f)) requires that a PMA or a notice of completion of a PDP be filed for each device subject to the rule within 90 days after the date of promulgation of the final rule or 30 months after the publication of the final classification rule for the device, whichever is later. When class III medical devices (*i.e.*, medical devices subject to premarket approval) are introduced into commerce by a manufacturer, an initial distributor within the United States of an imported device, or an exporter after the date identified in the published section 515(b) regulation without a filed PMA or PDP, or an approved investigational device exemption, or without FDA permission to export the device in accordance with section 801(e)(2) of the act, the device is adulterated and subject to direct reference seizure.

A direct reference (device) seizure is one that bypasses review by the Center for Devices and Radiological Health. Instead, the district office recommendation is processed only by the Office of Regulatory Affairs, Office of General Counsel, Department of Justice, and U.S. Attorney, in that order.

Interested persons may submit to the Dockets Management Branch (address above) written comments at any time. Two copies of any comments should be submitted except that individuals may submit one copy. Comments are to be identified with the docket number in the heading of this document.

The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: October 19, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-27261 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management

and Budget (OMB) for approval a new information collection for the Revised General Instructions to the Head Start Grant Application Package.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Revised General Instructions to the Head Start Grant Application Package.

OMB No.: N/A.

Description: The revised instructions include requirements for programmatic and cost data previously contained in the Head Start Cost Instrument. The instrument was developed during Fiscal Year (FY) 1982 and revised in FY 1983 and 1984 as a tool for monitoring how effectively grantees are using Head Start funds. The need for this information is specified under the program monitoring requirements of the Office of Management and Budget Circulars A-102 and A-110 (implemented in the Department of Health and Human Services by 45 CFR parts 74 and 92) and the Head Start legislation (section 651 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, as amended) which require that the Secretary of the Department of Health and Human Services (DHHS) provide for the continuing evaluation of the Head Start program.

The data collected through the revised instructions will be entered into a computer which will automatically generate reports on program and management operations. Federal staff will, then, be able to analyze grantee and delegate agency data more quickly and efficiently and follow up on problems and issues with the grantees. The ability to review the data in this fashion will allow the federal staff to carry out their stewardship role in an effective and efficient manner.

Annual Number of Respondents: 1,890
Annual Frequency: 1
Average Burden Hours Per Response: 6
Total Burden Hours: 11,340

Dated: November, 9, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90-27232 Filed 11-19-90; 8:45 am]
BILLING CODE 4130-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 55 FR 20210, May 15, 1990) is amended to reflect the office and division structures for the Maternal and Child Health Bureau and the Bureau of Health Resources Development.

Under HB-10, Organization and Functions amend the functional statements for the *Health Resources and Services Administration (HB)* as follows:

1. After the functional statement for the *Bureau of Health Resources Development (HBB)* add the following functional statements:

Office of the Director (HHB1). Provides leadership and direction for the programs and activities of the Bureau and oversees its relationship with other national health programs. Specifically: (1) Coordinates the internal functions of the Bureau and its relationships with other national health programs; (2) establishes program objectives, alternatives, and policy positions consistent with legislation and broad Administration guidelines; (3) develops and administers operating policies and procedures, and provides guidance and assistance to regional staff as appropriate; (4) evaluates program accomplishments; (5) serves as principal contact and advisor to the Department and other parties concerned with matters relating to planning and development of health delivery systems; (6) directs and coordinates Bureau activities carried out in support of Equal Opportunity programs; (7) provides direction for the Bureau's Civil Rights compliance activities; and (8) provides information about Bureau programs to the general public, health professions associations, and other interested groups and organizations.

Office of Program Support (HHB12). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management support activities. Specifically: (1) Serves as the Bureau Director's principal source for management and administrative advice and assistance; (2) in cooperation with the Division of Personnel, HRSA, coordinates personnel activities for the Bureau; (3) in cooperation with the Division of Financial Management, HRSA, provides guidance to the Bureau on financial management activities, including budget formulation, presentation, and execution functions; (4) provides communications advice and services to the Bureau; (5) coordinates the various ADP systems of the Bureau and supplies ADP services to the Office of the Director and its immediate offices; directs the formulation of ADP policy for the Bureau, plans, develops, and evaluates the Bureau's ADP systems, and develops, manages, and operates the Bureau's information systems; (6) conducts all business management aspects of the review, negotiation, award, and administration of Bureau grants, and coordinates the Bureau's contracts and cooperative agreement operations; (7) provides support to regional staff as appropriate by program; (8) provides organization and management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements the Administration's management policies and procedures; inteprets and implements the Administration's management policies and procedures; (9) coordinates the Bureau's program and administrative delegations of authority activities; (10) manages the Bureau's performance appraisal and employee performance management systems; (11) provides staff services to the Bureau director in day-to-day operational planning and program analysis; (12) serves as liaison or provides the Bureau with support services such as supply management, equipment utilization, printing, property management, space management, correspondence control, manual issuances, forms, records, reports, Freedom of Information Act and Privacy Act coordination, and the support of Civil Rights compliance activities; (13) provides direction regarding technological develoments in office management activities; and (14) directs, conducts, and coordinates the Bureau's manpower management activities and advises the Bureau Director on the allocation of the Brueau's personnel resources.

Office of Program Development (HBB13). Serves as the Bureau focal point for planning, evaluation,

legislation, and legislative implementation activities, including the development and dissemination of program objectives, alternatives, and policy positions. Advises the Bureau Director and Division Directors in the development of plans and legislative proposals to support Administration goals. Interprets evaluation requirements and coordinates the development of annual evaluation plans, as well as specific project proposals. Coordinates its activities closely and continuously with the Office of Planning, Evaluation, and Legislation (OPEL), HRSA. Specifically: (1) Stimulates, guides, and coordinates the Bureau's program planning and development activities, and prepares the Bureau's forward planning agenda; (2) promotes and oversees evaluation and monitoring activities to provide objective measurements of program performance; (3) provides staff services and coordinates activities pertaining to legislative policy development and interpretation, including the development of legislative proposals and the analysis of existing and pending Federal and State legislation to assure the fullest possible consideration of programmatic requirements in meeting established departmental, PHS, and HRSA goals; maintains liaison with other agencies, and distributes legislative materials; (4) participates in the development and coordination of program policies, implementation plans, and processes for health facilities, AIDS, and organ transplantation programs and devises implementation plans including the development, clearance, and dissemination of regulations, criteria, guidelines, and operating procedures; (5) directs the production of program management information and progress reports; and (6) develops and administers operating policies and procedures, and provides guidance and assistance to regional staff, as appropriate.

Division of HIV Services (HBB2). Plans, develops, implements, and monitors programs which provide health care services for persons infected with HIV. Specifically: (1) Provides information and advice for programs on issues related to the delivery of health services to persons with HIV infection/AIDS; (2) manages the AIDS Service Demonstration Grant Program and provides overall administrative direction to grantees; (3) manages a program of planning grants to improve the coordination and provision of health services to HIV-infected individuals and provides overall administrative direction to grantees; (4) manages grant programs which provide reimbursement for treatment, with life-prolonging drugs, of persons with HIV infection/AIDS; (5) disseminates advice and assistance on improving health services delivery to persons with HIV infection/AIDS; (6) develops discussion papers and guidelines for communities on special topics with HIV/AIDS service delivery, with coordination and input from other PHS components; (7) carries out studies of the cost of treating HIV-infected patients and establishes modalities to control the cost and improve the quality of health care to such patients; (8) establishes and maintains liaison with Federal and non-Federal public and private entities associated with matters pertaining to services for, and treatment of, persons with HIV infection/AIDS; and (9) conducts evaluation studies of various health care delivery modalities for people with HIV infection/AIDS.

Division of Organ Transplantation (HBB3). Plans, directs, coordinates, and monitors a broad range of activities relating to the field of organ procurement and transplantation. Specifically: (1) Develops, implements, and maintains a program of grants to organ procurement organizations (OPOs); (2) provides technical assistance to OPOs receiving Federal funds; (3) establishes and maintains an Organ Procurement and Transplantation Network; (4) establishes and maintains a scientific registry for organ transplantation recipients; (5) conducts a program of public information to inform the public of the need for organ donations; (6) monitors trends and analyzes data on the efficiency and effectiveness of organ procurement, the allocation of organs among transplant centers and transplant patients, and on other aspects of organ transplantation, and prepares reports as needed; (7) in conjunction with the Divison of Information and Analysis, coordinates collection of information with other units of the Federal Government concerned with organ procurement and transplantation (e.g., the National Center for Health Services Research and Health Care Tehnology Assessment, the Health Care Financing Administration, the National Institutes of Health, the Food and Drug Administration, and the Centers for Disease Control); (8) maintains working relationships with State activities and professional organizations in the field of organ transplantation; (9) maintains and/or fosters new relationships with public and private organizations (e.g., the North American Transplant Coordination Organization, the American Hospital Association, the American Society of Transplant Surgeons, and the American Society of Transplant Physicians) to promote the concepts of organ donation, to follow trends in organ procurement, and to maintain working knowledge of the clinical status of organ transplantation; and (10) develops and provides information on organ procurement and transplantation for professional associations, health providers, consumers, health insurers, medical societies, State health departments, and the general public.

Division of Information and Analysis (HBB4). Provides national leadership in identifying, analyzing, and responding to issues of national significance relating to BHRD programs. Tracks events and trends in the health care industry to determine appropriate Bureau policy and operational responses to these events and trends. Specifically: (1) Plans, develops, coordinates, and maintains a date and information system designed to improve implementation of Bureau programs; (2) develops, coordinates, and implements systematic technical assistance and consultation on research, professional training, data and information systems, and evaluation approaches to State an local, public and private agencies, and organizations and groups concerned with the implementation of Bueau programs; (3) through grants and contracts, provides support for a broad range of research, professional, education, data collection, analyses, and synthesis projects designed to improve the health and quality of life of persons served by Bureau programs; (4) provides liaison with professional, public, private and voluntary organizations involved with research, professional education, scientific and policy matters, the provision of health services, and data and information related to the promotion of health and prevention of disease among BHRD program recipients; (45) engages in program development activities designed to improve the delivery of services and programs; (6) coordinates and provides for a program of professional consultation and technical assistance through central and regional staff to State and local agencies and organizations relating to BHRD programs; (7) collects, complies, evaluates, and analyzes various data on the health care indusry and its response to current and emerging health care issues and problems; (8) develops reports and recommendations on appropriate BHRD responses to the analyses of the information compiled on the health care industry; (9) works with

the Centers for Disease Control, the National Institutes of Health, the National Center for Health Services Research and Health Care Technology Assessment, the National Center for Health Statistics, the Robert Wood Johnson Foundation, and other public and private organizations in the development and dissemination of information on current and emerging health care issues, trends, and problems; (10) performs reviews of Bureau program operations to determine if they address current and emerging problems appropriately; (11) develops, implements, and maintains information systems to support Bureau operations and needs; (12) reports on the status of health programs and facilities as a regional resource; (13) studies and analyzes trends in the availability, distribution, organization, financing, and construction of health facilities in the treatment and spread of AIDS, and in the development and operation of organ procurement programs; (14) coordinates with State and Federal Government agencies and units concerned with health programs and facilities development and management; (15) maintains working relationships with State and local agencies and professional organizations, such as the American Hospital Association, the Joint Commission on Accreditation of Hospitals, and the American Medical Association, with a common concern about health facilities and programs; (16) foster new relationships with public and private organizations to increase the Bureau's understanding of the health industry's status and trends; (17) develops and provides information and methods to public and private health care organizations, planners, providers, and consumers to assist in decision-making and efficiency in the operation of health care programs and facilities, particularly those serving special project target populations; and (18) performs special studies and collaborates with public and private organizations in carrying out special studies, as assigned.

Division of Facilities Compliance (HBB5). Substantiates health facilities' compliance with the reasonable volume of uncompensated care assurance. Specifically: (1) Establishes, develops, and monitors the implementation of regulations, policies, procedures, and guidelines for use by regional staff, State agencies, and health care facilities in ascertaining that assurances are met; (2) provides technical assistance and training, and conducts evaluations to ensure nationwide consistency in program administration; (3) maintains a system for receiving and responding to patient complaints and for their analysis, evaluation, and disposition; (4) develops and initiates monitoring activities necessary to ensure enforcement of provisions regarding the reasonable volume assurance; and (5) coordinates its activities with other components of the Bureau, HRSA, other PHS agencies, and other Departmental components.

Division of Facilities Assistance and Recovery (HBB6). Plans and directs the development of regulations and program guidelines for administering grant support for health care, health professions education, and nurse training facilities. Specifically: (1) Develops regulations, policies, and procedures for administering a grant support program designed to help health facilities eliminate or prevent imminent safety hazards or avoid noncompliance with State or voluntary licensure or accreditation standards; (2) in close coordination with the Bureau of Health Professions, HRSA, develops regulations, policy and procedures for administering and monitoring health professions education and nurse training facilities construction grant programs; (3) develops regulations, policy and procedures to ensure that the Federal Government takes appropriate waiver or recovery action as prescribed by Titles VI, VII, VIII, and XVI of the PHS Act; (4) reviews in their entirety and recommends action to, or on behalf of, the Administrator, HRSA, on: (a) Proposals for new health facilities or additions to or modernization of existing facilities under programs assigned to the Division, and (b) requests for recovery and/or waiver of recovery of Federal funds; (5) provides advice and guidance to regional staff on administering programs assigned to the Division; and (6) maintains liaison with, coordinates its activities and jointly develops pertinent programmatic materials with other components of the Bureau, HRSA, other PHS agencies, HHS, and other concerned Federal agencies.

Division of Facilities Loans (HBB7). Plans and directs the development of regulations and program guidelines for administering loan, loan guarantee and interest subsidy programs for health care facilities. Specifically: (1) Develops regulations, policy and procedures for administering loan and loan guarantee with interest subsidy programs; (2) administers the PHS responsibility for facility construction, renovation, and modification as described in interagency memoranda of agreement; (3) maintains an automated data system for the issuance of periodic and special reports and for the manipulation of institution-specific data in performing tests for financial feasibility; (4) assists the Division of Facilities Assistance and Recovery in the evaluation and analysis of applications for construction under assigned grant programs; (5) reviews and recommends action on: (a) Proposals for new health facilities or additions to or modernization of existing facilities under loan programs assigned to the Division, (b) requests for mortgage relief, such as forbearance of principal and/or interest payment, suspension of sinking fund deposits, modifications of loan terms, etc., and (c) requests for recovery and/or waiver of repayment of Federal loan funds; (6) provides advice and guidance to regional staff on statutory and regulatory provisions and policy and procedures for administering programs assigned to the Division; and (7) maintains liaison with and coordinates its activities and jointly develops pertinent programmatic materials with other components of the Bureau, HRSA, other PHS agencies, HHS, other concerned Federal agencies, and with private lending institutions and associations.

2. After the functional statement for the *Maternal and Child Health Bureau (HBM)* add the following functional statements:

Office of the Director (HBM1). Provides national leadership and policy direction for the planning, development, implementation and evaluation of the programs and actitivies of the Bureau. These programs are designed to improve the health of mothers, infants, children, youth and families, of children with special health needs, and of persons with hemophilia, regardless of their age. Specifically: (1) Oversees the day-to-day management and operations of the Bureau's Offices and Divisions; (2) coordinates all internal functions of the Bureau and its relationships with other health and related programs; (3) establishes a program mission, goals, and objectives and policy positions consistent with legislation and broad Administration guidelines; (4) develops and administers internal operating policies and procedures and provides guidance and direction to regional staff, to State Health Officers and to State Maternal and Child Health and Special Health Needs Coordinators; (5) serves as principal contact point to the agency, the Public Health Service, the Department, OMB, and the White House on matters concerning the health status of America's mothers and children; (6) directs and coordinates the Bureau's responsibilities, including the Maternal and Child Health block grants to States, a national program of discretionary

grants, contracts, and other funding arrangements in the areas of research, training, genetics, hemophilia, and health service improvement through regional and nationally significant projects, a program of consultation, technical assistance and training designed to improve health, nutrition, mental and dental health services for children in Head Start programs, a national program to improve emergency medical services for children, a demonstration program in Pediatric AIDS, and a national service demonstration program for the treatment and prevention of AIDS in persons with hemophilia; (7) provides national direction on international matters of concern to the health of mothers and children; (8) develops a policy statement and an action plan to address the health needs of mothers and children for culturally diverse groups; (9) directs and coordinates Bureau activities in support of Equal Opportunity programs; (10) provides direction for the Bureau's Civil Rights compliance efforts; and (11) provides information on the Bureau's programs to public, health, education and related professional associations, the Congress, other Federal and PHS agencies, OMB, and the White House.

Office of Program Support (HBM12). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management support activities. Specifically, (1) Serves as the Bureau Director's principal source for management and administrative advice and assistance; (2) in cooperation with the Division of Personnel, HRSA, coordinates personnel activities for the Bureau; (3) in cooperation with the Division of Financial Management, HRSA, provides guidance to the Bureau on financial management activities, including budget formulation, presentation, and execution functions; (4) provides communications advice and services to the Bureau; (5) conducts all business management aspects of the review, negotiation, award, and administration of Bureau grants, and coordinates the Bureau's contract and cooperative agreement operations; (6) provides organization and management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements the Administration's management policies and procedures; (7) coordinates the Bureau's program and administrative delegations of authority activities; (8) manages the Bureau's performance appraisal and employee performance management systems; (9) provides staff services to the Bureau Director in day-to-day operational planning and program analysis; (10) serves as a liaison or provides the Bureau with support services such as supply management, equipment utilization, printing, property management, space management, correspondence control, manual issuances, forms, records, reports, Freedom of Information Act and Privacy Act coordination, and the support of Civil Rights compliance activities; (11) provides direction regarding technological developments in office management activities; and (12) directs, conducts, and coordinates the Bureau's manpower management activities and advises the Bureau Director on the allocation of the Bureau's personnel resources.

Office of Program Development (HEM13). Serves as the Bureau focal point for planning, evaluation, legislation, and legislative implementation activities, including the development and dissemination of program objectives, alternatives, and policy positions. Advises the Bureau Director and Division Directors in the development of plans and legislative proposals to support Administration goals. Interprets evaluation requirements and coordinates the development of annual evaluation plans, as well as specific project proposals. Coordinates its activities closely and continuously with the Office of Planning, Evaluation and Legislation, HRSA. Specifically: (1) Stimulates, guides, and coordinates the Bureau's program planning and development activities, and prepares the Bureau's forward planning agenda; (2) promotes and oversees evaluation and monitoring activities to provide objective measurements of program performance; (3) provides staff services and coordinates activities pertaining to legislative policy development and interpretation, including the development of legislative proposals and the analysis of existing and pending Federal and State legislation to assure the fullest possible consideration of programmatic requirements in meeting established departmental, PHS, and HRSA goals; maintains liaison with other agencies, and distributes legislative materials; (4) participates in the development and coordination of program policies, implementation plans, and processes for the maternal and child health programs, and devises plans for the development, clearance, and dissemination of regulations, criteria, guidelines, and operating procedures; (5) directs the production of program management information and progress reports; and (6) develops and administers operating policies and procedures, and provides guidance and assistance to regional staff, as appropriate.

Division of Services for Children with Special Health Needs (HEM2). Plans, develops, implements, directs, monitors, and evaluates national programs relating to the promotion of the health status of children with special health needs. Specifically: (1) Administers a program of block and discretionary grants which support services for those with special health needs, including those at-risk-for or suffering from genetic diseases and hemophilia and HIV infections; (2) develops policies, guidelines and standards for the delivery of professional services and effective organization and administration of services of health programs for the targt population; (3) collaborates with the Division of Systems, Education and Science in carrying out, through central and regional staff, a national program of consultation and technical assistance to State and local agencies and organizations engaged in the provision of services to those with special health needs; (4) provides liaison with professional, public and voluntary organizations involved with the provision of services to those with special health needs; (5) provides a national focus for the improvement of services focused on those at-risk-for or suffering from genetic diseases, implementing a system of projects designed to improve genetic services, counseling, information and referral; (6) emphasizes the development and implementation of community based services and systems of care designed to improve the health of children with disabling conditions and chronic illnesses; (7) implements an ongoing national program of hemophilia diagnosis, treatment and information services designed to improve significantly the health status of those suffering from hemophilia; (8) coordinates activities with the full spectrum of Federal agencies concerned with the improvement of health services and health status for those with special needs; (9) participates in the development of forward plans, legislative proposals and budget submissions relating to health services for those with special health care needs; (10) administers a national program relating to children suffering from AIDS; and (11) provides a maternal and child health focus for international health activities of the Bureau.

Division of Maternal, Infant, Child and Adolescent Health (HBM3). Plans, directs, coordinates and monitors national programs focusing on the improved health status of mothers, children, infants and adolescents. Specifically: (1) Establishes national policy and administrative guidance for nationwide health programs for mothers, children, infants and adolescents, including discretionary and block grants to carry out programs designed to meet the health care needs of the target populations; (2) develops policies, guides and standards for professional services and effective organization and administration of health programs for mothers, children, infants and adolescents; (3) collaborates with the Division of Systems, Education and Science in carrying out, through central and regional staff, a program of technical assistance and consultation to State and local agencies and organizations designed to improve the effectiveness and efficiency of health programs for the target populations; (4) provides liaison with professional public and voluntary organizations on programs designed to improve services for mothers, children, infants and adolescents; (5) serves as the national focus for programs designed to address unacceptably high rates of infant and maternal mortality and morbidity and associated problems of low birthweight infants; (6) promotes coordination at the Federal level of activities authorized under title V and title XIX of the Social Security Act; (7) disseminates information to States on preventive health services and advances in the care and treatment of mothers, children, infants and adolescents; (8) carries out a national program designed to improve the provision of pediatric emergency services; (9) works in close cooperation with the National Center for Health Statistics and other CDC components in planning, developing, and disseminating to the public a broad spectrum of data relating to the health of mothers, children, infants and adolescents, with special concern for infant mortality and morbidity; (10) carries out a national health nutrition, dental health and related services consultation and technical assistance program targeted on children in the day care setting; and (11) participates in the development of forward plans, legislative proposals and budget submissions relating to health services for mothers, children, infants and adolescents.

Division of Systems, Education and Science (HBM4). Provides national leadership in identifying, analyzing, and responding to issues of national significance relating to the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs. Plans, directs, coordinates and monitors, and implements scientific, policy, and programmatic activities associated with Title V of the Social Security Act and with other national maternal and child health issues. Specifically: (1) Plans, develops, coordinates, and maintains a data and information system designed to improve implementation of Title V and otherwise promote the health of and prevent disease among mothers, infants, children, adolescents, and children with special health care needs; (2) develops, coordinates and implements systematic technical assistance and consultation on research, professional training, data and information systems, and evaluation approaches to State and local agencies and organizations or groups concerned with the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (3) through grants and contracts, provides support for a broad range of research, professional education, data collection, analyses, and synthesis projects designed to improve the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (4) plans, implements, and administers a program of research and professional education and training to develop new knowledge and professional skills designed to improve the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (5) provides liaison with professional public, private and voluntary organizations involved with research, professional education, scientific and policy matters, the provision of health services, and data and information related to the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (6) engages in program developmnt activities designed to improve the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (7) coordinates and provides for a program of professional consultation and technical assistance through central and regional staff to State and local agencies and organizations relating to the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (8) develops, coordinates and disseminates public information relating to the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (9) coordinates the various ADP systems of the Bureau and supplies ADP services to the Office of the Director and its immediate offices; directs the formulation of ADP policy for the Bureau, plans, develops, and evaluates the Bureau's ADP systems, and develops, manages, and operate the Bureau's information systems; and (10) plans, implements and monitors a system of placement of Federal employees assigned to State health agencies.

Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

Dated: May 15, 1990.

Robert G. Harmon,

Administrator.

FR Doc. 90-27260 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT U-67727]

Utah; Invitation To Participate in Coal Exploration Program; PacifiCorp Electric Operations

PacifiCorp Electric Operations is inviting all qualified parties to participate in its proposed exploration of certain federal coal deposits in the following described lands in Emery County, Utah:

T. 17 S., R. 6 E., SLM, Utah
Sec. 2, SW¼;
Sec. 3, all;
Sec. 4, lots 1, 2, 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 9, E½, E½W½;
Sec. 10, all;
Sec. 11, W½;
Sec. 14, W½;
Sec. 15, all;
Sec. 16, NE¼NW¼.
Containing 3,564.84 Acres

Any party electing to participate in this exploration program must send

written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155 and to Scott M. Child, PacifiCorp Electric Operations—Fuel Resources Department, P.O. Box 26128, Salt Lake City, Utah 84126–0128. Such written notice must be received within thirty days after publication of this notice in the **Federal Register.**

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by PacifiCorp Electric Operations, is available for public review during normal business hours in the BLM office (Public Room, Fourth Floor), 324 South State Street, Salt Lake City, Utah under Serial Number UTU–67727.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90–27282 Filed 11–19–90; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

South Wellfleet, Ma, Cape Cod National Seashore Advisory Commission, Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, December 7, 1990.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designess, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at Headquarters, Marconi Station, South Wellfleet, Massachusetts for the regular business meeting which will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1 p.m. for the following reasons:

The Commission members will meet at Headquarters, Marconic Station, South Wellfleet, Massachusetts for the regular business meeting which will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1 p.m. for the following reasons:

1. Approval of minutes of the previous meeting;
2. Old business;
3. New business;

Reports of officers;

5. Superintendant's report;
6. Review of November 16 planning workshop;
7. Communications/public comment; and
8. Agenda and date for next meeting.

The business meeting in open to the public. It is expected that 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

Dated: November 13, 1990.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 90–27271 Filed 11–19–90; 8:45 am]

BILLING CODE 4310–70–M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held Saturday, December 8, 1990, at the John F. Kennedy Center for the Performing Arts, Washington, DC.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC.
Mrs. Dorothy Tappe Grotos, Delaplane, Virginia
Mr. Samuel S.D. Marsh, Bethesda, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heniz, Arlington, Virginia
Professor Charles P. Poland, Jr., Chantilly, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn, Hancock, Maryland
Mr. Robert L. Ebert, Cumberland Maryland

Matters to be discussed at this meeting include:

1. Old and new business.
2. Superintendent's report.
3. Committee reports.
4. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: November 13, 1990.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 90–27220 Filed 11–19–90; 8:45 am]

BILLING CODE 4310–20–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 10, 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 December 5, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Perry County

Camp Ouachita Girl Scout Camp Historic District (Facilities Constructed by the CCC in Arkansas MPS), Area surrounding and N of Lake Sylvia, Ouachita NF, Paron vicinity, 90001826

Pulaski County

Porter, Lamar, Athletic Field, Jct. of Johnson & 7th Sts., Little Rock, 90001827

ILLINOIS

Marion County

Badollet House, 310 N. Washington St., Salem, 90001839

IOWA

Benton County

Burlington, Cedar Rapids & Northern Passenger Station—Vinton (Advent & Development of Railroads in Iowa MPS), 612 Second Ave., Vinton, 90001852

Boone County

Champlin Memorial Masonic Temple (Proudfoot & Bird in Iowa MPS), 602 Story St., Boone, 90001853

Buena Vista County

Harker House, 328 Lake Ave., Storm Lake, 90001855

Decatur County

McClung, J. J., House, Jct. of Main & Vine Sts., Garden Grove, 90001856

Johnson County

Johnson, Sylvanus, House, 2155 Prairie du Chien Rd., Iowa City, 90001857

Polk County

Johnson, Capt. Micholas W. and Emma, House, Jct. of 21st St. & University Ave., Des Moines, 90001854

Poweskiek County

Bowers and McDonald Office Building (Grinnell MPS), 816 Commercial St., Grinnell, 90001849

Interior Telephone Company Building (Grinnell MPS), 815 5th Ave., Grinnell, 90001850

KENTUCKY

Jefferson County

Avery, B. F., and Sons Industrial District (Louisville and Jefferson Co. MPS), 1721–1821 Seventh St., Louisville, 90001837

Cedarbrook Farm (Louisville and Jefferson Co. MPS), 4800 Springdale Rd., Louisville vicinity, 90001835

Dolfinger, J., and Company Building, (Louisville and Jefferson Co. MPS), 642 S. Fourth St., Louisville, 90001836

Muhlenberg County

Thomas, Robert, House, 516 Broad St., Central City, 90001833

Nelson County

Duncan, Henry, House, Taylorsville Rd. N of Maple Grove Cemetery, Bloomfield, 90001843

Todd County

Milliken Memorial Community House, 208 W. Main St., Elkton, 90001834

MASSACHUSETTS

Worcester County

West Main Street Historic District (Boundary Increase), 83–118 W. Main St., Westborough, 90001851

MINNESOTA

Lac Qui Parle County

Hotel Lac qui Parle 202 6th Ave., Madison, 90001820

NEW HAMPSHIRE

Carroll County

Eagle Mountain House, Carter Notch Rd. N of jct. with NH 16A, Jackson, 90001848

Sullivan County

Farwell School, NH 12A S of Hope Hill Cemetery, Charlestown, 90001847

NORTH CAROLINA

Mitchell County

Peterson, John N., Farm, E side of SR 1321 just N of jct. with SR 1322, Poplar, 90001859

NORTH DAKOTA

Richland County

Adams—Fairview Bonanza Farm (Bonanza Farming in North Dakota MPS), 17170 82 R St. SE, Wahepton vicinity, 90001838

OHIO

Mahoning County

Maple-Dell, 14737 Garfield Rd., Salem vicinity, 90001821

TENNESSEE

Shelby County

Sculptures of Dionicio Rodriquez at Memorial Park Cemetery, 5668 Poplar Ave., Memphis, 90001867

TEXAS

Ellis County

Ferris School, 411 Gibson, Waxahachie, 90001858

UTAH

Wayne County

Hanksville Meetinghouse—School (Mormon Church Buildings in Utah MPS), Sawmill Basin Rd., Hanksville, 90001825

VIRGINIA

Albemarle County

Cocke's Mill House and Mill Site, VA 712 N of jct. with VA 719, North Garden vicinity, 90001828

Bedford County

Locust Level, US 460 W of jct. with VA 695, Montvale, 90001841

Mount Airy, Jct. of VA 630 & VA 631, Leesville vicinity, 90001823

Gloucester County

Airville, VA 629 S of jct. with VA 626, Gloucester vicinity, 90001824

New Kent County

Marl Hill, VA 642 E of jct. with VA 609, Talleysville vicinity, 90001832

Patrick County

Cockran Mill, US 58 of jct. with VA 632, Meadows of Dan vicinity, 90001842

Prince William County

Brentsville Historic District (Civil War Properties of Prince William Co. MPS), Roughly, Bristow Rd. from Old Church Rd. to Isaac Walton Rd., Bristow vicinity, 90001829

Danville Independent City

Main Street Methodist Episcopal Church South, 767 Main St., Danville, 90001822

Newport News Independent City

Newsome, J. Thomas, House, 2803 Oak Ave., Newport News, 90001831

Petersburg Independent City

McKenney, William, House, 250 S. Sycamore St., Petersburg, 90001830

Roanoke Independent City

First Baptist Church, 407 N. Jefferson St., NW, Roanoke, 90001840

WASHINGTON

King County

Victorian Apartments, 1234–1238 S. King St., Seattle, 90001864

Skagit County

Bethsaida Swedish Evangelical Lutheran Church Parsonage, 1754 Chilberg Rd., Pleasant Ridge, La Conner vicinity, 90001863

Snohomish County

Suiattle Guard Station, Suiattle R. E of Buck Cr., Mt. Baker—Snoqualmie NF, Darrington vicinity, 90001865

Spokane County

Lewis & Clark High School, W. 521 4th Ave., Spokane, 90001860

Nine Mile Hydroelectric Power Plant Historic District, Charles Rd. at Spokane R., Nine Mile Falls vicinity, 90001861

Walla Walla County

Northern Pacific Railway Passenger Depot, 416 N. Second Ave., Walla Walla, 90001862

Whatcom County

Austin Pass Warning Hut, SE of Bagley Lakes, Mt. Baker—Snoqualmie NF, Glacier vicinity, 90001866

WEST VIRGINIA

Fayette County

Fayetteville Historic District, Roughly bounded by SR 16, Maple & Fayette Aves., Fayetteville, 90001845

Greenbrier County

Elmhurst (Boundary Increase), US 60 at the Greenbrier R., Caldwell, 90001846

Monroe County

Union Historic District, Roughly, along Main, Dunlap, Pump & Elmwood Sts. N from Royal Oak Field, including Paradise and Monument Fields, Union, 90001844

[FR Doc. 90–27272 Filed 11–19–90; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-485 (Preliminary)]

Certain Gene Amplification Thermal Cyclers and Subassemblies Thereof From the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of institution of preliminary antidumping investigation No. 731-TA-485 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the United Kingdom of certain gene amplification thermal cyclers and subassemblies thereof,[1] provided for in subheadings 8419.89.50 and 8419.90.90, respectively, of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 31, 1990.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 14, 1990.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202-252-1178), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on November 14, 1990, by MJ Research, Inc., Watertown, MA.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on December 5, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Janine Wedel (202-252-1178) not later than November 30, 1990, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before December 7, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due December 10, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the

[1] For purposes of this investigation, "certain" gene amplification thermal cyclers consist of Peltier-effect in vitro gene amplification thermal cyclers. Gene amplification thermal cyclers are microprocessor-based reaction controllers that regulate temperatures for small quantities of biologic reagents through a programmed and highly controlled thermal regime. They are used in biotechnology applications, including a biological protocol called in vitro gene amplification, as well as in several related sequencing and radionucleotide labeling reactions. Peltier-effect machines use one or more thermoelectric modules for heating and cooling of the biological sample.

The petitioner has identified four subassemblies that are wholly unique to and dedicated to Peltier-effect in vitro gene amplification thermal cyclers: (1) The sample block/thermoelectric/sensor/heat exchanger subassembly; (2) the sheet metal housing; (3) the membrane keypad used to program and control the machine; and (4) the proprietary software.

Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than December 12, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due December 13, 1990.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 16, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-27424 Filed 11-19-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 326X)]

Burlington Northern Railroad Co.—Abandonment Exemption—in Flathead County, MT

Applicant has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its 5.49-mile line of railroad between milepost 1231.18, near Kalispell, and the end of the line at milepost 1236.67, near Somers, including the stations of Coor's Spur (milepost 1231.9) and Somers (milepost 1236.67), in Flathead County, MT.

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.—Abandonment—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 December 20, 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 November 30, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 10, 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. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort 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 November 23, 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: November 8, 1990.

[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.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27293 Filed 11-19-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-24,589]

Cluett Shirt Group (Alatex) Andalusia, AL; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on August 29, 1990 applicable to all workers of the Cluett Shirt Group (Alatex), Andalusia, Alabama. The Certification Notice was published in the **Federal Register** on September 14, 1990 (55 FR 37984).

The Department, on its own motion, is amending TA-W-24,589 by deleting the June 2, 1990 impact date and inserting a new impact date of July 2, 1989. The intent of the certification is to cover all workers of the Cluett Shirt Group (Alatex) who were adversely affected by increased imports of articles like or directly competitive with men's shirts. The amended notice applicable to TA-W-24,589 is hereby issued as follows:

All workers and former workers at Cluett Shirt Group (Alatex), Andalusia, Alabama who became totally or partially separated from employment on or after July 2, 1989 are eligible to apply for adjustment assistance benefits under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of November 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-27318 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 666]

Halstead Industries, Inc. Zelienople, PA; Affirmative Determination Regarding Appication for Reconsideration

The United Steelworkers Union Local # 7032 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to

Apply for Worker Adjustment Assistance for workers and former workers of Halstead Industries, Inc., Zelienople, Pennsylvania. The negative determination was issued on September 21, 1990 and published in the **Federal Register** on October 16, 1990 (55 FR 41903).

The union claims that a foreign firm is importing copper tubing at a plant in North Carolina which it operates jointly with Halstead Industries and selling the tubing to Halstead's customers.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 6th day of November 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-27319 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,752]

Land and Marine Rental Co.; San Antonio, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Land and Marine Rental Company, San Antonio, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24,752; Land and Marine Rental Company, San Antonio, Texas (November 9, 1990)

Signed at Washington, DC this 9th day of November, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-27320 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,541]

Cederroth OR Medical, Buffalo, NY, Ormed Manufacturing, Incorporated Buffalo, NY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 22, 1989 applicable to all workers of Ormed Manufacturing, Inc., Buffalo, New York.

The Department, on its own motion, reviewed the certification for Ormed Manufacturing, Inc., Buffalo, New York and found that Cederroth OR Medical, Buffalo, New York meets all the requirements for a successor-in-interest firm. The amended notice applicable to TA-W-22,541 is hereby issued as follows:

All workers of Ormed Manufacturing, Incorporated and Cederroth OR Medical, Buffalo, New York who became totally or partially separated from employment on or after June 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of November 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-27317 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Revenue Quality Control

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of revenue quality control program design materials for review and comment.

SUMMARY: The purpose of this notice is to announce the availability of materials explaining the Revenue Quality Control (RQC) design. Interested parties are requested to obtain and comment on these materials.

DATES: Comments are requested by the close of business on January 4, 1991.

ADDRESSES: Copies of the materials may be obtained by writing to Janet Sten, S-4015 Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. Copies may also be requested by phone at (202) 535-0634 (this is not a toll-free number). Comments should be sent to Mary Ann Wyrsch, Director, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Janet Sten, Director, Revenue Quality Control Work Group, S-4015 Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 535-0634 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Through two previous **Federal Register** Notices (at 53 FR 52108 and 54 FR 46708), the Unemployment Insurance Service (UI) of the Department of Labor solicited comments on design issues for the RQC program. The second notice announced the Department's intention to solicit comment on more detailed design specifications. The Department wishes to announce the availability of four documents explaining the RQC design in greater detail. The documents are not published in the **Federal Register** because of their length and the fact that copies have already been sent to all parties who had responded to previous notices or were otherwise known to have an interest in the RQC program.

RQC is being developed in four segments or modules, which are at different stages. Paper I, the Design Overview paper, briefly describes them all. Module I, Core RQC, embraces evaluation of most State employment security agencies (SESAs) tax processing operations (*e.g.*, Status Determination, Collections). It is the most developed module and hence two of the other attachments offer additional detail on it. Paper II gives the definitions, formulas, and rationales for proposed indicators based on required reports. The program review methodology for Module I is being pretested in seven States this summer; Paper III is the pretest handbook. Although some features of the program review approach may be modified as a result of the pretest, the handbook is included for information, as a concrete example of what RQC means by "program review." The Design Overview paper describes the other three modules in as much detail as is now available. Paper IV is the RQC glossary.

The design described in the four papers assumes stand-still funding for Quality Control (QC) as a whole, and adequate funding for all other UI activities. If these assumptions prove to be invalid—*e.g.*, due to reduced resources occasioned by a Gramm-Rudman sequester or other funding restrictions—the design will be revisited. As a result of this design process, the QC regulation (at 20 CFR part 602) will be amended to include the specifications for an RQC program which all SESAs will implement.

Comments are requested on all materials except the pretest handbook. Respondents are asked to pay particular attention to the overall design proposed for reviewing tax operations and the indicators proposed for tracking various aspects of agency performance.

Signed at Washington, DC, on November 9, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 90-27321 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-166-C]

Serendipity Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Serendipity Mining, Inc., P.O. Box 309, Bimble, Kentucky 40915, has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-16838) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition.

3. In support of this request, petitioner states that:

(a) No methane has been detected in the mine;

(b) Each three-wheel tractor would be equipped with a handheld continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in the petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 20, 1990. Copies of the petition are available for inspection at that address.

Dated: November 13, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27323 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 40-8958 and 40-8981]

Uranerz U.S.A., Inc.; Draft Finding of No Significant Impact Regarding the Issuance of Two Source Material Licenses to Uranerz U.S.A., Inc. for Commercial Operation of the Ruth In-Situ Leach Project Located in Johnson County, WY and the North Butte In-Situ Leach Project Located in Campbell County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of draft finding of no significant impact.

1. Proposed Action

The proposed administrative action is to issue two commercial Source and Byproduct Material Licenses. These licenses would allow in-situ leach uranium recovery at the Ruth operation located in Johnson County, Wyoming and the North Butte operation located in Campbell County, Wyoming.

2. Reasons for Draft Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC), Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the Ruth Research and Development in-situ leach operation and the licensee's applications dated October 7, 1988 and March 7, 1989. Based on the review of the operational data and the application materials, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

The following statements support the draft finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground-water monitoring program proposed by Uranerz, U.S.A., Inc., is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of minining solutions.

B. Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based upon previous testing, can be restored to baseline concentrations or applicable class of use standards.

In accordance with 10 CFR 51.33(a), the Director of the Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register.**

This finding, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Field Office at 730 Simms Street, Golden, Colorado.

Dated at Denver, Colorado, this 13th day of November, 1990.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Deputy Director, Uranium Recovery Field Office, Region IV.

[FR Doc. 90-27277 Filed 11-19-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on FTOL Conversions; Meeting

The Subcommittee on FTOL Conversions will hold a meeting on December 5, 1990, room P-100, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 5, 1990—1 p.m. until the conclusion of business.

The Subcommittee will discuss the FTOL conversion for Palisades.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, Consumers Power Company, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492-9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 13, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90-27273 Filed 11-19-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittees on Containment Systems and Structural Engineering; Meeting

The ACRS Subcommittees on Containment Systems and Structural Engineering will hold a joint meeting on December 5, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, MD. This notice was previously published Tuesday, October 23, 1990 (55 FR 42788), and Monday, November 5, 1990 (55 FR 46591).

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 5, 1990–8:30 a.m. until 12 Noon.

The Subcommittees will discuss containment design criteria for future plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittees Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, it consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492-9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 13, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90-27274 Filed 11-19-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Improved Light Water Reactors; Meeting

The Subcommittee on Improved Light Water Reactors will hold a meeting on December 4, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to the public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 4, 1990–8:30 a.m. until the conclusion of business.

The Subcommittee will review SECY-90-377 regarding the level of design detail.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 13, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90-27275 Filed 11-19-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Planning and Procedures; Meeting

The Subcommittee on Planning and Procedures will hold a closed meeting on December 4, 1990, 3 p.m., Room P-422, 7920 Norfolk Avenue, Bethesda, MD. The Subcommittee will discuss the qualifications of candidates nominated for appointment to the Committee.

The entire meeting will be closed to public attendance, in order to discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding this meeting can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Raymond F. Fraley (telephone 301/492-8049) between 7:30 a.m. and 4:15 p.m.

Dated: November 14, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-27276 Filed 11-19-90; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task numbers, DG-3003 (which should be mentioned in all correspondence concerning this draft guide), is titled "Format and Content for the License Application for the High-Level Waste Repository" and is intended for Division 3, "Fuels and Materials Facilities." This guide is being developed to provide guidance acceptable to the NRC staff on the information to be provided in the license application for the high-level waste repository. The guide also establishes a format for presenting the information.

It is expected that forthcoming changes to 10 CFR part 20, "Standards for Protection Against Radiation," will affect portions of this guide. These changes will be incorporated in the final version of this guide.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of Comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 15, 1991.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services, Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: (5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 13th day of November 1990.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 90-27278 Filed 11-19-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28613; File No. SR-AMEX-90-14]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing of Long-Term Options on Reduced Value Major Market Index

On July 18, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to list long-term put and call options on a broad market index which will be computed at one-twentieth the value of the Exchange's Major Market Index ("XMI"). The options on the new index, the reduced value XMI ("LT-20"), will have expirations up to 36 months.

The proposed rule change was noticed in Securities Exchange Act Release No. 28321 (August 8, 1990), 55 FR 33398. No comments have been received on the proposal.

In 1987, the Commission approved a rule change allowing the AMEX to list long-term options, with expirations up to 36 months, on any of the Exchange's broad-based indexes.[3] Pursuant to that authorization, the Amex now proposes to list long-term options on the LT-20. Except for the reduced value given to the new index, all of the specifications and calculations for the LT-20 will be the same as those used for the XMI.[4] The LT-20 will trade independently of and in addition to full-size XMI options and will be subject to the same rules that presently govern the trading of Exchange index options, including sales practice rules, margin requirements, floor trading procedures and position and exercise limits.

The Exchange has determined that because positions in full-size XMI options and those in LT-20 options will be based on the same underlying stock index, full-size XMI options will be aggregated with positions in the LT-20 for the purpose of determining adherence to position and exercise limits.[5] Because one full-size XMI contract is equivalent to 20 LT-20 contracts, each LT-20 contract will be considered 1/20 of an XMI contract when XMI and LT-20 contracts are aggregated for position and exercise limit purposes. Thus, for example, under current XMI position limits of 17,000

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] *See* Securities Exchange Act Rel. No. 25041 (October 16, 1987), 52 FR 40008 (order approving File No. SR-AMEX-87-22) ("Long-Term Option Approval Order"). As noted in the Long-Term Option Approval Order, strike price interval, bid/ask differential, and continuity rules do not apply to long term option series until the time to expiration is less than 12 months.

[4] The XMI is designed to represent a broad cross-section of American business and to reflect broad market trends. The XMI is a price-weighted index based on the stocks of 20 highly capitalized companies. The AMEX disseminates updated values of the XMI at least once each minute. The updated values are available on broker-dealer market information devices. For a more complete description of the XMI, see Securities Exchange Act Rel. No. 19610 (March 17, 1983), 48 FR 12486.

[5] *See* letter from Barbara D. Salmanson, Special Counsel, Options Division, Amex, to Thomas Gira, Branch Chief, Division of Market Regulation, dated October 15, 1990.

contracts (with 10,000 in the near-term month), an option holder with no full size XMI contracts would be permitted to hold 340,000 LT-20 contracts (200,000 in the near-term month).

Like XMI options, the LT-20 options will feature European-style exercise, thereby restricting exercise to the last day of trading. The Exchange continuously will calculate and disseminate the underlying value of the LT-20 index in addition to the XMI value. The Amex plans to list an initial option series on the LT-20 with a December 1992 expiration and thereafter to introduce options with a 36-month expiration at the end of each December expiration.

The Exchange will list new strike prices at each December expiration. The strike prices will be near or bracketing the current index level, and the Exchange will list both a put and a call series for each strike price. The Exchange proposes to add additional strike prices only when the index makes significant moves of approximately 10-15 percent. The Amex believes that this procedure should result in the listing of only a limited number of series for any expiration, thereby eliminating the confusion that might otherwise be caused by a myriad of strike prices and expirations.

The Exchange believes that the listing of long-term options on a reduced value XMI will fit the needs of retail investors because the reduced dollar value of the underlying index and the relative long-term duration of the proposed options will offer investors the opportunity to obtain better long-term portfolio protection at an affordable price. The Amex anticipates that its proposed strike prices on the LT-20 will permit the offering of long-term options at premiums between $3 and $7 ($300 to $700 per contract) based on current market volatility and normal pricing considerations. As the LT-20 options approach expiration, however, these premiums could become smaller as the time value portion decreases.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[6] because the proposal is designed to remove impediments to and perfect the mechanism of a free and open market. Specifically, the Commission believes that the proposal will facilitate transactions in options by providing investors with additional means to hedge equity portfolios against long-term market risk.[7] In particular, the Commission believes that the LT-20 options will serve the needs of retail investors by providing them with the opportunity to use long-term options to protect their portfolios from long-term market moves at a known and limited cost. The Commission also believes that the reduced value LT-20 index will result in options premiums more affordable to retail investors, thereby allowing smaller equity portfolios held by retail investors to be hedged more efficiently and allowing investors to hedge or speculate in market movements with a smaller outlay of capital.

The Commission also believes that trading in LT-20 options will not have an adverse impact or be susceptible to manipulation. Previously, the Commission had determined that the XMI is a broad-based index.[8] The Commission does not believe that merely changing the XMI by dividing its value by 20 changes this determination. The LT-20 will contain the same stocks with the same weightings as the XMI and will be calculated in the same manner as the XMI (with the exception of being ½0th the value of the XMI). Moreover, the Commission believes that any potential manipulation concerns raised by LT-20 options are minimized by the fact that positions in LT-20 options and XMI options will be aggregated for position and exercise limit purposes.[9] Finally, the Commission notes that the same Exchange surveillance procedures for XMI options wil be used for LT-20 options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-AMEX-90-14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: November 14, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27298 Filed 11-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28612; File No. SR-AMEX-90-17]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Expansion of Options Principal Member and Limited Trading Permit Holder Trading Privileges

On August 13, 1990, the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change which will allow options principal members ("OPMs") and limited trading permit ("LTP") holders to trade "derivative products" in addition to standardization options. The proposed rule change was noticed in Securities Exchange Act Release No. 28401 (August 31, 1990), 55 FR 37381. No comments were received on the proposed rule change.

The AMEX has been developing several new derivative products intended to attract both institutional and retail investors. In April 1990, the Exchange's Board of Governors approved listing guidelines for unit investment trusts and other entities ("Trusts") that issue securities based on (1) A portfolio of stocks included in a stock market index, and/or (2) a portfolio of money market or other debt instruments. Holders of Trust shares or units would be able to separate the shares or units into components reflecting distinct interests and investment objectives, such as the right to dividend income, the possibility of capital appreciation, or the ability to hedge against a market decline. A Trust could operate on an open or closed-end basis. Although these guidelines were initially intended to accommodate the listing of "SuperUnits" of certain "SuperTrusts" sponsored by SuperShare Services Corporation ("SSC"),[3] the

---

[6] 15 U.S.C. 78f(b)(5) (1982).

[7] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[8] *See* Securities Exchange Act Rel. No. 19264 (November 22, 1982), 47 FR 53981 (order approving SR-AMEX-82-8).

[9] In this regard, it is reasonable for the AMEX to count 20 LT-20 contracts as equivalent to one XMI contract for position limit purposes, as the underlying value of one XMI contract is equal to the underlying value of 20 LT-20 contracts.

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30-3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1990).

[3] For further discussion of SuperTrust securities, *see* Securities Exchange Act Rel. No. 28095 (June 6, 1990), 55 FR 24016 (File No. SR-AMEX-90-06), as amended by Amendment No. 1. *See* Securities Exchange Act Rel. No. 28410 (September 6, 1990), 55 FR 37783.

guidelines are broad enough to accommodate other trusts of varying sizes and characteristics. In addition, the Exchange is developing a new basket type product to be called Standard & Poor's Index Receipts ("SPIRS"). SPIRS, like SSC SuperUnits, represent interests in actual portfolios of securities.

The Exchange believes that in order to support trading in basket type products and to optimize the chance for an active trading crowd to develop in these products, it is important that as many members as possible be given the opportunity to trade them. The AMEX believes that a larger number of qualified traders will add liquidity and depth to the market, thereby attracting more public investors.

Accordingly, the AMEX proposes to amend its Constitution to permit LTP holders and OPMs to trade the new derivative products being developed by the Exchange, including SuperUnits and SPIRS. Presently, the Exchange Constitution allows an OPM to trade as principal in all AMEX-traded options [4] and authorizes a LTP holder to trade as principal in all AMEX-traded index option products.[5] Under the proposed rule change, OPMs and LTP holders will be permitted to trade as principal in "derivative products," in addition to options and index option products. The proposal defines "derivative products" to include "in addition to standardized options, other securities which are issued by the Options Clearing Corporation or another limited purpose entity or trust and which are based solely on the performance of an index or portfolio of other publicly traded securities * * * (and shall) not include warrants of any type or closed-end mutual funds." The AMEX has stated that the definition of derivative products is not intended to expand OPM and LTP trading privileges to include products which they are not entitled to trade currently, including currency warrants, index warrants or closed-end mutual funds.

Currently, LTP holders are required to conduct at least one-third of their total trading activity in the Exchange's Institutional Index Option ("XII") and no more than two-thirds of their trading activity in the Exchange's Major Market Index Option. The proposal will amend the one-third trading requirement by adding index-based derivative products to the category of products in which LTP holders must conduct one-third of their trading activity.[6] Thus, LTP holders will be required to conduct one-third of their total trading activity in the XII and in index-based derivative products. The Exchange has represented that it has advised its members and LTP holders of the change.[7]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [8] because it is designed to perfect the mechanism of a free and open market. As the Commission stated in its order approving the LTP program,[9] the Commission in the past has approved proposals to create limited membership classes designed to encourage market maker participation in a new or developing market for an option product. Historically, the Commission has taken the position that decisions concerning the implementation and characteristics of a plan designed to increase the number of traders on an exchange floor were best left to the business judgment of an exchange, as long as the procedures adopted were not inconsistent with the purposes of the Act. Viewed in this context, the amendment to the LTP plan to include SuperShares and SPIRS appears to be designed for the legitimate business purpose of attracting market makers to these products. This will promote the development of an active trading crowd and increase the depth and liquidity of the market for these new products.

For the reasons stated in the LTP Approval Order, the Commission believes that the LTP plan proposed by the AMEX adequately addresses concerns regarding whether the one-third requirement would create an incentive for inappropriate trading activity. The addition of several new products to the LTP's zone does not alter this analysis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-AMEX-90-17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: November 14, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27299 Filed 11-19-90; 8:45 am]

BILLING CODE 8010-01-M

---

[4] *See* AMEX Constitution Article IV, section 1(b)(4).

[5] *See* AMEX Constitution, Article IV, section 1(j)(3).

[6] *See* letter dated October 29, 1990, from Linda Tarr, Special Counsel, AMEX, to Thomas R. Gira, Branch Chief, SEC ("AMEX letter").

[7] *See* AMEX letter, *supra* note 6.

[8] 15 U.S.C. 78f (1982).

[9] *See* Securities Exchange Act Rel. No. 24303 (April 6, 1987), 52 FR 11789 (order approving File No. SR-AMEX-86-24) ("LTP Approval Order").

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30-3(a)(12) (1990).

[Rel. No. 35-25189]

Filings; Ahlstrom Corp., et al.

November 13, 1990

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 7, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ahlstrom Corp. (31-844)

A. Ahlstrom Corpporation ("Ahlstrom"), Helsinki, Finland, a Finnish corporation, has filed an application pursuant to section 3(a)(5) of the Public Utility Holding Company Act of 1935 ("Act") for an order exempting it from all provisions of the Act except section 9(a)(2).

Ahlstrom is primarily engaged in manufacturing operations. Ahlstrom's total consolidated revenues for 1989 were approximately $1.8 billion. It owns or has interests in electric power generating plants in Finland, West Germany and Italy. It also owns indirectly a 14% interest in Beebee Island Corporation ("BIC") which owns and operates a small hydroelectric

generating plant in Watertown, New York. BIC is a "public-utility company" within the meaning of section 2(a)(5) of the Act. Ahlstrom represents that BIC is the only company, the principal business of which within the United States is that of a public-utility company, from which it derives any income. Ahlstrom's share of BIC revenues for 1989 was $107,981, approximately five one-thousandths of one percent (.005%).

Indiana Michigan Power Co. (70-7716); Blackhawk Coal Co.

Indiana Michigan Power Company ("I&M"), 1 Riverside Plaza, Columbus, Ohio 43215, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, and Blackhawk Coal Company ("Blackhawk"), 1 Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, a subsidiary of I&M, have filed an application-declaration under sections 6(a), 7, 9(a), and 10 of the Act.

By orders dated August 7, 1980, September 30, 1980 and October 19, 1981 (HCAR Nos. 21672, 21672A and 22237, respectively), Blackhawk issued, and I&M acquired, two non-interest bearing promissory notes ("Notes") with a maturity date of December 31, 1990, which now have an aggregate amount of approximately $66 million currently outstanding.

Blackhawk and I&M now propose to extend the maturity date of the Notes by issuing one new non-interest bearing promissory note with a maturity date of December 31, 2010, up to an aggregate amount of $65,952,464.

Northeast Utilities, et al. (70-7717)

Northeast Utilities ("Northeast"), a registered holding company, and its subsidiary companies, Western Massachusetts Electric Company ("WMECO"), The Quinnehtuk Company ("Quinnehtuk"), all located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light and Power Company ("CL&P"), Northeast Utilities Service Company ("Service"), Northeast Nuclear Energy Company ("Nuclear"), The Rocky River Realty Company ("Rocky River"), all located on Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company ("Holyoke"), Canal Street , Holyoke, Massachusetts 01040 (collectively, "Companies"), have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45 and 50(a)(5) thereunder.

The proposal includes a request for authorization through December 31, 1992 of short-term borrowings in the form of bank notes ("Bank Notes") pursuant to lines of credit and commercial paper ("Commercial Paper"), open account advances ("Advances") by Northeast to its subsidiary companies, and the continuation of a money pool ("Pool") to be utilized by the Companies for operational, maintenance, and construction expenses, and to meet cash needs which may arise due to timing differences. The Commercial Paper is proposed to be issued under an exception from competitive bidding requirements of rule 50 under subsection 50(a)(5).

The aggregate amount of all short-term borrowings through December 31, 1992, whether through the issuance of Bank Notes, Commercial Paper, Advances, borrowings from the Pool, or through existing revolving credit agreements (HCAR No. 24943, August 18, 1989 and HCAR No. 24686, July 29, 1988) will not exceed $135 million for Northeast, $300 million for CL&P, $95 million for WMECO, $10 million for Holyoke, $50 million for Nuclear, $55 million for Rocky River, $5 million for Quinnehtuk, and $65 million for Service.

All of the Companies, except Quinnehtuk, propose to issue Bank Notes. Borrowings under each Bank Note will have a maximum maturity of 270 days, and will bear interest at a fixed or floating rate, determined with reference to an agreed upon index, such as the bank's prime rate, LIBOR, certificate of deposit rates or money market rates. The interest rate will not exceed the higher of 1% above the lending bank's prime rate or 2% above the Federal Funds Effective Rate. Floating rate Bank Notes will generally be subject to prepayment at any time at the Companies' option. Fixed rate Bank Notes may, in certain circumstances, not be prepayable, or may be prepayable only with "make whole" payments. The Companies, other than Quinnehtuk, further propose to negotiate credit lines with one or more banks, subject to compensating balance requirements not exceeding 5% of committed credit line amounts, and fees not exceeding .25% per annum.

Northeast, CL&P and WMECO propose to issue and sell Commercial Paper, with maturities of up to 270 days, to dealers at the prevailing discount rate per annum on the date of issuance for commercial paper of comparable quality and the particular maturity sold by other public utilities. Such sales will occur only if the issuer believes that the effective interest cost will be equal to or less than the cost for the issuance of Bank Notes in amounts at least equal to the principal amount of the Commercial Paper.

Northeast proposes to make Advances to the other Companies which will bear interest at a rate equal to the prime rate designated by Citibank of New York on the date of the advance. The Advances will be repayable on demand, and any outstanding Account will be repaid by December 31, 1992, unless otherwise authorized by the Commission.

The Companies propose to continue the use of the Pool administered by Service. The Pool is composed of available funds loaned by the participating Companies and borrowed by the participating Companies, except Northeast, to assist in meeting their respective short-term borrowing needs. Additionally, Northeast proposes to borrow funds by issuing Bank Notes or Commercial Paper solely for the purpose of lending those funds through the Pool to Service, Nuclear, Quinnehtuk, and Rocky River. All loans made under the Pool will bear interest, payable monthly, equal to the daily Federal Funds Effective Rate, except that loans from the proceeds of external borrowings by Northeast will bear interest at the same rate paid by Northeast on the borrowings, and any loans from external borrowings may be prepayable only with "make whole" payments. To the extent that there are any excess funds available in the Pool, such funds will be invested with the earnings allocated on a pro rata basis.

Transok, Inc. (70-7759)

Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma, 74101, a non-utility subsidiary company of Central and Southwest Corporation, Inc., a registered holding company, has filed an application under sections 9(a) and 10 of the Act and rule 51 thereunder.

Transok proposes, either directly or through a newly formed, wholly owned subsidiary, to construct, own and operate, or to acquire an interest in, an interstate natural gas pipeline connecting Transok's existing intrastate pipeline system in Oklahoma with one or more pipelines located in Texas, which pipeline facility will be utilized, in part, to satisfy the fuel requirements of Transok's associate electric utility companies in Texas.

Transok also expects to enter into a letter agreement with Loan Star Gas Company ("Lone Star"), a non associate gas pipeline company located in the state of Texas, concerning the construction, operation and ownership of the proposed pipeline. Transok may, however, finance up to 100% of the cost

of the project and then allow Lone Star to repay it for Lone Star's share of the investment in the proposed pipeline.

Indiana Energy, Inc., et al. (70–7778)

Indiana Energy, Inc. ("IEI"), 1630 Meridian Street, Indianapolis, Indiana 46202, an Indiana corporation and public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, has filed an application pursuant to sections 9(a)(2) and 10 of the Act.

By order dated June 1, 1990 (HCAR No. 25099), IEI was authorized to acquire all of the issued and outstanding shares of Richmond Gas Corporation ("Richmond") and Terre Haute Gas Corporation ("Terre Haute"), each an Indiana gas utility company. IEI now proposes to reorganize its ownership of Richmond and Terre Haute by selling all of the common stock of such companies to Indiana Gas Company, Inc. ("Indiana Gas"), also a wholly owned gas utility subsidiary of IEI.

Pursuant to an Acquisition Agreement dated October 26, 1990, Indiana Gas proposes to acquire from IEI all of the issued and outstanding shares of Richmond and Terre Haute common stock for an aggregate consideration of $60,727,305.00 plus or minus an as yet undetermined amount, as described below. If the aggregate net book value of Richmond and Terre Haute as of the closing date exceeds their aggregate net book value as of July 31, 1990, such excess value shall be added to the purchase price. If the aggregate net book value of Richmond and Terre Haute as of July 31, 1990 exceeds their aggregate net book value as of the closing date, this amount will be subtracted from the purchase price. The purchase price shall be paid by Indiana Gas with a combination of cash and up to 1,850,000 newly issued shares of Indiana Gas common stock. The value of these newly issued shares of Indiana Gas common stock shall not exceed $45,000,000. The value of each of the shares of Indiana Gas common stock shall be deemed to equal its book value per share as of the closing date.

National Fuel Gas Co. (70–7803)

National Fuel Gas Company ("NFG"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

NFG proposes to issue and sell from time-to-time through October 31, 1995, under an exception from the competitive bidding requirements of rule 50 under subsection (a)(5), up to 1 million shares of its authorized but unissued shares of common stock ("Common Stock") pursuant to a Customer Stock Purchase Plan ("Plan").

The Common Stock will be offered pursuant to the Plan which shall be open to the residential customers of National Fuel Gas Distribution Corporation, a subsidiary company of NFG.

Georgia Power Co. (70–7807)

Georgia Power Company ("GPC"), 333 Piedmont Avenue NE., Atlanta, Georgia 30308, an electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(d) of the Act and rule 44 thereunder.

GPC proposes to sell, pursuant to a proposed Agreement of Sale and Exchange to Oglethorpe Power Corporation ("OPC"), a Georgia Electric Membership Generation & Transmission Corporation, all of GPC's right, title and interest in and to: (1) The real and personal property, including engineering drawings, comprising up to one hundred one of GPC's distribution substation facilities; (2) the real and personal property comprising two of GPC's transmission tap lines; and (3) the revenue metering equipment associated with the substation facilities for aggregate price of $17,594,057 (collectively, "GPC Facilities"). Such sales price represents the sum of: (a) GPC's original book cost of all property, real and personal, associated with the GPC Facilities; (b) an additional negotiated amount as an adjustment for gross up to GPC's allowance for funds used during construction; and (c) an additional amount in order to insure GPC does not incur any after-tax loss on the sale. In addition, GPC proposes to convey to OPC all of GPC's right, title and interest in and to the real and personal property, including engineering drawings, comprising the Jackson E.M.C. #13 Substation Facility, commonly referred to as the Beaver Ruin Substation Facility ("Beaver Ruin Substation Facility"), in exchange for all of OPC's right, title and interest in and to the real and personal property comprising the Dillard Substation Facilities ("OPC Substation Facilities"). The estimated exchange value of the OPC Substation Facilities represents OPC's original book cost of the OPC Substation Facilities, including land, incurred as of the closing date. The estimated exchange value of the Beaver Ruin Substation Facility represents GPC's original book cost of the Beaver Ruin Substation Facility, including land, incurred as of the closing date plus an additional amount in order to insure that CPC does not incur any after-tax loss on the exchange. A payment to equalize the value of the Beaver Ruin Substation Facility and the OPC Substation Facilities will be paid by OPC to GPC at closing.

GPC will obtain from its First Mortgage Bond Trustee a release of the GPC Facilities and the Beaver Ruin Substation Facilities from the lien of GPC's First Mortgage Bond Indenture. OPC will obtain a release executed by the United States of America, Columbia Bank for Cooperatives, and Trust Company Bank, as Trustee, under OPC's Consolidated Mortgage and Security Agreement dated as of October 15, 1985, as amended, releasing the OPC Substation Facilities from the lien of said Consolidated Mortgage and Security Agreement.

Consolidated Natural Gas Co. (70–7811)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, CNG Tower, Pittsburgh, Pennsylvania 15222–3199, has filed a declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

Consolidated proposes to issue and sell, through December 31, 1991, up to $250 million principal amount of convertible subordinated debentures ("Debentures") maturing in not more than thirty years. The Debentures would be convertible into shares of Consolidated's common stock $2.75 par value.

The Debentures will be issued under a new closed-end indenture ("Indenture"), not allowing for any further series of debentures thereunder, between Consolidated and a bank, as trustee. The Indenture will contain provisions making the Debentures subordinate to all senior indebtedness of Consolidated, including all currently outstanding and future series of debentures issued or to be issued under the current indentures of Consolidated.

It is anticipated that the Debentures will be offered and sold at par with an annual interest rate determined by the market for similar convertible debt. Such interest is anticipated to be approximately 300 to 350 basis points lower than for senior debt of comparable terms but without the conversion feature. The conversion price per share for the Debentures would be set at an initial premium of approximately 20–25% over market.

Consolidated would have the right to call the Debentures at par plus a declining premium beginning three years after the date of issue. Beginning in the eleventh year after issuance, the outstanding Debentures would be retired through equal annual sinking

fund payments so as to retire 75% of the outstanding issue at maturity. Consolidated will also have the noncumulative option to make additional sinking fund payments equal to the mandatory sinking fund payments.

The proceeds from the sale of the Debentures will be added to the treasury funds of Consolidated and subsequently used to finance, in part, capital expenditures of Consolidated and Consolidated's subsidiaries.

Consolidated requests an exception from the requirements of rule 50 pursuant to subsection 50(a)(5) thereunder for the issuance and sale of the Debentures. Consolidated further requests authorization to begin negotiations, pursuant an exception from the requirements of rule 50 pursuant to subsection 50(a)(5) thereunder, with underwriters for the public offering of the Debentures. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27302 Filed 11-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17853; International Series Rel. No. 191/812-7539]

November 13, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Consolidated TVX Mining Corporation ("Applicant").

RELEVANT 1940 ACT SECTIONS: Order requested under section 3(b)(2) of the 1940 Act or, in the alternative, section 6(c) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks (a) An order declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore is not an "investment company" as defined in the 1940 Act, or (b), in the alternative, an order exempting it from all provisions of the 1940 Act.

FILING DATE: The application was filed on June 14, 1990, and amended on September 20, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 145 King Street West, Toronto, Ontario M4H 1J8, Canada, with a copy to McPheters & Richardson, P.C., One Rockefeller Plaza, New York, New York 10020, Attention: R. Douglas McPheters, Esq.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504-2283, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained from a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant represents that it has been engaged in the acquisition, ownership, operation and exploitation of precious metals mining properties in the Federative Republic of Brazil ("Brazil") since 1983 and in the Republic of Chile ("Chile") since 1988. Applicant's precious metals mining business in Brazil and Chile is carried on through indirect interests in the form of voting and non-voting shares in corporations and other entities having beneficial ownership of claims, concessions, leases or licenses with respect to precious metals mining properties located in Brazil and Chile.

2. Applicant holds these interests indirectly through holding companies in order to: (a) Minimize the effect upon Applicant and its financing arrangements of the restrictions of the laws of Brazil and Chile upon foreign investment and remittance of capital and dividends, (b) obtain favorable tax treatment under the laws of Canada with respect to Applicant's activities outside Canada, and (c) accommodate the joint venture activities of Applicant's subsidiaries and affiliates. To the extent that Applicant has minority interests in intervening holding companies, those minority interests are in closely held companies where the majority interest is owned by companies overwhelmingly owned and controlled by Eike F. Batista, the Chairman, Chief Executive Officer and a director of Applicant. Mr. Batista also is the beneficial owner of approximately 32% of Applicant's Common Shares ("Shares"), which makes him Applicant's largest shareholder.

3. Applicant's mining operations in Brazil involve principally the joint venture operation of the Brasilia mine and the operation of the Salamangone and Xapetuba gold mines. Applicant acquired, owns and operates these mining properties in concert with Brazilian corporations and other entities tht Mr. Batista controls. Applicant's mining operations in Brazil are conducted through "majority-owned subsidiaries," as defined by section 2(a)(24) of the 1940 Act (individually, a "Majority-Owned Subsidiary" and collectively, "Majority-Owned Subsidiaries") and through companies that it argues it "controls," within the meaning of section 2(a)(9) of the 1940 Act (individually, a "Controlled Company" and collectively, "Controlled Companies"). For example, the Brasilia mine, which represents Applicant's largest interest in Brazil, is operated as a joint venture with Rio Tinto Zinc plc, a publicly-trading English mining company. Applicant indirectly owns 100% of the voting securities of TVX Participacoes Ltda., which owns 49% of the voting securities of Autram Investimentos S.A., which owns 67.3% of the voting securities of Autram Mineracao e Participacoes S.A., which has a 49% ownership interest in the Brasilia mine joint venture. Where Applicant does not own 50% or more of the voting securities of the above entities, it supports its argument that these entities are Controlled Companies with, among other things, certain joint venture agreements, shareholder agreements and informal arrangements. Applicant's share of the gold that all of the Brazilian mines produced during 1989 was approximately 64,000 ounces.

4. Applicant's mining operations in Chile are conducted principally through the joint venture operation of the La Coipa mineral properties. Applicant's interest in these properties is represented by Mantos de Oro, a lega. mining company created under the laws of Chile, which Applicant submits is a Majority-Owned Subsidiary, or, in the alternative, a Controlled Company. Applicant owns 100% of the voting securities of Miicre Mining, which owns 80% of the voting securities of Macaines, which owns 50% of the equity securities in the Mantos de Oro joint venture with

a publicly-traded Canadian gold mining company. Applicant supports its contention that Mantos de Oro is a Controlled Company with, among other things, that entity's by-laws that require the unanimous consent of the directors for all significant decisions. A smaller tract of mineral properties in Chile also is held by Mineral La Coipa, a legal mining company created under the laws of Chile, which is Applicant's Majority-Owned Subsidiary and is operated as a joint venture in which Applicant is an equal partner. Applicant's share of the precious metals produced by the La Coipa mine during 1989 was approximately 6,500 ounces of gold and 638,000 ounces of silver.

5. In addition to the discussion above, the manner in which Applicant believes that certain companies, through which it conducts its Brazilian and Chilean mining operations, are Controlled Companies and further information concerning its complex structure is described explicitly in the application. This information includes various joint venture agreements, by-laws and shareholder agreement that are attached to the application as exhibits.

6. Approximately 63% of the value of Applicant's total assets is represented by Applicant's joint venture interests in the Brasilia mine and the La Coipa and other Chilean mineral properties and related fixed assets. An additional 27% of the value of Applicant's total assets is represented by Applicant's interests in Brazilian precious metals mining properties held through what Applicant contends are Majority-Owned Subsidiaries and Controlled Companies. In the aggregate, approximately 90% of the value of Applicant's total assets is represented by its interests in Brazilian and Chilean mining operations. Approximately 81% of Applicant's net income after taxes is derived from Applicant's joint venture interests in the Brasilia mine and in the La Coipa mineral properties, and an additional 19% of Applicant's net income after taxes is derived from Brazilian precious metals mining properties held through what Applicant claims are Majority-Owned Subsidiaries and Controlled Companies.

7. Applicant's Shares are listed on the Toronto Stock Exchange, but are not traded on any exchange in the United States or quoted on the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). Applicant understands that a number of holders of its Shares reside in the United States. Applicant filed a registration statement with respect to its Shares on Form 20-F (the "Form 20-F") under section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act"), which became effective by operation of law 60 days after the date of its filing on December 30, 1986. Since the Form 20-F became effective, Applicant has filed two amendments to the Form 20-F and has filed its required reports under the Exchange Act.

8. The complex nature of Applicant's holding company structure, which was not created with the 1940 Act in mind, but which necessarily reflects the laws and business customs of the countries where Applicant carries on its mining business, as well as the way the mining business is conducted generally, pose the issue of whether Applicant should be considered an investment company within the meaning of section 3(a)(3) of the 1940 Act. Although Applicant believes that it is primarily engaged in the business of precious metals mining through Majority-Owned Subsidiaries and Controlled Companies, Applicant desires this issue to be formally resolved so that it may attempt to have its Shares quoted on NASDAQ and so that its mining business can be conducted in the future without the uncertainties created by the possibility that Applicant might be considered an investment company.

Applicant's Legal Analysis

1. Applicant seeks (a) An order under section 3(b)(2) of the 1940 Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore is not an investment company as defied in the 1940 Act, or (b), in the alternative, an order under section 6(c) of the 1940 Act exempting in from all provisions of the 1940 Act.

2. Section 3(b)(2) of the 1940 Act provides that the SEC may find that a person is not an investment company within the meaning of the 1940 Act, notwithstanding that person being an investment company within section 3(a)(3) of the 1940 Act. Section 3(a)(3) defines an "investment company" as including any issuer that, "is engaged * * * in the business of investing, reinvesting, owning, holding, or trading in securities, and owns * * * investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items)." The section 3(b)(2) exclusion applies if the SEC finds the issuer "to be primarily engaged in a business or businesses other than investing * * * in securities either directly or (A) Through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses."

3. Section 6(c) of the 1940 Act authorizes the SEC to issue a conditional or unconditional exemption from any provision of the 1940 Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of (the 1940 Act)."

4. Applicant believes that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities and should be granted an exemption under section 3(b)(2). In determining the primary business in which a company is engaged, the SEC considers, among other things: (a) The issuer's historical development, (b) the issuer's officers and directors, (d) the nature of the issuer's present assets, and (e) the sources of the issuer's present income. *Tonopah Mining Company of Nevada.* 26 S.E.C. 426 (1946).

(a) *Historical development:* Since its organization in 1981, Applicant believes it has been engaged primarily in the mining business, and in no other business. Applicant participates actively in the operation of various mining properties in Brazil and Chile and is, and has been, actively engaged in the acquisition, financing and development of interests in precious metals mining properties in those countries.

(b) *Public representatives:* Applicant has held itself out as a mining company and has never held itself out as an investment company. This is supported by materials that Applicant has prepared and published, including its annual reports, publicly filed documents and press releases. Applicant has been characterized in writing as a mining company by the Toronto Stock Exchange, in numerous newspaper articles and published reports and by the inclusion of it Shares in the Toronto Stock Exchange Gold Index.

(c) *Activities of officers and directors:* Applicant's officers and directors have considerable expertise in the mining business and are actively and directly involved on a regular basis in the acquisition, exploration, development, financing and operation of Applicant's mineral properties.

(d) *Nature of assets:* At December 31, 1989, Applicant's interests in mineral properties in Chile represented approximately 47% of the value of Applicant's total assets, and its interests in Brazilian mining properties represented approximately 43% of the value of its total assets. Therefore,

Applicant's combined interests in these mining properties represent approximately 90% of the value of Applicant's total assets.

(e) *Source of income:* Approximately 82% of Applicant's net income after taxes for the four quarters ended December 31, 1989 was derived from revenues from Applicant's joint venture interest in the Brasilia mine, while approximately 5% of Applicant's net income after taxes for the same period was derived from revenues from Applicant's La Coipa joint venture in Chile, or approximately 87% in the aggregate. Substantially all of Applicant's remaining net income after taxes was derived from revenues from Applicant's Salamangone and Xapetuba mines.

5. In the alternative to an order under section 3(b)(2), Applicant requests an order under section 6(c) of the 1940 Act. Applicant believes that an exemption under section 6(c) of the 1940 Act is warranted in the present instance. Applicant was structured for valid economic and legal reasons not common in the United States and not with the 1940 Act in mind. Therefore, it believes that its compliance with the 1940 Act would not be possible. Applicant submits that requiring its compliance with the provisions of the 1940 Act would be inconsistent with the purposes fairly intended by the policy and provisions of the 1940 Act and would neither be necessary or appropriate in the public interest nor consistent with the protection of investors.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 27301 Filed 1-19-90 8:45 am]

BILLING CODE 8010-01-M

[Investment Co. Act Rel. No. 17852; International Series Rel. No. 190; 812-7587]

Christiana Bank og Kreditkasse; Application

November 13, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Christiana Bank og Kreditkasse.

RELEVANT 1940 ACT SECTION: Section 6(c).

SUMMARY OF APPLICATION: Applicant seeks a conditional order under section 6(c) to permit it to offer and sell its equity securities in the United States without registering as an investment company under the 1940 Act.

FILING DATES: The application was filed on September 5, 1990, and an amendment was filed on November 2, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1990, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, P.O. Box 1166 Sentrum, 0107 Oslo 1, Norway, with a copy to Katheryn C. Patterson, Coudert Brothers, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a commercial bank incorporated in Norway and is one of the two largest commercial banks in Norway. Applicant is engaged in regularly in, and derives a substantial portion of its business from, extending credit and accepting deposits that are customary for commercial banks in Norway. In addition to its operations in Norway, applicant has wholly owned banking subsidiaries in Luxenbourg and Sweden. Applicant maintains branches in Signapore, London, New York, Seattle, and the Cayman Islands and maintains representative offices in Bejing, Tokyo, Copenhagen, Malaga (Spain), and Sydney. At December 31, 1989, applicant had total assets of $19,678,000,000 and total deposits of $8,092,000,000.

2. The operations of applicant are subject to a wide range of regulation and administrative supervision under Norwegian law. The three most important laws in this area are the Monetary and Credit Policy Act of 1965, the Bank Act of 1961, and the Financial Services Act of 1968. The Monetary and Credit Policy Act sets forth certain requirements relating to the lending activities and liquidity of Norwegian banks, and the Bank Act and Financial Services Act contain other requirements for such banks. The Banking, Insurance and Securities Commission is the official body supervising Norwegian banks.

3. Applicant has appointed its full service branch in New York, currently located at 11 West Forty-Second Street, New York, New York, as its agent in the United States to accept service of process in connection with any action brought against applicant arising out of any offering of securities made in reliance upon any order granted with respect to the instant application.

4. Applicant desires to have access to the United States capital markets through private placements of its equity securities, either directly or in the form of American Depositary Shares evidenced by American Depositary Receipts.

Applicant's Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to issue conditional or unconditional exemptions from any provision of the 1940 Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]." Applicant submits that the application meets these requirements.

2. Applicant states that the proposed exemption would be appropriate in the public interest because it would permit qualified institutional investors in the United States to have access to applicant's equity securities. Applicant submits that the requested relief would be consistent with the protection of investors because applicant's proposed equity offering would be structured to comply with the exemption from registration afforded by the section 4(2) of the Securities Act of 1933. Applicant submits further that the requested relief would be consistent with the purposes of the 1940 Act because the public policy concerns that lead to the enactment of the 1940 Act are not applicable to banks in general and applicant in particular.

3. On August 15, 1990, the Commission approved for comment amendments to Rule 6c-9 under the 1940 Act. Investment Company Act Release No.

17682 (Aug. 17, 1990). In its present form, Rule 6c–9 provides a conditional exemption from the 1940 Act that permits foreign banks to offer and sell debt securities and non-voting preferred stock without registering under the 1940 Act. The proposed amendments would, among other things, extend the exemption from registration under the 1940 Act to foreign banks offering or selling their equity securities in the United States. Applicant has agreed to comply with Rule 6c–9 as it is proposed to be amended and as it may be reproposed, adopted, or amended in the future in connection with all offerings of securities in the United States.

Applicant's Condition

As a condition to the requested relief, applicant will comply with Rule 6c–9 under the 1940 Act as it is proposed to be amended and as it may be reproposed, adopted, or amended in the future in connection with all offerings of securities in the United States.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27241 Filed 11–19–90; 8:45 am]

BILLING CODE 8010–01–M

Order of Suspension of Trading

In the Matter of Electronic Medical Management, Inc.; File No. 500–1
November 13, 1990

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Electronic Medical Management, Inc. ("EMMI") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the history and formation of EMMI, the public tradeability of EMMI stock, the background of its promoters and other matters. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of EMMI.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the common stock of EMMI, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. (EST) on November 13, 1990 through 11:59 p.m. (EST) on November 27, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–27300 Filed 11–19–90 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17851; 812–7580]

The Rodney Square Multi-Manager Fund, et al.; Application

November 13, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: The Rodney Square Milti-Manager Fund (the "Fund") and Wilmington Trust Company ("Wilmington," collectively with the Fund, "Applicants").

RELEVANT 1940 ACT SECTION: Order requested under (a) section 17(b) of the 1940 Act granting an exemption from section 17(a) of the 1940 Act, and (b) section 17(d) of the 1940 Act and Rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit a proposed reorganization between two series of the Fund: The Total Return Portfolio, which is expected to be renamed the Growth and Income Portfolio, and the Value Portfolio (collectively, the "Portfolios"). The Total Return Portfolio plans to acquire all or substantially all of the assets and liabilities of the Value Portfolio in exchange for Total Return Portfolio shares, which then will be distributed to the shareholders of the Value Portfolio.

FILING DATE: The application was filed on August 21, 1990, and amended on October 30, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1990, and should be accomplished by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Rodney Square North, Wilmington, Delaware 19890.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504–2283, or Stephanine M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants represent that the Fund is a Massachusetts business trust, established on August 19, 1986, that is registered as a diversified open-end investment company under the 1940 Act. The Portfolios are two diversified series of the Fund.

2. Wilmington is a state-chartered bank organized as a Delaware corporation. On June 30, 1990, it beneficially owned on behalf of its underlying customers' accounts 99.4% of the outstanding shares of the Total Return Portfolio and 99.4% of the Value Portfolio. Wilmington also owns 100% of the outstanding shares of Rodney Square Management Corporation ("RSMC"), the Fund's investment adviser.

3. The Value Portfolio's investment objective is to seek superior long-term capital appreciation by investing in securities that are judged by its portfolio advisers to be undervalued in the marketplace.

4. The Total Return Portfolio's current investment objective is to seek superior return through capital appreciation or income, or both, by investing entirely in debt securities or entirely in equity securities at any given time. Prior to the proposed reorganization, the Total Return Portolio's shareholders will be asked to approve a change to that Portfolio's fundamental investment objective. The new investment objective would be to produce superior long-term total return through a combination of capital appreciation and income by investing in securities with attractive growth or valuation characteristics and relatively high income yields. The Total Return Portfolio also will change its name to the Growth and Income Portfolio.

5. If the Total Return Portfolio's shareholders approve the change, that Portfolio's investment objective will include investing in undervalued securities, which is the investment objective of the Value Portfolio.

Moreover, the Total Return Portfolio, like the Value Portfolio, will have a non-fundamental policy that under normal circumstances at least 65% of the Portfolio's total asset value will be invested in equity securities. The Portfolios have identical investment practices (such as repurchase agreements, options and when-issued securities) and investment limitations.

6. Applicants propose that the Total Return Portfolio will acquire all or substantially all of the assets of the Value Portfolio in exchange for shares of the Total Return Portfolio pursuant to an Agreement and Plan of Reorganization and Liquidation (the "Plan"). The Plan was unanimously approved by the Fund's board of trustees, including the disinterested trustees, on August 20, 1990.

7. The Plan provides, among other things, that the number of shares of the Total Return Portfolio to be issued to the Value Portfolio will be determined on the basis of relative net assets value of the Portfolios. The Value Portfolio then will be liquidated by establishing accounts on the share records of the Total Return Portfolio in the name of each Value Portfolio shareholder, each account representing the respective *pro rata* number of shares of the Total Return Portfolio due those Value Portfolio shareholders.

8. The expenses of the reorganization will be borne by the Total Return Portfolio and the Value Portfolio in proportion to their respective net assets as of the Plan's closing date. RSMC will be liable for all reorganization expenses that would cause either Portfolio to incur expenses in excess of 1.75%, if incurred prior to the reorganization, and 1.50%, if incurred subsequent to the reorganization, respectively, of the average daily net assets on an annualized basis.

9. The Fund's trustees, including the disinterested trustees, have reviewed the terms of the proposed reorganization under the Plan, and have voted unanimously to recommend approval of the Plan to the shareholders of the Value Portfolio. In determining to recommend approval of the Plan, the trustees considered, among other things:

(a) The effect of the reorganization on the expense ratio of the Total Return Portfolio relative to the current expense ratios of the Portfolios;

(b) The effect of the reorganization on expected investment performance;

(c) The compatibility of the Portfolios' investment objectives, policies and restrictions and the compatibility of the assets being acquired to those in the Total Return Portfolio;

(d) The costs to be incurred by the Portfolios as a result of the reorganization;

(e) The cost savings that could be achieved by combining the Portfolios;

(f) The tax consequences of the reorganization;

(g) Other possible alternatives to the proposed reorganization; and

(h) Potential benefits to other persons, especially affiliates of the Portfolios.

10. Consummation of the reorganization contemplated by the Plan is subject to, among other things, the conditions that:

(a) A majority of the outstanding shares of the Value Portfolio shall have approved the Plan;

(b) A majority of the outstanding shares of the Total Return Portfolio shall have approved the change to that Portfolio's fundamental investment objective; and

(c) Applicants have received exemptive relief from the SEC with respect to the issues that are the subject of the application.

Applicants' Legal Analysis

1. Applicants seek an exemption under section 17(b) of the 1940 Act from the provisions of section 17(a) of the 1940 Act to the extent necessary to permit the proposed reorganization under the Plan. Section 17(a) generally prohibits an affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling to or purchasing from such investment company any security or other property. Wilmington may be considered an affiliate, or an affiliate of an affiliate, of the Fund under section 2(a)(3) of the 1940 Act, and because of the nature of the proposed reorganization may not rely on Rule 17a-8 under the 1940 Act.

2. Section 17(b) of the 1940 Act authorizes the SEC to exempt any person from the provisions of section 17(a) if the evidences establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(b) The proposed transaction is consistent with the policy of each registered investment company concerned; and

(c) The proposed transaction is consistent with the general purposes of the 1940 Act.

3. Applicants submit that the terms of the proposed transaction under the Plan are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the investment policies of each Portfolio and consistent with the purposes of the 1940 Act. Applicants represent that the number of shares to be issued to shareholders of the Value Portfolio will be determined on the basis of the relative net asset values of the Portfolios. Applicants also note that the reorganization should eliminate duplicative charges and expenses for the shareholders of both Portfolios and achieve economies of scale in the operation of the combined Portfolios.

4. In addition, although the nature of the affiliations precludes Applicants from relying on the exemption Rule 17a-8 under the 1940 Act affords, Applicants represent that the Fund's trustees, including the disinterested trustees, have made the findings required by that Rule. These findings are specifically that participation in the reorganization as contemplated by the Plan is in the best interests of each Portfolio and that the interests of existing shareholders of each Portfolio will not be diluted as a result of the reorganization. Applicants also note that Wilmington's interest in the Portfolios arises from Wilmington functioning in a fiduciary capacity with respect to various trust accounts, and that Wilmington exercises voting and/or investment discretion with respect to Portfolio shares not on its own behalf, but solely on behalf of the beneficiaries of those trust accounts. Finally, Applicants represent that the proposed reorganization is consistent with the policies of each Portfolio.

5. Applicants also seek an order under section 17(d) of the 1940 Act. Section 17(d) generally prohibits any affiliated person of a registered investment company or an affiliated person of such a person acting as principal from effecting any transaction in which such registered company is a joint or a joint and several participant with such person in contravention of any SEC rules and regulations. Rule 17d-1 under the 1940 Act generally provides that no joint enterprise or joint arrangement that the Rule covers may be consummated unless an application has been filed in connection with such transaction and granted by the SEC. The proposed reorganization may be deemed to be a joint enterprise or joint arrangement that Section 17(d) and Rule 17d-1 thereunder prohibits because of, among other things, the allocation of the reorganization expenses.

6. Applicants believe that proposed reorganization is warranted under section 17(d) and Rule 17d-1 thereunder because they believe that the terms of the proposed transaction is consistent with the provisions, policies and

purposes of the 1940 Act in that they are reasonable and fair to all parties, do not involve overreaching, and are consistent with the investment policies of each of the Portfolios.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27242 Filed 11-19-90; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Sanifill, Inc., Common Stock, $.01 Par Value (File No. 1-10490)

November 14, 1990.

Sanifill, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d)a of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the company's stock on the NYSE commenced on September 28, 1990, and concurrently such stock was suspended from trading on the Amex. In making the decision to withdraw its common stock from listing on the Amex, the company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dueal listing would fragment the market for its common stock.

Any interested person may, on or before December 6, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-27243 Filed 11-19-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice No. 1291]

Advisory Committee on Historical Diplomatic Documentation; Meeting

Four members of the Advisory Committee on Historical Diplomatic Documentation met on July 23, 1990 at the Department of State. The purpose of the meeting was to brief Committee members on the status of pending legislation regarding the series Foreign Relations of the United States and on Department planning to assure the accuracy and completeness of the series. The Advisory Committee advises the Bureau of Public Affairs, and in particular the Office of the Historian, concerning problems related to the preparation of the documentary series Foreign Relations of the United States and other responsibilities of that Office.

Persons wishing to receive a copy of a record of this meeting should contact William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663-1122.

William Z. Slany,

Executive Secretary.

[FR Doc. 90-27239 Filed 11-19-90; 8:45 am]

BILLING CODE 4710-11-M

[Public Notice No. 1292]

United States Organization for the International Telegraph and Telephone Consultative Committee Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on December 17, 1990 in Room 1205 and continuing on December 18, 1990 in Room 1107, Department of State, 2201 C Street, NW, Washington, DC.

The purpose of the meeting is to begin the work of the Message Handling System-Management Domain Group according to its agreed terms of reference, including the initial selection of officers for the Group. Any other business within the scope of Study Group D may be raised and considered.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Gary Fereno, Department of State, 202-647-2592 (fax 202-647-7407). The above includes government and non-government attendees. All attendees must use the C Street entrance.

Dated: November 6, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 90-27279 Filed 11-19-90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-90-47]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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

ACTION: Notice of petitions for exemption received and of disposition of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 10, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation

Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. ————, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 14, 1990.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket no.: 25731
Petitioner: Experimental Aircraft Association/Confederate Air Force
Sections of the FAR affected: 14 CFR 45.25 and 45.29
Description of relief sought: To extend Exemption No. 5019, which allows the operation of historic military airplanes with 2-inch high registration numbers located under the horizontal stabilizer. Exemption No. 5019 will expire on February 28, 1991.

Docket no.: 26294
Petitioner: Moody Aviation
Sections of the FAR affected: 14 CFR part 141, appendix A
Description of relief sought: To extend and amend Exemption No. 5032, which allows petitioner to graduate a part 141 student with a "night flying prohibited" limitation on the private pilot certificate. The amendment would remove the stipulation against reducing total flight hours. Exemption No. 5032 will expire on March 31, 1991.

Docket no.: 26374
Petitioner: Corsair, Inc.
Sections of the FAR affected: 14 CFR 36.7(d)(2) and 91.805
Description of relief sought: To allow petitioner to transport a Boeing 727 freighter from Miami International Airport to Brazil where the aircraft will be leased for 4 years to be used exclusively in foreign commerce.

[FR Doc. 90-27264 Filed 11-19-90; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Services and Research Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2282.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by December 20, 1990.

Dated: November 13, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Health Services and Research Administration.
2. Application for Participation in Department of Veterans Affairs Health Professional Scholarship Program.
3. Department Form Numbers.
a. VA Form 10-0003—Department of Veterans Affairs Health Professional Scholarship Program Application for Scholarship.
b. VA Form 10-0003a—Letter of Enrollment.
c. VA Form 10-0003b—Employment/Volunteer Recommendation.
d. VA Form 10-0003c—Department of Veterans Affairs Health Professional Scholarship Program Contact.
4. The information collection is used to determine a student's eligibility to receive a scholarship award offered through the Department of Veterans Affairs Health Professional Scholarship Program.
a. VA Form 10-0003 is used by student applicants enrolled in associate, baccalaureate, and masters degree programs in nursing; and baccalaureate, and masters degree programs in physical or occupational therapy, to apply for a scholarship.
b. VA Form 10-0003a is used by the applicant as consent to allow the educational institution in which he/she is enrolled to release information regarding enrollment and academic standing.
c. VA Form 10-0003b is used to obtain an employment/volunteer recommendation to support the scholarship application.
d. VA Form 10-0003c is used as the contract containing the obligations of the applicant and VA.
5. Annually.
6. Individuals or households; Businesses or other for-profit; Non-profit Institutions.
7. 4,000 responses.
8. Estimate of Total Hours.
a. VA Form 10-0003—1½ hours.
b. VA Form 10-0003a—1¼ hour.
c. VA Form 10-0003b—1½ hour.
d. VA Form 10-0003c—⅙ hour.
9. Not applicable.

[FR Doc. 90-27250 Filed 11-19-90; 8:45 am]
BILLING CODE 8320-01-M

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These

adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1990. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstone or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 1991 which began on October 1, 1990.

DATES: These COLAs are effective December 1, 1990. The headstone or marker allowance rate is effective October 1, 1990.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 3112 and section 306 of Public Law 95-588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register.**

The Social Security Administration has announced that there will be a 5.4 percent cost-of-living increase in social security benefits effective December 1, 1990. Therefore, applying the same percentage, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1990:

Table 1.—Improved Pension

Maximum Annual Rates

(1) Veterans permanently and totally disabled (38 U.S.C. 521):
Veteran with no dependents, $7,133
Veteran with one dependent, $9,343
For each additional dependent, $1,213

(2) Veterans in need of aid and attendance (38 U.S.C. 521):
Veteran with no dependents, $11,409
Veteran with one dependent, $13,620
For each additional dependent, $1,213

(3) Veterans who are housebound (38 U.S.C. 521):
Veteran with no dependents, $8,718
Veteran with one dependent, $10,928
For each additional dependent, $1,213

(4) Two veterans married to one another, combined rates (38 U.S.C. 521):
Neither veteran in need of aid and attendance or housebound, $9,343
Either veteran in need of aid and attendance, $13,620
Both veterans in need of aid and attendance, $17,894
Either veteran housebound, $10,928
Both veterans housebound, $12,515
One veteran housebound and one veteran in need of aid and attendance, $15,203
For each dependent child, $1,213

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541):
Surviving spouse alone, $4,780
Surviving spouse and one child in his or her custody, $6,262
For each additional child in his or her custody, $1,213

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 541):
Surviving spouse alone, $7,646
Surviving spouse with one child in his or her custody, $9,124
For each additional child in his or her custody, $1,213

(7) Surviving spouses who are housebound (38 U.S.C. 541):
Surviving spouse alone, $5,844
Surviving spouse and one child in his or her custody, $7,323
For each additional child in his or her custody, $1,213

(8) Surviving child alone (38 U.S.C. 542), $1,213.

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 521, 541, and 542.)

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,613. (38 U.S.C. 521(g).)

Parent's DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 415):

TABLE 2

[*One parent.* If there is only one parent, the monthly rate of DIC paid to such parent shall be $336 reduced on the basis of the parent's annual income according to the following formula:]

For each $1 of annual income		
The $336 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	8,113

No DIC is payable under this table if annual income exceeds $8,113.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $241 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income		
The $241 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	8,113

No DIC is payable under this table if annual income exceeds $8,113.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $226 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $226 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	10,909

No DIC is payable under this table if combined annual income exceeds $10,909.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on

the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $179 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

Table 5.—Section 306 Pension Income Limitations

(1) Veteran or surviving spouse with no dependents, $8,113 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance, $8,640 (38 U.S.C. 521(d)) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $10,909 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $11,436 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran or surviving spouse), $6,631 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $2,587 (Pub. L. 95–588, section 306(a)(20(B)).

Table 6.—Old-Law Pension Income Limitations

(1) Veteran or surviving spouse without dependents or an entitled child, $7,102 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $10,241 (Pub. L. 95–588, section 306(b)).

Headstone or Marker Allowance

Under 38 U.S.C. 906(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, Monument Service and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1990 under the above computation method was $85. Therefore, effective October 1, 1990, the maximum rate of reimbursement of non-Government headstones or markers purchased during Fiscal Year 1991 is $85.

Dated: November 8, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 90–27251 Filed 11–19–90; 8:45 am]

BILLING CODE 8320-01-M

Medical Care Reimbursement Rates for FY 1991

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In accordance with provisions of OMB Circular A–11 section 13.5(a), revised reimbursement rates have been established by the Department of Veterans Affairs for inpatient and outpatient medical care furnished to beneficiaries of other Federal agencies during FY 1991. These rates will be charged for such medical care provided at health care facilities under the direct jurisdiction of the Secretary on and after December 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Alline Norman, Acting Director, Medical Administration Service (161B), Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2180.

SUPPLEMENTARY INFORMATION: The Interagency billing rates for FY 1991 are as follows:

Medicine	$568
Surgery	865
Spinal Cord Injury	585
Blind Rehabilitation	475
Neurology	498
Rehabilitation Medicine	406
General Psychiatry	257
Intermediate Medicine	184
Nursing Home Care	164
Alcohol—Drug	205
Prescription—Refill	17
Outpatient *	116
Dental Outpatient	75

* Rate includes Dialysis Treatment.

Prescription refill charges in lieu of the outpatient visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. These charges apply if the patient receives the prescription refills in person or by mail.

When medical services for beneficiaries of other Federal agencies are obtained by the Department of Veterans Affairs from private sources, the charges to the other Federal agencies will be the actual amounts paid by the Department of Veterans Affairs for such medical services.

Inpatient charges to other Federal agencies will be at the current interagency per diem rate for the type of bed section or discrete treatment unit providing the care.

Dated: November 9, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 90–27241 Filed 11–19–90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the December 4, 1990, regular meeting of the Farm Credit Adminstration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, December 13, 1990, starting at 10 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia, 22102-5090.

Dated: November 15, 1990.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 27429 Filed 11-16-90; 2:22 pm]

BILLING CODE 6705-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11 a.m., Monday, November 26, 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. Federal Reserve Bank and Branch director appointments. (This item originally announced for a closed meeting on October 29, 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: November 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27465 Filed 11-16-90; 3:40 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 19, 26, December 3, and 10, 1990.

PLACE: Commissioners' Conference room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 19

Wednesday, November 21

8:30 a.m.
Litigation Matters: Discussion of Options (Closed—Ex. 10)

9:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 26—Tentative

There are no meetings scheduled for the Week of November 26

Week of December 3—Tentative

Friday, December 7

10 a.m.
Briefing on Level of Design Detail for part 52 (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 10—Tentative

Thursday, December 13

9 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

10:30 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 a 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: November 15, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-27446 Filed 11-16-90; 8:45 am]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Revision of Fees For Sanitation Inspections of Cruise Ships

Correction

Notice document 90-25880 beginning on page 46102 in the issue of Thursday, November 1, 1990, was inaccurately printed. The correct text is set forth below.

SUMMARY: Revised fees for vessel sanitation inspections are presented to become effective January 1, 1991.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control (F29), CDC, Atlanta, Georgia, 30333. Telephone: FTS: 236–4595, Commercial: (404) 488–4595.

SUPPLEMENTARY INFORMATION:

Purpose and Background

CDC began collecting fees for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program (VSP), on March 1, 1988; the fee schedule was first published in the **Federal Register** on Tuesday, November 24, 1987, (52 FR 45019).

The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total Cost of VSP}}{\text{Weighted No. of Annual Inspections}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on Friday, July 17, 1987, (52 FR 27060) and revised in a schedule published in the **Federal Register** on Tuesday, November 28, 1989, (54 FR 48942) and is as follows:

	Average cost ×
Extra Small (<3,001 GRT [1])	0.25
Small (3,001–15,000 GRT)	0.5
Medium (15,001–30,000 GRT)	1.0
Large (30,001–60,000 GRT)	1.5
Extra Large (>60,000 GRT)	2.0

[1] GRT-Gross Register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Fees

The following fee schedule will be effective January 1, 1991, through December 31, 1991. However, should there be a substantial increase in the cost of air transportation, it may be necessary to re-adjust the fees prior to December 31, 1991, since travel constitutes a sizable portion of the costs of this Program. If such a re-adjustment in the fee schedule is necessary, a notice will be published in the **Federal Register** 30 days prior to the effective date.

Vessel sizes	Fee
Extra Small Ship (<3,001 GRT):	$693
Small Ship (3,001–15,001 GRT):	1,386
Medium Ship (15,001–30,000 GRT):	2,772
Large Ship (30,001–60,000 GRT):	4,158
Extra Large Ship (>60,000 GRT):	5,544

Inspections and reinspections involve the same procedure, require the same amount of time and will therefore be charged at the same rate.

Applicability

The fees will be applicable to all passenger cruise vessels for which sanitation inspections are conducted as part of the Vessel Sanitation Program, CDC.

Dated: October 25, 1990.

BILLING CODE 1505-01-D

federal register

Tuesday
November 20, 1990

Part II

Department of Education

34 CFR Part 682

Guaranteed Student Loan Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AA96

Guaranteed Student Loan Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Guaranteed Student Loan (GSL) and PLUS Programs. The new GSL programs regulations will govern the Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Supplemental Loans for Students (SLS) Program, the PLUS Program, and the Consolidation Program, collectively referred to as the Guaranteed Student Loan (GSL) programs. The proposed regulations address the administration of the GSL programs by schools, lenders, State and private nonprofit guarantee agencies, and the Department of Education. The proposed regulations would incorporate statutory changes made by the Consolidated Omnibus Budget Reconciliation Act of 1985 (enacted April 7, 1986) (COBRA), the Higher Education Amendments of 1986 (enacted October 17, 1986) (1986 Amendments), the Higher Education Technical Amendments Act of 1987 (enacted June 3, 1987) (Technical Amendments), Public Law 100-297 (enacted April 28, 1988), and Public Law 100-369 (enacted July 18, 1988). The proposed regulations would also implement various policy initiatives intended to improve program administration, prevent loan defaults, and generate repayment on a loan once default has occurred. The proposed regulations do not incorporate the provisions of the Omnibus Budget Reconciliation Act of 1989 (enacted December 19, 1989) (Pub. L. 101-239). Regulations covering these provisions will be issued soon.

DATES: Comments must be received on or before February 19, 1991.

ADDRESSES: Comments should be addressed to Patricia Newcombe, Acting Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, room 4310, ROB-3, 7th and D Streets, SW., Washington, DC 20202-5449.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of the preamble.

FOR FURTHER INFORMATION CONTACT: Contact Lloyd Robertson or Patricia Beavan, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, room 4310, Mail Stop 5345, ROB-3, 7th & D Streets SW., Washington, DC 20202-5449, Telephone Number (202) 708-8242.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1986, the GSL and PLUS Program regulations governing the participation of lenders, guarantee agencies, and educational institutions in the GSL programs, as authorized by title IV of the Higher Education Act of 1965, as amended (the Act), were published in the **Federal Register**. Those regulations did not reflect changes to the authorizing legislation for the GSL programs made by the 1986 Amendments and the Technical Amendments Act of 1987 (Pub. L. 100-50). These proposed regulations would implement the changes brought about by these statutes and by Public Law 100-297 and Public Law 100-369, and would implement various policy initiatives designed to reduce defaults and increase collections on loans that do go into default. They also include the revisions to part 682 included in the Secretary's Default Reduction Initiative. See 54 FR 24114 (June 5, 1989) (final regulations). This Notice of Proposed Rulemaking (NPRM) is not soliciting comments on the final regulations implementing the Default Reduction Initiative published on June 5, 1989 or on the NPRM published that same day. When final regulations based on the June 5, 1989 NPRM are published, those regulations will be included in the final regulation based on this NPRM. See 54 FR 24128 (June 5, 1989) (NPRM). This NPRM does not incorporate the final regulations implementing the targeted teacher deferment See 55 FR 35006 (August 27, 1990)(final regulations). Those regulations will be included in the final regulations based on this NPRM.

Important Statutory Changes Included in the Regulations

A major purpose of these regulations is to incorporate recent statutory amendments. These statutory amendments include the following important changes to the GSL programs. The section(s) of the proposed regulations principally affected by each change is indicated in parentheses for each change.

Terminology (Sections 682.100-682.712)

The proposed regulations would substitute "SLS borrower" for "student PLUS borrower" where appropriate, due to the statutory change restricting PLUS loans to parent borrowers and creating the SLS Program as successor to the student PLUS Program.

The term "Stafford Loan Program," would be used throughout, in place of "Guaranteed Student Loan Program" due to the statutory change in Public Law 100-297 renaming the GSL Program. The term "Guaranteed Student Loan" would be used throughout the regulations in referring to the Stafford Loan, SLS, PLUS, and Consolidation programs as a group.

PLUS/SLS (Sections 682.200-682.204)

The 1986 Amendments created the SLS Program. Graduate and professional students, independent undergraduate students, and, under certain circumstances, dependent undergraduate students are eligible to borrow funds under this program. Under the 1986 Amendments, PLUS program eligibility is limited to parent borrowers. A PLUS loan and an SLS loan must be repaid beginning 60 days after disbursement, unless the borrower is entitled to a deferment of repayment.

Estimated Cost of Attendance (Section 682.200)

The 1986 Amendments revised the definition of cost of attendance. Under the statute, a school may include only the allowance and other allowable charges applicable to the student in determining the cost of attendance for that student.

Loan Consolidation (Sections 682.200-682.204)

The COBRA authorized the Student Loan Marketing Association (SLMA) and most eligible lenders to enter into agreements with the Secretary or a guarantee agency for the purpose of consolidating Stafford, PLUS, and Perkins (formerly National Direct Student Loan) loans of eligible student borrowers under the Consolidation Loan Program. All eligible lenders except guarantee agencies and Rural Rehabilitation Corporations are authorized to enter into agreements with the Secretary or a guarantee agency for the purpose of consolidating loans made to students under the Stafford Loan, Perkins Loan, PLUS, SLS, and Health Professions Student Loan (HPSL) programs. PLUS loans made to parents and loans more than 90 days delinquent may not be consolidated. Any nonprofit private agency functioning in any State as a secondary market is considered an eligible lender for the purpose of loan consolidation.

New Definition of "School" (Section 682.200)

The Technical Amendments changed the definition of "institution of higher education" for purposes of the GSL programs regarding the types of educational programs offered. The proposed regulations would incorporate this change by revising the definition of the term "school" to include a hospital or health care facility offering at least a one-year training program leading to a degree or certificate for graduates of accredited health professions programs. Previously, the definition required that the institution offer either a bachelor's degree or a two-year program acceptable for full credit toward a bachelor's degree.

Disqualification of Lenders (Section 682.200)

The 1986 Amendments allow for the disqualification of a lender for use of certain incentives, conducting unsolicited mailings of loan applications to certain students, or engaging in misleading or fraudulent advertising.

Financial Need Requirements for a Stafford Loan (Section 682.201)

The 1986 Amendments require all Stafford loan applicants to show financial need to qualify for a federally subsidized Stafford loan based on an expected family contribution (EFC) calculated under a need analysis system approved by the Secretary for use in the Perkins Loan, Supplemental Educational Opportunity Grant, and College Work-Study programs, whether or not the institution participates in these programs. This change in statute repeals the application of the Stafford loan needs test tables formerly used to determine an EFC.

Restrictions on SLS Eligibility (Section 682.201)

Public Law 100–369 restricts the eligibility of dependent undergraduate students for SLS loans to those students for whom the financial aid administrator determines that "exceptional" circumstances would likely preclude the student's parents from borrowing under the PLUS program to cover the expected family contribution and that the student's family is otherwise unable to provide the expected family contribution. Documentation of the school's determination of exceptional circumstances must be retained in the school's files. These "exceptional" circumstances may include, but are not limited to, a serious illness in the family, sudden loss of employment of a family's principal wage earner, or the family's dependence on fixed incomes or public assistance. The Secretary particularly solicits comments on whether a regulatory definition of "exceptional circumstances" is feasible and, if so, what the definition should include.

Determination of Pell Grant and Stafford Loan Eligibility for SLS Applicants (Section 682.201)

Public Law 100–369 requires all undergraduate SLS applicants to have a determination of eligibility or ineligibility for a Pell Grant made for the enrollment period for which the applicant wishes to borrow, and if determined to be eligible, have filed an application for a Pell Grant prior to the certification of an SLS application for a borrower. Further, Public Law 100–369 requires all SLS applicants to also receive a determination of eligibility or ineligibility for a Stafford loan, and, if determined to be eligible, have applied for a Stafford loan prior to certification of an SLS application for the borrower.

Determination of SLS Loan Amounts (Section 682.201)

Public Law 100–369 requires the amount of an SLS applicant's Stafford Loan eligibility and other financial aid to be subtracted from the student's cost of attendance in determining the student's SLS loan amount.

Interest Rates (Section 682.202)

The 1986 Amendments changed the Stafford loan interest rate for new borrowers who obtain loans made for periods of enrollment beginning on or after July 1, 1988. The interest rate for these borrowers is 8 percent through the fourth year of repayment, and 10 percent thereafter.

The 1986 Amendments also established a variable interest rate for SLS and PLUS loans made for a period of enrollment beginning on or after July 1, 1987. The Technical Amendments changed this provision to apply the variable interest rate for the PLUS and SLS programs to loans for which the first disbursement is made on or after July 1, 1987. The variable rate is established annually on June 1, and for any July 1 through June 30 period, equals the bond equivalent rate of 52-week Treasury Bills auctioned at the final auction held prior to June 1, plus 3.25 percent.

Under the 1986 Amendments, a borrower may refinance prior fixed rate SLS and PLUS loans to secure a variable interest rate.

New Loan Limits (Section 682.204)

The 1986 Amendments increased the annual Stafford Loan limits. Under the Act, an undergraduate student attending on at least a half-time basis for periods of enrollment beginning on or after January 1, 1987, who has not successfully completed the first or second year of an undergraduate program, may borrow up to $2,625 per academic year. A student who has successfully completed the first and second year of an undergraduate program may borrow up to $4,000 per academic year. Graduate and professional students may borrow up to $7,500 per academic year. A student may borrow an aggregate maximum of $17,250 for undergraduate study and $54,750 for graduate and professional study, including undergraduate borrowing.

PLUS borrowing limits were also increased from $3,000 to $4,000 for each eligible student, with an aggregate loan maximum of $20,000 per eligible student. SLS loan limits are the same as PLUS limits. SLS limits do not include amounts borrowed under the Stafford Loan Program or amounts borrowed by parents under the PLUS Program.

Multiple Disbursement of SLS Loans (Section 682.207)

Public Law 100–369 requires SLS loans to be multiply disbursed in the same manner as Stafford Loans.

The 15-year Repayment Rule (Section 682.209)

The 1986 Amendments eliminated the requirement that loans insured under guarantee agency program must be repaid within 15 years from the date the promissory note was signed. Although COBRA eliminated this requirement for all new Federal Insured Student Loan (FISL) Program loans made on or after the effective date of COBRA, the Secretary plans to waive any liability that may be incurred on other FISL loans by borrowers or lenders for violations of the 15-year repayment rule.

Refinancing of SLS and PLUS Loans (Section 682.209)

The 1986 Amendments made refinancing options available to SLS, PLUS student, and PLUS parent borrowers to secure a variable interest rate on an outstanding fixed-rate SLS or PLUS loan, or to discharge a previous loan held by the original lender who denies the borrower the option of refinancing to secure a variable interest rate. That statute also provides borrowers with the option of a combined repayment schedule of SLS and PLUS loans held by a lender.

New Deferment Provisions (Section 682.210)

The 1986 Amendments include new deferment provisions for Stafford, SLS, and PLUS loan borrowers. The Technical Amendments extended those provisions to include all parent PLUS borrowers. The majority of these provisions apply to a borrower who, on the date the promissory note is signed, has no outstanding loan balance. Public Law 100–369 further amended provisions governing internship deferments for borrowers completing internships or residencies at institutions of higher education, hospitals, or health care facilities.

Forbearance (Section 682.211)

The proposed regulations would allow for forbearance after default, as permitted by the 1986 Amendments, provided the terms of the forbearance agreement include a new repayment schedule. Forbearance in this instance must be consistent with the minimum annual payment requirements and the ten-year maximum repayment period.

Prohibited Inducements (Sections 682.212 and 682.401)

Under the 1986 Amendments, guarantee agencies and lenders are prohibited from offering inducements to secure loan applicants, and lenders are prohibited from offering loans as an inducement for the purchase of insurance.

Payment of Special Allowance on GSL Loans Made With Tax-Exempt Funds (Sections 682.302 and 682.800)

Under the 1986 Amendments, the special allowance rate was reduced by one quarter of one percent, except for loans made with tax-exempt funds and certain loans made by Maine Educational Loan Marketing Corporation and South Carolina Student Loan Corporation.

The 1986 amendments made two changes to the requirements regarding the Plan for Doing Business that must be adopted by student loan authorities using tax-exempt financing: First, the Governor of the State in which the authority operates, rather than the Secretary, approves the Plan of the authority, in consultation with the principal guaranty agency in that State; second, the requirement that the Plan include a provision that the authority will not issue obligations in excess of the reasonable needs for student loan credit in its service area, was removed.

Basic Program Agreement (Section 682.401)

The 1986 Amendments abolished the Supplemental Reinsurance Agreement and incorporated the provisions of the Supplemental Reinsurance Agreement into the Basic (section 428(b)) Agreement.

Insurance Premiums (Section 682.401)

Under the 1986 Amendments, the maximum insurance premium an agency may charge on a loan was changed from 1 percent per year of the unpaid principal amount of the loan to 3 percent of the principal amount of the loan. The insurance premium must be deducted proportionately from each disbursement of a multiply-disbursed loan.

Reinsurance Fee (Section 682.404)

The 1986 Amendments require a guarantee agency to pay the Secretary, during each fiscal year, a reinsurance fee equal to 0.25 percent of the total principal amount of loans guaranteed by that agency during that fiscal year, or 0.5 percent for any fiscal year during which the guarantee agency reaches the five percent reinsurance "trigger" (*i.e.*, if reinsurance claims paid during a fiscal year exceed five percent of the loans in repayment at the end of the preceding fiscal year as defined in section 428(c)(1)(C) of the Act). For an agency that reaches the five percent insurance trigger, the 0.5 percent reinsurance fee is charged on the agency's total loan guarantees for that fiscal year including those guarantees already covered at the lower rate. The fee is charged on all GSL loans except Consolidation loans and refinanced PLUS and SLS loans.

Administrative Wage Garnishment (Section 682.404)

The Technical Amendments clarified previous legislation that allowed a guarantee agency to retain 35 percent of the amount recovered from a borrower in a State that enacts a qualifying garnishment law by requiring the State to enforce the law in the collection of a GSL loan. A guarantee agency must qualify for this higher retention amount on a loan-by-loan basis, but the agency should be eligible to retain the full 35% of subsequent recoveries on that loan made after it sends a notice to a borrower who has not made payments for at least 90 days, formally warning the borrower of the commencement of a wage garnishment proceeding.

Administrative Fee for Supplemental Preclaims Assistance (Section 682.404)

The Technical Amendments permit the holder of a loan to charge the cost of supplemental preclaims assistance to a borrower who begins or resumes payment, as a result of that assistance, up to 2 percent of the outstanding principal, or $100, whichever is less.

[Reserved] (Section 682.405)

The proposed regulations would delete current § 685.405—Supplemental Federal Reinsurance, since the 1986 amendments incorporated the provisions of the Supplemental Reinsurance agreement with guarantee agencies into the Basic Agreement (section 682.401).

Circumstances Under Which Loans may be Guaranteed by the Secretary (Section 682.500)

Under the 1986 Amendments, the Secretary may guarantee a Consolidation loan under certain conditions, if guarantee coverage has been denied by a guarantee agency.

A School That Makes or Originates Loans (Section 682.601)

The 1986 Amendments repealed the restrictions regarding the origination of loans by school lenders, thereby making school lenders subject to the same loan origination requirements as other eligible lenders. The Technical Amendments then reinstated the prohibitions against a school making loans to more than 50 percent of the undergraduate students enrolled at the school, or making a loan, other than to a graduate or professional student, except to a borrower who has previously received a GSL programs loan from the school, or has been denied a loan by an eligible lender other than a school lender. In addition, to be eligible to make or originate loans, the school must employ at least one person whose full-time responsibilities are limited to the administration of the financial aid programs, and the school may not be a correspondence school. However, schools are no longer required to enter into a separate agreement with the Secretary for the purpose of originating loans.

Student Address Change (Section 682.610)

Under the 1986 Amendments, a school must promptly notify the holder of a loan when it discovers that a student has changed his or her permanent address.

Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guarantee Agencies Against Lenders and Schools (Sections 682.712 and 682.713)

Under the 1986 Amendments, the Secretary may disqualify a lender or school from the GSL programs on the basis of limitation, suspension or termination action taken by a guarantee agency.

Major Regulatory Changes

In addition to the regulatory changes needed to incorporate the statutory revisions listed above, the Secretary proposes the following major changes to the regulations. The sections of the proposed regulations affected by the changes are indicated in parentheses.

Capitalization (Section 682.202)

The proposed regulations would permit lenders to capitalize accrued interest with the written consent of the borrower during the in-school period or grace period, even if capitalization has not been authorized by the promissory note. This provision is intended to assist those borrowers who might otherwise default on their entire loans due solely to an inability to make interest payments during those periods.

Security, Endorsement, and Co-makers (Section 682.206)

The proposed regulation would provide that a guarantee agency may not implement a policy to require a lender to obtain security or endorsement for a Stafford or SLS loan. These programs are intended to provide the opportunity to obtain credit to finance education for those students who are unable to obtain credit elsewhere.

Prepayment (Section 682.209)

The proposed regulations would permit a lender to apply prepayment amounts that equal three or more full payments to future installments, in the absence of a contrary indication from the borrower. The lender would have to notify the borrower that the payment has been so applied and also contact the borrower no less frequently than quarterly to remind the borrower of the repayment obligation. This change would recognize that a borrower who makes a prepayment in this large an amount typically intends that the prepayment be applied to future installments.

Deferments (Section 682.210)

For the deferment for volunteers serving in tax-exempt organizations, the Secretary would require that volunteers must earn a wage that does not equal or exceed the Federal minimum wage. This would be a change from existing regulations that restrict these borrowers to compensation equivalent to that received by full-time ACTION and VISTA volunteers.

Forbearance (Section 682.211)

The proposed regulations reflect the provision in the 1986 Amendments that permits forbearance after default, and would require that the agreement for a post-default forbearance include a new repayment schedule.

The proposed regulations would also permit the lender to grant forbearance to a borrower, upon notice to the borrower and subject to certain limits, when the lender determines that a previously granted deferment period is invalid. Further, the proposed regulations would permit the lender to grant forbearance to a delinquent borrower for the period from the first day of delinquency to the commencement date of a deferment. These provisions would assist in the handling of delinquencies that result when a deferment is invalidated or when a borrower who is delinquent at the time he or she applies for a deferment leaves deferment status.

Defenses to a Borrower's Liability to Repay a GSL Loan (Section 682.215)

The Secretary is proposing to codify his longstanding view regarding the defenses to a borrower's liability for repayment of a GSL loan. Generally, a student who borrows under the GSL Program from a third-party lender remains legally responsible for repaying the loan, even if the school fails to provide the student with the services purchased by the student. However, if an origination relationship exists between the lender and the school, the school's failure to deliver those services provides the student with a defense against the obligation to repay the lender all or part of the loan, absent a disclaimer by the lender as discussed below.

The Secretary solicits comments on how the definition of "origination" could be more precisely crafted to reflect the common law of agency, and to give a lender better notice of the circumstances under which the enforceability of a loan it holds may be jeopardized by a school's failure to comply with its educational responsibilities.

The proposed regulation would clarify that the Secretary's imposition of a requirement on a school, lender, or guarantee agency under these regulations does not mean that a violation of that requirement constitutes a defense to the borrower's obligation to repay a GSL loan.

The proposed regulations would also allow a lender that is not a corporate affiliate of a school to protect itself from defenses otherwise created by a school's failure to comply with its educational obligations by formally disclaiming responsibility for these matters to the borrower at the time of disbursement and commencement of repayment of the loan.

Members of Religious Orders (Section 682.301)

Interest benefits are paid on behalf of borrowers who have shown need as determined under an approved need analysis system. The Secretary believes that, as in the other title IV programs, members of a religious order, who are pursuing a course of study at a school and are supported by the order or are required to forego monetary compensation, do not have need for interest benefits on a Stafford loan. Therefore, the proposed regulations provide that these individuals are not eligible for interest benefits.

Termination of Special Allowance Payments (Section 682.302)

The Secretary proposes to terminate a lender's right to receive special allowance payments on a loan if it fails to file a default claim thereon, together with all required documentation, by the 45th day after default.

Annual Loan Limits (Section 682.401)

The Secretary proposes in this section to establish a minimum time period that an agency may use in applying the annual maximum loan amounts. The Secretary believes this is needed to restore the integrity of the maximum loan amount rules. Those rules are currently being circumvented by some schools that define their periods of academic progression to be as short as three months in order to qualify their students for three loans, each for the annual maximum amount, for a nine-month period of enrollment.

Student Status Confirmation Report (Section 682.401)

The Secretary proposes that guarantee agencies be required to use a standardized format approved by the Secretary for monitoring the enrollment status of student borrowers. The use of the format and data elements included in appendix B is considered to be approved for this purpose. The Secretary believes that the use of a standardized format by all guarantee agencies will enhance the development of electronic data transmission, and create uniformity throughout the

administration of the guarantee agency programs. Additionally, a national reporting system will reduce the administrative burden encountered by lenders and financial aid administrators now faced with a variety of reporting systems.

The Secretary is particularly interested in receiving public comment as to which loans and information should be covered by a guarantee agency's student status confirmation report system.

The Secretary is also considering whether to require guarantee agencies to use standardized loan applications and/or promissory notes. The Secretary believes such uniformity would significantly accelerate application processing and reduce the administrative burden on lenders, and is soliciting public comment on this issue.

The Secretary wishes to minimize the burden on students and their families of applying for loan assistance under the GSL programs. To this end, § 682.401(d) provides that the GSL programs loan application required under section 483(a)(1) of the Act may not ask for information already provided by students and their parents on the common financial aid form also required by section 483(a)(1), other than basic identifiers such as name, address, and Social Security number.

The Secretary understands that this restriction may force lenders and guarantors to use other means to secure information needed to process the student's loan application. The Secretary therefore solicits comment on both (1) possible alternative methods for securing this information and (2) the appropriate Federal role, if any, in the orderly development of these alternatives.

Equitable Share of Borrower Payments (Section 682.404)

The Secretary proposes to reduce from 60 days to 30 days the number of days a guarantee agency has to pay the Secretary's equitable share of borrower payments to the Secretary. The Secretary believes that 30 days is a sufficient period of time for agencies to return these amounts. In addition, a 30-day period is consistent with the Department's own obligations. The Act requires the Secretary to authorize payments for interest and special allowance obligations within 30 days. More generally, the Prompt Payment Act requires Federal agencies to pay bills and claims within 30 days.

Application of Borrower Payments (Section 682.404)

In response to a recent recommendation of the General Accounting Office, proposed § 682.404 would permit a guarantee agency to apply borrower payments it receives on a defaulted loan first to defray its collection costs, rather than to accrued interest and principal as required by current regulation.

Conditions of Reinsurance Coverage (Section 682.406)

The Secretary proposes to reduce the period of time in which a guarantee agency must pay a claim to the lender, in order for all interest accruing on the loan thereafter to be reinsurable by the Secretary. The Secretary believes that 45 days provides ample time for this process.

Program Reviews of Secondary Markets (Section 682.410)

The Secretary proposes to require each guarantee agency to perform a biennial program review of each State or private nonprofit secondary market located in its State, using statistically valid techniques to calculate any liabilities that may be owed to the Secretary. Because of its status as a Federal Consolidation Program lender, SLMA would be reviewed by the Secretary, and, at the option of each guarantee agency, by the agency.

Collection Efforts on Defaulted Loans (Section 682.410)

Current § 682.410(b)(6) requires guarantee agencies to perform specific due diligence steps to collect defaulted loans. The Secretary recognizes that there may be other effective methods available to guarantee agencies to maximize recoveries on defaulted loans, most notably the use of collection contractors. For this reason, the proposed regulations substantially restructure the rules governing agencies' collection efforts to facilitate the use of some of these additional methods. The Secretary specifically solicits comments on the extension of time for a guarantee agency to litigate against a defaulted borrower that was published as a final rule on August 27, 1990 and is included in this NPRM at § 682.410(b)(6)(vii).

The proposed regulations would provide an agency with two alternative procedures for collecting a loan. Under the first alternative, the agency would follow essentially the same procedures as those required under current regulations. The provisions setting forth these procedures have been revised to replace most of the 45-day time periods in current rules with a 60-day "gap" standard. The Secretary intends that this approach result in an agency engaging in a collection effort at least as intensive as that required by current regulations, while reducing the opportunities for an agency to commit violations that do not affect loan collectibility.

Under the second alternative procedure, an agency would be subject to less stringent requirements during the initial 180 days of collection, but would be required thereafter to refer the debt to a contingency fee-based collection contractor for further collection. The agency would be required to retain at least two contractors, periodically compare the performance of the contractors, and adjust the volume of debts referred to each contractor so as to reward the best performers with increased volume. The Secretary believes that the use of commercial collection contractors, working in a competitive environment with incentives and sanctions based on recovery results, will be an effective way to maximize the collection of defaulted loans.

The proposed second alternative procedure allows the guarantee agency a period of up to six (6) months after claim payment, or the period required for completion of the IRS tax refund offset "cycle," whichever is greater, to effect collection on a loan. If, at the end of that period, the guarantee agency has been unsuccessful in securing repayment from the borrower, the guarantee agency would refer the debt to a collection contractor. The guarantee agency could also elect to refer the debt to the collection contractor at any earlier time. If the collection contractor is unable to secure payment, the agency must initiate litigation against the borrower no later than 90 days after the loan is returned by the contractor, or 365 days after referral to the contractor, whichever occurs first. The proposed regulations assume a 90-day window for a guarantee agency to initiate litigation after a loan is returned from a collection firm. By requiring litigation within 365 days after referral, the effect is to limit collection contractors to 275 days (365 minus 90) for collecting a loan.

The Secretary would require a guarantee agency using the second alternative procedure to contract with a minimum of two (2) collection contractors who would then compete for the right to receive a larger volume of debts from the agency on the basis of performance. The Secretary expects that guarantee agencies will select collection contractors using sound and prudent business practices, including selecting

contractors with successful student loan experience, checking references, and requiring bonding and financial stability. Contractor performance should be evaluated solely on objective factors established by the guarantee agency as indicative of successful collection efforts, and the volume of referrals to each contractor adjusted accordingly. For example, a guarantee agency using three collection contractors could refer 50% of total placements to the contractor with the best performance record in the prior year, 30% to the second-best performer, and 20% to the poorest performer.

Due Diligence by Lenders in the Collection of Guarantee Agency Loans (Section 682.411)

This section of the regulations, published in November 1986, established minimum due diligence procedures that a lender must follow in order for a guarantee agency to receive reinsurance on a loan. The proposed revision of this section would replace most of the 30-day time periods in current regulations with a 45-day "gap" standard. This standard is one with which many lenders are familiar in connection with their application of the "cure" procedures explained in the Department's Bulletin 88–G–138. The Secretary intends that this approach result in a lender engaging in collection efforts at least as intensive as that required by current regulations, while reducing the opportunities for a lender to commit violations that do not affect loan collectibility.

The Secretary also proposes to reduce the current 30-day time period in which the lender must send the first collection notice to a borrower to require that the first notice be sent no later than the 10th day of delinquency. This change is based on standards contained in the Collections Handbook, published by the American Banker's Association, and the Secretary's understanding of current consumer credit practice.

The Secretary proposes to clarify that telephone contacts at a time when the lender knows the borrower will not be at the number called are not considered "diligent efforts".

Default Reduction Initiative (Sections 682.603–682.606)

The Default Reduction Initiative final regulations and notice of proposed rulemaking have made or proposed a number of changes to part 682 and to the Student Assistance General Provisions Regulations (34 CFR part 668) to implement the Secretary's Default Reduction Initiative. The provisions of those documents are repeated in these proposed regulations. When final regulations based on this NPRM are published, they will include the language from final regulations based on the default reduction NPRM which will be published separately. The Secretary is not soliciting comments on the regulations included in the June 5, 1989 final rule or the proposed regulations also published on that date in connection with this regulation.

Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax exempt Obligations (Sections 682.800–682.840)

These sections of the regulations have been revised to delete provisions no longer needed and to incorporate some of those sections under former § 682.302.

Policy for Waiving the Secretary's Rights to Recover or Refuse to Pay Benefits on Guaranteed Student Loans Involving Due Diligence or Timely Filing Violations (Appendix D)

A bulletin (88–G–138) dated March 11, 1988 was sent to Guarantee Agency Directors setting forth the Secretary's policy for waiving the Secretary's rights to recover, or refuse to pay, interest benefits, special allowance, and reinsurance on GSL loans involving lenders' violations of Federal regulations pertaining to due diligence in collection or timely filing of claims. That bulletin, with technical corrections, is published in appendix D.

Other Regulatory Changes

The following is a subpart-by-subpart summary of other proposed changes to specific provisions of the regulations. In light of past experience, the Secretary also solicits comments on the effective date for new proposed requirements that are not statutorily mandated.

Subpart A—Purpose and Scope

This subpart would be revised to describe the SLS Program and the Consolidation Program, and to reflect the revised scope of the PLUS Program. SLS loans are available to eligible independent undergraduate students and all graduate or professional students who attend an eligible institution on at least a half-time basis. Dependent undergraduate students may also be eligible if the institution's financial aid administrator determines that exceptional circumstances will likely preclude the student's parents from borrowing under the PLUS program and the student's family will be unable to provide its expected family contribution. Consolidation loans are available to eligible borrowers for the purpose of consolidating eligible student loans made under the Stafford, SLS, PLUS, Perkins, and HPSL programs. PLUS loans made to parent borrowers may not be consolidated.

Subpart B—General Provisions

Section 682.200 Definitions.

The Secretary proposes to revise several definitions in this section:

National of the United States—The regulation would delete this definition since it is covered in § S668.2 ("U.S. citizen or national").

Estimated financial assistance—The regulations would be revised to provide that, in determining estimated financial assistance for a Stafford Loan or SLS borrower, or for the student for whom a parent borrows under the PLUS program, a school would not count Perkins Loan or College Work-Study (CWS) Program funds for which the borrower would qualify but that the borrower refuses, if the student provides a valid reason for not accepting those funds. For example, a student's need to care for a dependent or a student's heavy academic courseload or academic difficulties may not permit the student to accept a CWS job. In the case of a Perkins Loan, a student may wish to reject a small Perkins Loan that reduces the student's Stafford Loan eligibility rather than incur two sources of indebtedness and increase the possibility of default upon repayment.

Lender—The proposed regulations would replace the current provision that prohibits a lender from making loans that total over one-half of the lender's consumer credit volume, with a standard that is based on net income realized by the lender from GSL program activities. This change is proposed because the former approach fails to recognize that a lender's loan origination volume can be large even though its GSL activities generate only a small portion of the bank's consumer credit income.

This section would also be revised to reflect the statutory rule that renders ineligible any lender who offers inducements to secure GSL loan applicants, conducts certain unsolicited mailings of student loan application forms, or engages in fraudulent or misleading advertising.

The proposed regulations would also reflect the addition to part 682 of the following definitions: Act, Authority, Federal GSL programs and Temporarily totally disabled.

Section 682.201 Eligible Borrowers

Eligible student—Under the 1986 Amendments, student eligibility under

the Stafford, SLS, and PLUS programs has been limited for periods of enrollment beginning on or after July 1, 1987. To be eligible, a student must be enrolled or accepted for enrollment, on at least a half-time basis, in a degree or certificate program. A student may be enrolled for one period not to exceed 12 consecutive months in a course of study determined by the school to be necessary for the student to enroll in a degree or certificate program. A student may not be simultaneously enrolled in either an elementary or secondary school and be eligible for GSL program loans. The definition of an eligible student borrower has been amended further by Public Law 100-369 to allow a student to be eligible for a loan provided the otherwise eligible student is enrolled or accepted for enrollment at an eligible institution in a program which leads to a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State.

The proposed regulation would provide that in order for a borrower to be eligible to borrow a GSL loan that the borrower must reaffirm any GSL debt that was previously cancelled due to the borrower's total and permanent disability or discharged in bankruptcy. Such a borrower would also be required to obtain a physician's certification that his or her condition has improved and that he or she has the ability to engage in substantial gainful activity or attend school. Further, the borrower would be required to sign a statement that he or she is aware that the loan could not be cancelled in the future on the basis of any present impairment unless that condition substantially deteriorates to the extent that the definition of total and permanent disability is met. The Secretary believes that while such borrowers should not be denied loan eligibility because of prior debts, that in order to obtain further GSL loans, the borrower must be willing to repay the current loan and prior loans still owed.

Incarcerated student—The proposed regulations would restrict GSL loan eligibility to only those incarcerated students who are expected to be unconditionally released by the end of the grace period, as calculated based on the student's anticipated graduation date at the time the loan is made. The Secretary believes that a lender that makes a loan to an incarcerated student who is not expected to be unconditionally released at or before the time the borrower enters repayment has not exercised due diligence in making the loan, because the borrower will, in all likelihood, not be able to repay the loan.

Consolidation program—The proposed regulations reflect the statutory change permitting the making of Consolidation loans. To be eligible, a borrower must (1) Have an outstanding indebtedness of not less than $5,000 on loans eligible for consolidation, and (2) be in repayment, or in a grace period preceding repayment and not be delinquent by more than 90 days, on each of the loans to be consolidated.

PLUS program—The proposed regulations would reflect the statutory change limiting PLUS loans to parent borrowers. Prior to the 1986 Amendments, parents were permitted to borrow under the PLUS program on behalf of an eligible dependent undergraduate, and an independent undergraduate, graduate, or professional student could borrow on his or her own behalf. Effective October 17, 1986, the Act limits PLUS loan eligibility to a parent borrowing on behalf of a dependent undergraduate, graduate, or professional student.

SLS program—The proposed regulations would reflect that, as part of the 1986 Amendments, the SLS Program was made available to independent undergraduate, and graduate and professional students and that Public Law 100-369 extended eligibility for SLS loans, on the basis of documented exceptional circumstances, to dependent undergraduate students.

Section 682.202 Permissible Charges by Lenders to Borrowers

Interest rates—The proposed regulations reflect the following changes to interest rate provisions made by the 1986 Amendments and the Technical Amendments:

(1) The interest rate for Stafford loan borrowers who obtain loans to cover periods of enrollment beginning on or after July 1, 1988, is eight percent until four years after the repayment period begins, and ten percent thereafter.

(2) For PLUS and SLS loans disbursed before July 1, 1987, the interest rate is twelve percent. The applicable rate for PLUS and SLS loans disbursed on or after July 1, 1987, and for PLUS and SLS refinancing loans obtained to secure a variable rate, is a variable rate not to exceed 12 percent. (3) The interest rate on Consolidation loans is the greater of (a) the weighted average of the interest rates on the loans being consolidated, rounded to the nearest whole percent, or (b) nine percent.

Administrative charge for a refinanced SLS or PLUS loan—The proposed regulations would provide that a lender may charge a borrower up to $100 as a fee for the administrative costs of making a refinanced SLS or PLUS loan to secure a variable interest rate. The fee may be assessed only once per borrower.

Capitalization—The proposed regulations would provide that accrued interest may be capitalized by the lender during periods for which payments of principal are deferred on PLUS and SLS loans, if agreed to by the borrower and the lender. The accrued interest may be paid monthly or quarterly during periods of deferment, or capitalized on a quarterly basis by the lender.

The proposed regulations would permit lenders to capitalize accrued interest quarterly, rather than annually, for interest accruing during the in-school period, grace period, and during an authorized period of deferment and forbearance.

Collection charges—The proposed regulations would revise current regulations to reflect other costs that a lender may charge a borrower in collecting a loan.

Section 682.203 Responsible Parties

The proposed regulations would delete current § 682.203—Statement of Educational Purpose since the provisions of that section now appear in 34 CFR 668.7. Proposed § 682.203 would clarify that a school, lender, or guarantee agency may delegate or contract the performance of functions to a servicing agency, but that the lender, school or guarantee agency would still be held responsible for complying with the Act and regulations. This provision would also apply to a lender that holds a loan in its capacity as a trustee.

Section 682.204 Maximum Loan Amounts

This section would be revised to reflect the increased annual and aggregate Stafford Loan, SLS, and PLUS loan limits discussed above.

Section 682.205 Disclosure Requirements for Lenders

The Secretary is proposing that, as part of the lender disclosure requirements, the lender disclose to the borrower, in a separate statement, that the borrower will generally be required to repay the loan even if the borrower believes that he or she did not receive the quality of education, potential employment, or other services for which the loan was intended. The proposed regulations would also apply this disclosure requirement to any loan made or originated by a school lender.

The proposed regulations would revise current credit bureau reporting requirements for lenders to require that those reports be made to national credit bureaus. This change would recognize that long distance lending is now commonplace in the GSL programs, and that credit bureau reporting on a GSL loan should therefore encompass more than a single State or region of the country.

Section 682.206 Due Diligence in Making a Loan

The proposed regulations provide that prior to disbursement of a Consolidation loan, a lender shall obtain a certification from the current holders of the outstanding loans that those loans comply with the requirements for inclusion in consolidation. The consolidating lender may rely in good faith on these certifications, which the holders must provide within 10 days of a request by the consolidating lender. Under proposed § 682.413, if the certification is inaccurate, the Secretary may require the holder of the paid-off loan to repay interest benefits, special allowance, and reinsurance paid on Consolidation loan amounts attributed to the paid-off loan.

The proposed regulations would also prohibit a guarantee agency from requiring security or endorsement for a Stafford or SLS loan. In the Secretary's view, a major purpose of the Stafford and SLS programs is to provide educational credit for those who cannot obtain it elsewhere. This purpose is frustrated if only those borrowers who can obtain a co-signer or endorser are permitted to borrow. However, this proposal would not preclude a lender from obtaining security or endorsement on a GSL loan if it so chooses.

Section 682.207 Due Diligence in Disbursing a Loan

The Secretary proposes to revise the regulations governing loan disbursements to reflect new statutory requirements for multiple-disbursed loans. In addition, a proposed change would provide for the direct delivery of loan funds to students attending foreign schools, as permitted by statute. The Secretary also proposes to establish a standardized late disbursement policy to be used by all lenders, under which, among other things, a lender would be allowed to make a disbursement on a loan up to 60 days after the borrower leaves school without a case-by-case approval by the guarantee agency, if the disbursement is to cover outstanding institutional charges actually incurred prior to the date the borrower left school.

Section 682.208 Due Diligence in Servicing a Loan

The Secretary proposes to revise the regulations to reflect provisions of the 1986 Amendments governing the types of information that a lender must report to a credit bureau. Specifically, that information would include the total amount and remaining balance of the borrower's loan, and information concerning the date of default and collection of the loan, such as the repayment status of a defaulted loan for which the Secretary or guarantee agency has paid a claim and the date of cancellation of the note.

The Secretary also proposes to allow a guarantee agency, lender, or subsequent holder 90 days to report the required loan information to credit bureaus, to ensure that those reports are made within a reasonable time.

The Secretary proposes to amend § 682.208 to require the assignee of any loan to notify the borrower, in writing, of the assignment, if the transaction results in a change in the party to whom the borrower must make payments. A similar requirement has been in effect in the FISL Program since 1970. See 34 CFR 682.508(b)(2)(ii).

Section 682.209 Repayment of a Loan

Several proposed changes to §§ 682.208, 682.209, and 682.211 would encourage the use of graduated repayment schedules to assist borrowers in repaying their loans for the purpose of preventing defaults. As proposed, a lender would be encouraged to establish an original, or, with the consent of the borrower, a revised repayment schedule, that provides for graduated or income-sensitive installment payments for a period covering not more than the first 5 years of repayment, provided that no installment is scheduled to be more than three times greater than any other installment, and the amount scheduled to be repaid complies with the maximum repayment period and minimum annual payment prescribed by § 682.209(c). The Secretary proposes that the borrower's graduated repayment schedule be required to provide for level payments to begin not later than the sixth year of repayment.

Section 682.210 Deferment

New deferment provisions included in the 1986 Amendments and the Technical Amendments are implemented by the proposed regulations.

The proposed regulations would clarify that for purposes of obtaining a student deferment, a borrower is eligible if he or she is attending an institution that meets the definition of eligible institution found in section 435 of the Act. This change reflects the Secretary's current view that students are eligible for deferment as long as they are attending schools that are eligible to participate in the HEA title IV programs, regardless of whether those schools are actually participating.

Under the parental leave deferment involving care for an adopted child, deferment would be allowed for the borrower while caring for the child following the placement of the child through the adoption process. For the deferment for care of pre-school age children of a working mother, pre-school age children would be defined as children who have not yet entered first grade.

Changes would also be made to other existing deferments. The maximum unemployment deferment period was extended by statute from 12 to 24 months. The proposed regulations would also extend the period covered by a single certification of unemployment from three to six months. The Secretary proposes to require that to qualify for an unemployment deferment, a borrower may not unreasonably limit his or her search for employment by not seeking or accepting employment in kinds of positions or at salary and responsibility levels for which the borrower may feel overly qualified.

The Secretary proposes to codify his view on borrower eligibility for deferment for active duty status in the U.S. Armed Forces by specifying in the regulations that a member of the National Guard or the reserves does not qualify for this deferment, unless the borrower is serving on a full-time basis in active duty status for at least one year, as evidenced by official military orders.

The Secretary would also specify what constitutes sufficient documentation to establish eligibility for each deferment, and, in some instances, the frequency of recertification required to continue that eligibility.

The proposed regulations would provide that a deferment may have retroactive effect from the date the lender receives a substantially complete deferment request. A request would not be considered substantially complete if the documentation does not contain the signature of the official identified as the authorized certifying official. If the lender grants a deferment to a borrower based upon substantially complete documentation that nevertheless does not include some of the required information, the proposed regulations would require the lender to diligently

attempt to obtain the missing information from the borrower.

The proposed regulations would treat a certified SLS application as sufficient documentation for a student deferment for an SLS loan up through the student's anticipated graduation date indicated on the application, and for a Stafford loan guaranteed by a guarantee agency whose student status confirmation report system includes a mechanism for the school's confirmation of the borrowers' student deferment status.

Section 682.212 Prohibited Transactions

The Secretary intends to clarify that a loan sold or otherwise transferred at discount by a school may only be done on a case-by-case basis with the Secretary's explicit approval.

Section 682.214 Compliance With Equal Credit Opportunity Requirements

The Secretary proposes to revise the regulations by including a provision requiring a lender making a Stafford loan to comply with the equal credit opportunity requirement of regulation B, 12 CFR part 202, as applicable to credit assistance programs authorized by law for the benefit of an economically disadvantaged class of persons.

Subpart C—Federal Payment of Interest and Special Allowance

These sections have been renumbered to accommodate changes.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford Loans

A substantial amount of this section would be deleted, because, under the 1986 Amendments, need, and therefore eligibility for interest benefits, is determined through a need analysis system approved for use in the campus-based programs. Need must be determined for every applicant; therefore, the $30,000 adjusted gross income provision would be eliminated.

In addition, this subpart would be revised to reflect the Secretary's position described above with respect to interest benefits on Stafford loans made to members of a religious order.

Section 682.302 Payment of Special Allowance on GSL Loans

Proposed § 682.302(e) would be revised to refer to § 682.800, and those provisions governing special allowance payments for loans financed by tax-exempt obligations would be incorporated in § 682.800.

Section 682.303 [Reserved]

The proposed regulation would move the provisions of § 682.303 *Prohibition against discrimination as a condition for receiving special allowance payments* to § 682.840.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance

The proposed regulations would provide that the Secretary does not consider a request for interest benefits and special allowance to be accurate if the request is not provided on a form prescribed by the Secretary, does not contain all the information required by the Secretary, or includes conflicting information.

The proposed regulations would require that a lender whose outstanding GSL loan portfolio during any fiscal year exceeds $10 million must have an annual independent financial and compliance audit of its billings for interest benefits and special allowance payments. The Secretary believes that an annual audit of such large volume lenders would reduce lender billing errors, and thus reduce the cost to the Federal Government of these payments. This change is being proposed in response to a recommendation by the General Accounting Office (GAO Report HRD 88-72).

Subpart D—Guarantee Agency Programs

Section 682.401 Basic Program Agreement

The Secretary proposes to revise this section to require that a guarantee agency require a borrower to notify the school of any change in the borrower's employer or the employer's address, to assist the holder in locating the borrower if he or she "skips", and to facilitate wage garnishment in the event of default.

Administrative fee for Consolidation loans. The Secretary proposes to limit to $50 the fee a guarantee agency may charge a lender to defray the agency's administrative costs incurred in guaranteeing a Consolidation loan.

Section 682.402 Death, Disability, and Bankruptcy Payments

The Secretary proposes to amend the regulations to address more specifically the treatment of bankruptcy petitions filed under chapters 11 and 12 of the Bankruptcy Code. In addition, a guarantee agency would be provided with the flexibility to establish a time frame, not to exceed 30 days, for lenders to file a bankruptcy claim with the agency. Proposed § 682.402(d)(2) would also expand the forms of documentation a lender may use to determine that a borrower has filed a bankruptcy petition to include other appropriate documents, *e.g.*, written notices from the debtor's attorney, in lieu of the notice of the first meeting of creditors.

The Secretary also proposes to allow a guarantee agency to submit a chapter 13 bankruptcy claim to the Secretary for reimbursement after it has paid the claim to the lender. Guarantee agencies would no longer be required to hold chapter 13 loans until a general order of discharge is entered, which can often occur up to five years after the agency pays the lender on the claim.

The proposed regulations would revise § 682.402(g) regarding the actions required of guarantee agencies in bankruptcy proceedings on loans acquired by the guarantee agencies through payment of bankruptcy claims. The proposed regulations would require the agency in a chapter 7 proceeding, if it determines that repayment would not constitute an undue hardship for the debtor, to determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, and if it does not, to oppose the petition, and to seek a judgment if the borrower has defaulted on the loan.

Payment of death, disability, and bankruptcy claims by the guarantee agency. The Secretary proposes to reduce from 90 to 45 days the period within which a guarantee agency is required to pay a death, disability, and bankruptcy claim to a lender. The proposed regulations would also clarify a guarantee agency's responsibility to diligently oppose the discharge of a GSL loan in bankruptcy.

Section 682.404 Federal Reinsurance Agreement

The Secretary proposes to clarify that an agency is prohibited from double charging the Secretary for costs of supplemental preclaims assistance if those costs have already been reimbursed under the 30% retention of collection.

The Secretary proposes to revise the regulations to implement the provisions of the 1986 Amendments allowing a guarantee agency to transfer a loan guarantee issued by that agency to another guarantee agency with the approval of the receiving agency and the holder of the loan. The quarterly report (ED Form 1130) would be revised to provide for the reporting of these transfers. Therefore, in proposed § 682.404(b)(5), the definition of the "amount of loans in repayment" would be revised to include the original principal amount of all loan guarantee transfers received from other agencies,

and to exclude the original principal of loan guarantees that were transferred to another agency.

The Secretary proposes to revise the regulations to require that, as a condition for receiving a reinsurance payment from the Secretary, a guarantee agency would have to ensure that a lender provided evidence that due diligence was exercised in collecting a loan. The Secretary would consider a detailed collection history and payment history to satisfy this requirement.

The proposed regulation would require a guarantee agency to remit reinsurance fees within the earlier of 90 days after the end of a quarter or within 30 days after receiving written notice from the Secretary that the fees are due. The Secretary believes this requirement would allow the agency ample time to pay those fees, and would clarify the Secretary's ability to charge interest on fees not paid in a timely manner.

Section 682.407 Administrative Cost Allowance for Guarantee Agencies

In the 1986 Amendments, the primary and secondary administrative cost allowances were combined into a single administrative cost allowance. A guarantee agency is now eligible to receive administrative cost allowance payments equal to 1 percent of the principal amount of loans insured during any fiscal year.

Proposed § 682.407(d) would clarify that, for a loan for which an agency transfers its loan guarantee to another guarantee agency, the Secretary pays an administrative cost allowance on the loan only to the original guarantor of the loan.

Section 682.408 Stafford and SLS Loan Disbursement Through an Escrow Agent

The proposed regulations would implement the provision in the Technical Amendments that reduces from 45 days to 21 days the period within which an escrow agent must transmit loan proceeds to the school for delivery to the borrower.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

The Secretary is proposing that guarantee agencies report to the Secretary (1) Each action brought against a lender or school by the agency, an accrediting agency, or a State licensing agency, (2) each action the agency takes affecting the eligibility of the lender or school, and (3) with some exceptions, each court proceeding relating to the enforceability of a GSL loan.

The proposed regulations would require a guarantee agency to charge a borrower reasonable collection charges. The Secretary believes that reasonable costs should equal the amount a guarantee agency would charge for its collection costs, as calculated under 34 CFR 30.60. However, these charges should not exceed the amount the same borrower would be charged for the cost of collection if the loan was held by the Secretary.

The proposed regulations would allow an agency to use the pre-credit bureau reporting notice under § 682.410(b)(5)(ii)(A) as the delinquency notice under § 682.410(b)(6) and (b)(7).

The Secretary proposes to add § 682.410(b)(5)(v) to eliminate bias from the administrative review process in response to a borrower's request for review of the legal enforceability or past due status of the loan(s). Proposed § 682.410(b)(5)(vi) has been added to prescribe the information that a guarantee agency must communicate to the debtor after the agency has paid a default claim.

The proposed regulations also clarify the role of a guarantee agency in the treatment of a special condition claim under proposed § 682.410(b)(8). Specifically, the Secretary proposes certain servicing and collection activities to be performed by a guarantee agency for special condition claims. The Secretary notes that the guarantee agency may not report as a default to a credit bureau a loan on which it acquires through payment of a special condition claim, unless the borrower in fact defaults on the loan.

The Secretary is interested in receiving comments on ways the burden of due diligence procedures might be further reduced, particularly for lenders and guarantee agencies which have low default rates. Any proposed means of relieving this burden should not reduce the access of needy students to the programs.

The Secretary proposes that guarantee agencies be required to review lenders which make or hold in excess of $10 million in student loans in the most recent fiscal year. In addition, the Secretary proposes to allow guarantee agencies to review schools and lenders selected under an alternative selection methodology approved by the Secretary.

The Secretary recognizes concerns recently raised about whether current regulations (§§ 682.410(b) and 682.411) prescribing actions that lenders must take to exercise due diligence in collecting delinquent GSL obligations preempt inconsistent State law.

The Secretary has recently clarified his intention to preempt inconsistent State laws in promulgating these regulatory provisions in 1986. In response to these concerns, these proposed regulations state this preemptive effect in the text of the rule itself: § 682.410(b) (2), (5), (6), and (7) preempt State laws that would prohibit or restrict lenders or guarantee agencies from performing the steps required in those sections. This preemptive regulation is proposed for the same reasons that prompted adoption of the current preemptive regulations, as explained in the recently-published Notice of Interpretation. See 55 FR 40120 (October 1, 1990) (Interpretation): To ensure that holders of GSLP loans in all States can engage in collection activity on these loans that meets a minimum, national standard, and thereby protect the public interest in recovering on these Federally-financed loans.

While the Secretary's interpretation applies only to the preemption of State law by § 682.410(b) (2), (5), (6), (7) and 682.411, the Secretary notes that the Act itself preempts State law affecting performance of other collection activities: By expressly requiring holders of GSLP loans to make reports to credit bureaus, by making borrowers liable for all reasonable collection costs incurred to enforce those loans, and by abrogating the defense of infancy on all GSLP loans, the Act itself preempts any conflicting or inconsistent State law. The Secretary also does not mean to imply that other provisions of these proposed rules would not preempt State laws where those laws created a direct conflict between meeting the requirements.

Section 682.414 Records, Reports, and Inspection Requirements for Guarantee Agency Programs

The proposed regulations would clarify that the guarantee agency must maintain required records in a system that allow ready identification of each loan's current status, and would require that the status be updated at least once every 10 business days.

The Secretary is proposing to revise this section to include specific reference to the annual "tape dump" report now required of agencies, and to note that each agency's "tape dump" must contain accurate data, and be provided in the format prescribed in the Stafford Loan, SLS, and PLUS Tape Dump Procedures (ED Form 1070).

Subpart E—Federal Guaranteed Student Loan Programs

Section 682.505 Insurance Premium

There has been some confusion as to how the calculation of the insurance

premium under § 682.505(c)(1) is consistent with section 429(c) of the Act. The Secretary is providing the following example to resolve this confusion:

Assumptions:
$1000 loan, singly disbursed Disbursement date—September 12 Anticipated graduation date—May 15

	§682.505(c)(1)	Section 429(c)
(i)	= 20 months	(.25)(.01) = .0025
(ii)	$= \frac{(.0025)(1000)}{12} = .2083$	(.0025)(1000) = 2.50
(iii)	= (.2083)(20) = 4.16	$(2.50)(\frac{20}{12}) = 4.16$

Section 682.506 Limitations on Maximum Loan Amounts

The Secretary proposes to revise the regulations to clarify that a FISL loan amount may not exceed the student's cost of attendance, minus the student's estimated financial assistance and expected family contribution.

Assignment of a Loan (§ 682.508). The proposed regulation would delete the current provision regarding risks assumed by the buyer of a FISL loan (§ 682.508(c)). This provision is covered under § 682.513 which references § 682.215.

Subpart F—Requirements, Standards, and Payments for Participating Schools

Section 682.603 Certification by a Participating School in Connection with a Loan

The Secretary proposes to revise § 682.603 to clarify that a school may not certify an application for a loan in excess of the maximum annual loan amount. If a school certifies more than one application for a student for the enrollment period, the total amount certified for those applications cannot exceed the lesser of (1) the student's cost of education, minus the student's estimated financial aid, for the enrollment period, if applicable, or (2) the annual maximum loan amount. In addition, this proposed section would be revised to reflect the statutory requirement that a school must certify loan applications for any eligible lender.

The proposed regulations would prohibit a lender or a school from charging a borrower a fee for processing a loan application.

The proposed regulations would also codify the Secretary's interpretation of current law as allowing a school to certify an application only for (1) An academic year, (2) the length of the program for a program of less than two academic years, or (3) an academic period of less than one academic year (as determined by the school) that is used by the school to bill substantially all of its students for institutional charges.

Section 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

The Secretary proposes to clarify that, for a student attending a foreign school, the loan funds are to be delivered directly to the student rather than to the school.

The Secretary also proposes to revise the current regulation that provides that a school may transmit loan proceeds only to a student who has maintained his or her eligibility, including enrollment on at least a half-time basis at a participating school.

Specifically, the proposed regulations would provide that, if a student notifies the school on or before the first day of classes that he or she will delay attending school for a short period and if the student thereafter commences attendance within 30 days after the date of that notification, the school may consider that student to have maintained eligibility for the loan since the first day of the period of enrollment for which the loan is intended, and may transmit the loan proceeds to the student in accordance with this section.

After a school loses its eligibility to participate in the Title IV programs, either because it no longer meets the statutory requirements for eligibility or because the Secretary has terminated the school's eligibility, that school is no longer a participating school. Under current regulations, the school may not deliver Stafford or SLS loan proceeds to a borrower after the school's loss of eligibility. Under the proposed change, in the case of a loan on which the first disbursement of loan proceeds is delivered to a student or credited to a student's account prior to the school's loss of eligibility, the school could deliver the proceeds of a second or subsequent disbursement on the loan to the borrower even after the school loses its eligibility. This change would enable the borrower to complete the period of enrollment, thus reducing the likelihood of default on the loan.

The Secretary also proposes to clarify that a school may retain the borrower's loan proceeds prior to delivery to the borrower for not more than 45 days.

The Secretary also proposes to revise the regulations to provide for the treatment of an "overaward" of a Stafford or SLS loan. If, after a school certifies a loan application, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which a GSL loan was made that exceeds the student's estimated cost of attendance, or in the case of a Stafford loan subject to payment of interest benefits, the student's financial need, the school would, if no loan proceeds have been credited to the student's account or delivered to the student, immediately return to the lender any proceeds in its possession. The school would also provide the lender with a written statement describing the reason for the return of funds, and setting forth the student's revised cost of attendance or

financial need. If any proceeds of the first disbursement of a multiply-disbursed loan had been credited to the student's account or delivered to the student prior to the school's learning of the excess aid, the school would promptly provide the lender with a written statement setting forth the student's revised cost of attendance or financial need, and directing the lender to reduce the second disbursement by the amount of the excess. If the entire loan proceeds had been credited to the student's account or delivered to the student, the school would attempt to eliminate the excess by reducing the amount of other financial aid, if any, that is to be delivered to the student, or had been or is to be credited to the student's account. If all efforts were made to eliminate the excess proceeds, the school would not be required to take any further action. This approach would be consistent with the treatment of overawards in other title IV programs, as well as produce a savings to the Federal Government by reducing the costs of defaults and interest benefits and special allowance payments to lenders.

The proposed regulations would revise the requirements applicable to a school concerning the treatment of a late disbursement. Unless otherwise informed by the lender, and subject to certain requirements, a school would be allowed to process a borrower's loan proceeds received within 90 days after the borrower ceased to be enrolled on at least a half-time basis, or received within 90 days after the end of the period of enrollment for which the loan was made.

The proposed regulations would eliminate the provision in current § 682.604(c) that requires schools to obtain the student's written authorization for release of funds disbursed by electronic funds transfer, if the initial counseling requirements in § 682.604(f) are provided to the student in-person or by videotape.

Section 682.605 Determining the Date of a Student's Withdrawal

The proposed regulations would revise the withdrawal date for a student enrolled in a program of study by correspondence to be the date of the last lesson submitted.

Section 682.606 Refund Policy

The proposed regulations would establish an amount not to exceed $100 for a reasonable administrative fee that a school may deduct in calculating a *pro rata* refund. This change would eliminate the current "5 percent" rule that can operate to require a school to pay refunds in very small amounts. In those cases, the purpose of the rule (discouraging enrollment of likely dropouts) is not served by requiring payment of a *pro rata* refund.

The proposed regulations would reflect a change in the calculation of a *pro rata* refund to provide that the applicable *pro rata* percentage should be rounded downward to the nearest 10 percent, but to never less than 10 percent. This change represents a technical correction to the June 5, 1989 default reduction regulations published in the September 7, 1989 Federal Register to conform the regulatory language to the original intent.

Section 682.609 Remedial Actions

The proposed regulations would clarify the Secretary's authority to make schools purchase loans that are unenforceable in whole or in part, or that include loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits contrary to the school's certification. Guarantee agencies currently have this authority if provided for in their program regulations.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

Section 682.706 Limitation or Termination Proceedings

The Secretary proposes to amend § 682.706 to provide that a lender's, or a lender's owner's or officer's conviction of, or *nolo contendere* plea or guilty plea to, a crime involving the unlawful acquisition, use, or expenditure of GSL program funds, constitutes automatic grounds for termination of a lender's eligibility to participate in the GSL programs. The fact that a conviction is being appealed would not affect the termination.

Section 682.712 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guarantee Agencies Against Lenders

Section 682.713 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guarantee Agencies Against a School

These sections would be added to reflect the provisions in the 1986 Amendments under which the Secretary reviews limitation, suspension, and termination actions taken by a guarantee agency against a lender or a school in order to determine whether to disqualify the lender or school from participation in the loan guarantee program of all other guarantee agencies. The proposed rule would codify the Secretary's interpretation that the scope of the review of the action by the guarantee agency is appropriately a limited one. The Secretary considers only whether the agency took action on the basis of substantive agency requirements regarding either initial or continuing eligibility that were not more onerous than those in effect for participating in the FISLP as of January 1, 1990, and whether the agency took that action in accordance with procedures that were substantially the same as those that govern the limitation, suspension or termination of a lender or school, as applicable, from the FISLP, as those Federal procedures may be amended from time to time. The Secretary considers whether the substantive and procedural rules actually applied to that school or lender by the agency in the particular adverse action being reviewed met these requirements, and the school or lender may introduce evidence and argument relating only to these two issues. If the Secretary determines that the requirements applied by the agency to disqualify the school or lender were not more onerous than FISLP rules, and the procedure used to adjudicate those determinations was comparable to that available under the FISLP, the Secretary regards the findings as conclusively determined against the school or lender. The school or lender is thereafter precluded from disputing those findings under traditional principles of collateral estoppel.

The proceeding under §§ 682.712 and 682.713 is thus limited to determining whether the conditions on which collateral estoppel rests are established in the case on appeal: Whether the issues were substantially similar to the issues that would be raised in a FISLP limitation, suspension, or termination proceeding, and whether the agency procedures used to adjudicate those issues were comparable to FISLP so as to provide the school or lender a comparable opportunity to dispute the charges and to provide the Secretary a comparable assurance of reliability of the decisionmaking process. Therefore, if both these conditions are met, the school or lender may not relitigate before the Department the substantive merit of the agency charges. If these conditions are not met, the Secretary also does not reexamine the merits of the agency's determination, but simply declines to extend that disqualification to the programs of all other guarantee agencies.

Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

Section 682.801 Provisions Required in Plan

Because of the provisions in the 1986 Amendments transferring to Governors the power to review and approve Plans for Doing Business, and deleting the requirement that a Plan provide for assessing unmet need for student loan credit in the service area of the Authority, substantial revisions have been proposed for subpart H. The changes in law apply only with regard to Plans submitted and obligations issued after November 16, 1986, the effective date of the 1986 Amendments. For purposes of entitlement to special allowance payments on loans acquired with the proceeds of tax-exempt instruments issued before November 16, 1986, Authorities remain subject to the requirements of the current regulations regarding Plan approval by the Secretary and the assessment of unmet need under subpart H. These proposed regulations will revise § 682.800 in subpart H, to differentiate between loans acquired under the new requirements and those subject to the pre-amendment requirements.

Section 682.801 as revised would reflect that, consistent with the legislative intent underlying the transfer of Plan approval authority from the Secretary to the Governors of the respective States, each Governor, rather than the Secretary, is to establish standards for determining whether proposed tax-exempt borrowing exceeds the unmet need for student loan credit in the State. The Secretary believes that the Governor's authority in this area is already implicit in the Governor's power to determine the proper allocation of tax-exempt borrowing under the Internal Revenue Code of 1986. Consistent with Congressional intent, the Secretary proposes to delete §§ 682.810—682.822 in current regulations that provide detailed methods of measuring unmet need. Those regulations would continue to apply to obligations issued prior to the effective date of the 1986 Amendments.

Sections 682.802, 682.803 Submission for Plan Approval—Required Documentation and Amendments to Plan

These sections would be revised to reflect that the Governor, rather than the Secretary, is charged with reviewing and approving or rejecting Plans and amendments to Plans. Because the substantive requirements for Plans remain the same, the revised regulation would continue to require the Authority to submit supporting documentation to accompany its proposed Plan.

Sections 682.804, 682.805 Failure to Comply With Plan and Sanctions for Material Misrepresentation

These sections would continue to effect the requirements of current regulations regarding the consequences of non-compliance with an approved Plan, or misrepresentations made to secure that approval or the approval of the issuance of a particular tax exempt obligation. The revised regulations also would reflect the fact that entitlement to special allowance payments for loans acquired under Plans approved either by a Governor or by the Secretary is conditioned on compliance with the requirements of the Plan and applicable regulations under which the Plan, or a particular obligation, was approved.

Section 682.830 Audit Standards

This section would be revised to require the Authority to provide a copy of the report of its required annual audit to the Governor of the State that approved its Plan as well as to the Department. The audit report must continue to examine and articulate conclusions regarding the authority's compliance with the specific provisions in its Plan. Simple, audited financial statements alone do not meet the requirements of the statute or the regulations, and remain unacceptable as substitutes for the required Plan audit. In addition, the audit must contain an analysis of the operation and expenditures by the Authority using cost categories that permit the Department to conduct its mandated study of the need for tax-exempt financing, and this section would continue to require such analysis according to the commonly-used standards set forth in OMB Circulars A–87 (See 46 FR 9548, January 28, 1981) and A–122 (original publication in the **Federal Register** on July 8, 1980, at 45 FR 46022, with corrections published on March 17, 1981, at 46 FR 17185 and amendments published on April 27, 1984, at 49 FR 18260, with corrections published on May 8, 1984, at 49 FR 19588).

Section 682.840 Prohibition Against Discrimination as a Condition for Receiving Special Allowance Payments

This section would implement the statutory requirement that Authorities may not discriminate in their loan financing policies and practices on the basis set forth in section 438(d)(3) of the Act. The regulation would require the Authority to take into account, and make accommodations to alleviate, the effect of practices of guaranty agencies that affect its service area that would be violations of the statute if implemented by the authority itself. This regulation, and the companion provision of section 438(d)(2)(D) of the Act, would not prevent the Authority from exercising its discretion, consistent with its obligation to use due diligence in making, servicing, and collecting loans, from refusing to make or purchase a student loan on grounds other than those prescribed here.

Appendix B

Existing appendix B (Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution 1986–87) would be removed in accordance with the 1986 Amendments.

The Secretary is proposing to publish as a new appendix B a reprint of the Student Status Confirmation Report (ED Form 1072) to be used as a guide by a guarantee agency to establish and follow a system and procedures for monitoring the status of a student borrower. By using the format and data elements of this standardized form, a guarantee agency would be in compliance with proposed § 682.401(b)(17).

Appendix D

The Secretary is proposing to include (with technical corrections), as appendix D, Dear Guarantee Agency Director Letter 88–G–138, issued March 11, 1988, setting forth the Secretary's policy for waiving the Secretary's right to recover, or refuse to pay, interest benefits, special allowance, and reinsurance on GSL loans involving lenders' violations of the rules governing due diligence in collection and timely filing of claims. This policy was developed after extensive consultation with lender and guarantee agency representatives.

As was suggested by these groups, the waiver policy includes gradations in the Secretary's exercise of waiver authority corresponding to the seriousness of the violations at issue. In addition, the waiver policy provides more lenient treatment of past violations than for most future violations, in recognition of the fact that some lenders and guarantee agencies did not fully understand the effect a due diligence or timely filing violation has on the right of the lender or guarantee agency to receive program payments. The Bulletin also explains the application of these regulations to a number of specific situations raised by lender and guarantee agency

representatives in the course of discussions on the waiver policy.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Many provisions of the proposed regulations repeat statutory requirements. Certain reporting, recordkeeping, and compliance requirements are imposed on guarantee agencies, lenders, and schools by the regulations. These regulations, however, are modeled on existing Stafford Loan and PLUS Program regulations and would not have significant impact on these institutions. Participating guarantee agencies are reimbursed for their costs.

Paperwork Reduction Act of 1980

Sections 682.205, 682.206, 682.208, 682.209, 682.210, 682.211, 682.214, 682.301, 682.305, 682.401, 682.402, 682.404, 682.406, 682.407, 682.409, 682.410, 682.411, 682.412, 682.414, 682.507, 682.508, 682.511, 682.515, 682.601, 682.602, 682.603, 682.604, 682.605, 682.606, 682.610, and 682.711 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Although preparation of this NPRM resulted in extensive consideration of the imposition of information collection and recordkeeping requirements, the Department is particularly interested in comments on ways to further reduce the paperwork burden imposed or enhance the utility of information that is collected in this program. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Dan Chenok.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in ROB-3, room 4310, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To expedite the Department's review and response, comments should be identified by specific sections of the NPRM and presented sequentially.

To assist the Department in complying with the specific requirements of Executive Order 12291, the Paperwork Reduction Act of 1980, and the overall requirement of reducing regulatory burden, the Secretary invites public comment on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

All comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice or procedure, colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

Dated: November 5, 1990.

(Catalog of Federal Domestic Assistance Number 84.032, Stafford Loan Program and PLUS Program)

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to revise part 682 of title 34 of the Code of Federal Regulations to read as follows:

PART 682—GUARANTEED STUDENT LOAN (GSL) PROGRAMS

Subpart A—Purpose and Scope

Sec.

682.100 The Guaranteed Student Loan programs.
682.101 Participation in the GSL programs.
682.102 Obtaining and repaying a loan.
682.103 Applicability of subparts.

Subpart B—General Provisions

682.200 Definitions.
682.201 Eligible borrowers.
682.202 Permissible charges by lenders to borrowers.
682.203 Responsible parties.
682.204 Maximum loan amounts.
682.205 Disclosure requirements for lenders.
682.206 Due diligence in making a loan.
682.207 Due diligence in disbursing a loan.
682.208 Due diligence in servicing a loan.
682.209 Repayment of a loan.
682.210 Deferment.
682.211 Forbearance.
682.212 Prohibited transactions.
682.213 Prohibition against the use of the Rule of 78's.
682.214 Compliance with equal credit opportunity requirements.
682.215 Defenses to the borrower's obligation to repay a GSL loan.

Subpart C—Federal Payments of Interest and Special Allowance

682.300 Payment of interest benefits on Stafford loans.
682.301 Eligibility of borrowers for interest benefits on Stafford loans.
682.302 Payment of special allowance on GSL loans.
682.303 [Reserved]
682.304 Methods for computing interest benefits and special allowance.
682.305 Procedures for payment of interest benefits and special allowance.

Subpart D—Administration of the Guaranteed Student Loan Programs by a Guarantee Agency

682.400 Agreements between a guarantee agency and the Secretary.
682.401 Basic program agreement.
682.402 Death, disability, and bankruptcy payments.
682.403 Federal advances for claim payments.
682.404 Federal reinsurance agreement.
682.405 [Reserved]
682.406 Conditions of reinsurance coverage.
682.407 Administrative cost allowance for guarantee agencies.
682.408 Stafford and SLS loan disbursement through an escrow agent.
682.409 Mandatory assignment by guarantee agencies of defaulted loans to the Secretary.
682.410 Fiscal, administrative, and enforcement requirements.
682.411 Due diligence by lenders in the collection of guarantee agency loans.
682.412 Consequences of the failure of a borrower or student to establish eligibility.
682.413 Remedial actions.
682.414 Records, reports, and inspection requirements for guarantee agency programs.

Subpart E—Federal Guaranteed Student Loan Programs

682.500 Circumstances under which loans may be guaranteed by the Secretary.
682.501 Extent of Federal guarantee under the Federal GSL programs.
682.502 The application to be a lender.
682.503 The guarantee agreement.
682.504 Issuance of Federal loan guarantees.
682.505 Insurance premium.

682.506 Limitations on maximum loan amounts.
682.507 Due diligence in collecting a loan.
682.508 Assignment of a loan.
682.509 Special conditions for filing a claim.
682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.
682.511 Procedures for filing a claim.
682.512 Determination of amount payable on a claim.
682.513 Factors affecting coverage of a loan under the loan guarantee.
682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.
682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

Subpart F—Requirements, Standards, and Payments for Participating Schools

682.600 Agreement between an eligible school and the Secretary for participation in the GSL programs.
682.601 Rules for a school that makes or originates loans.
682.602 Correspondence school schedule requirements.
682.603 Certification by a participating school in connection with a loan application.
682.604 Processing the borrower's loan proceeds and counseling borrowers.
682.605 Determining the date of a student's withdrawal.
682.606 Refund policy.
682.607 Payment of a refund to a lender.
682.608 Termination of a school's lending eligibility.
682.609 Remedial actions.
682.610 Administrative and fiscal requirements for participating schools.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

682.700 Purpose and scope.
682.701 Definitions of terms used in this subpart.
682.702 Effect on participation.
682.703 Informal compliance procedure.
682.704 Emergency action.
682.705 Suspension proceedings.
682.706 Limitation or termination proceedings.
682.707 Appeals in a limitation or termination proceeding.
682.708 Evidence of mailing and receipt dates.
682.709 Reimbursements, refunds, and offsets.
682.710 Removal of limitation.
682.711 Reinstatement after termination.
682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.
682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

Subpart H—Special Allowance Payments on Loans Made or Purchased with Proceeds of Tax-Exempt Obligations

682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.
682.801 Provisions required in Plan.
682.802 Submission for Plan for approval—required documentation.
682.803 Amendments to Plan.
682.804 Failure to comply with Plan.
682.805 Sanctions for material misrepresentation.
682.806–682.829 [Reserved]
682.830 Audit standards.
682.831–682.839 [Reserved]
682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

Appendix B—Student Status Confirmation Report

Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L–77a]

Appendix D—Policy for Waiving the Secretary's Right to Recover or Refuse to Pay, Interests Benefits, Special Allowance, and Reinsurance on Guaranteed Student Loan, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Dear Guarantee Agency Director Letter 88–G–138]

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

Subpart A—Purpose and Scope

§ 682.100 The Guaranteed Student Loan programs.

(a) This part governs the following four programs, collectively referred to in these regulations as "the Guaranteed Student Loan (GSL) programs", in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the student's attendance at postsecondary schools:

(1) The Stafford Loan Program, which encourages the making of loans to undergraduate, graduate, and professional students.

(2) The Supplemental Loans for Students (SLS) Program, which encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) The PLUS Program, which encourages the making of loans to parents of dependent students. Prior to October 17, 1986, the PLUS Program also provided for the making of loans to graduate, professional, and independent undergraduate students.

(4) The Consolidation Program, which encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers while they were students, under the Stafford Loan, SLS, PLUS (as in effect prior to October 17, 1986), and Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of title VII of the Public Health Service Act.

(b)(1) Except for the loans guaranteed directly by the Secretary described in paragraph (b)(2) of this section, a guarantee agency guarantees a lender against losses due to default by the borrower on a GSL loan. If the guarantee agency meets certain Federal requirements, the guarantee agency is reimbursed by the Secretary for all or part of the amount of default claims it pays to lenders.

(2)(i) The Secretary guarantees lenders against losses—

(A) Within the Stafford Loan Program, on loans made under the Federal Insured Student Loan (FISL) Program;

(B) Within the PLUS Program, on loans made under the Federal PLUS Program;

(C) Within the SLS Program, on loans made under the Federal SLS Program; and,

(D) Within the Consolidation Program, on loans made under the Federal Consolidation Program.

(ii) The loan programs listed in paragraph (b)(2)(i) of this section are collectively referred to in these regulations as the "Federal GSL programs".

(iii) The Federal GSL programs are authorized to operate in States not served by a guarantee agency program. In addition, the FISL and Federal SLS programs are authorized, under limited circumstances, to operate in States in which a guarantee agency program does not serve all eligible students.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.101 Participation in the GSL programs.

(a) Eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies may make loans.

(b) Eligible educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools may participate as schools, enabling an eligible student

or his or her parent to obtain a loan to pay for the student's cost of education.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford Loan and SLS programs. Parents of eligible dependent students may borrow under the PLUS Program. Student borrowers who have at least $5,000 outstanding in Stafford, FISL, Perkins, HPSL, or student PLUS loans may borrow under the Consolidation Program.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(b) *SLS loan application.* Generally, to obtain an SLS loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(c) *PLUS loan application.* Generally, to obtain a PLUS loan, both the student and the parent complete an application before submitting it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(d) *Consolidation loan application.* Generally, to obtain a Consolidation loan, a borrower completes the application and submits it to a lender holding at least one of the borrower's loans to be consolidated. If all the holders of loans selected for consolidation by the borrower refuse to make a Consolidation loan, the borrower may submit the application to any other lender participating in the Consolidation Program. If a lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(e) *Repaying a loan*—(1) *General.* Generally, the borrower is obligated to repay the full amount of the loan, late fees, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes totally and permanently disabled, or has that obligation discharged in bankruptcy.

(2) *Stafford loan repayment.* Generally, a borrower is not required to make any principal payments on a Stafford loan during the time the borrower is in school. In most cases, the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to make interest payments on the borrower's behalf. At the end of the grace period, the repayment period begins. During the repayment period, the borrower pays both the principal and the interest accruing on the loan.

(3) *SLS loan repayment.* Generally, the repayment period for an SLS loan begins immediately upon disbursement of the loan by the lender. The first payment of principal and interest on an SLS loan is due from the borrower within 60 days after the loan is fully disbursed.

(4) *PLUS loan repayment.* Generally, the repayment period for a PLUS loan begins immediately upon disbursement of the loan by the lender. The first payment of principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is disbursed.

(5) *Consolidated loan repayment.* Generally, the first payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the borrower's liability on all loans being consolidated has been discharged.

(6) *Deferment of repayment.* Repayment of principal on a GSL programs loan may be deferred under the circumstances described in § 682.210 of this part.

(7) *Default.* If a borrower defaults on a loan, the guarantor reimburses the lender for the amount of its loss. The guarantor then collects the amount owed from the borrower.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.103 Applicability of subparts.

(a) Subpart B of this part contains general provisions that are applicable to all participants in the GSL programs.

(b) The administration of the GSL programs by a guarantee agency is subject to subparts C, D, F, and G of this part.

(c) The Federal GSL programs are subject to subparts C, E, F, and G of this part.

(d) Certain requirements applicable to schools under all the GSL programs are set forth in subpart F of this part.

(Authority: 20 U.S.C. 1071 to 1087–2)

Subpart B—General Provisions

§ 682.200 Definitions.

(a) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based Programs
Clock hour
College Work-Study Program
Dependent student
Eligible program
Eligible student
Enrolled
Federal Insured Student Loan Program
Independent student
Institution of higher education
National of the United States
Pell Grant Program
Perkins Loan Program (formerly National Direct Student Loan Program)
PLUS Program
Secretary
State
State Student Incentive Grant Program
Supplemental Educational Opportunity Grant Program
Supplemental Loans for Students Program
Vocational school

(b) The following definitions also apply to this part:

Act. The Higher Education Act of 1965, as amended, 20 U.S.C. 1001 *et seq.*

Actual interest rate. The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate. The maximum annual interest rate that a lender may charge under the Act on a loan.

Authority. Any private non-profit or public entity that may issue tax-exempt obligations to obtain funds to be used for the making or purchasing of GSL loans. The term *Authority* also includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, that may issue tax-exempt obligations, any party authorized to issue those obligations on behalf of a governmental agency, and any non-profit organization authorized by law to issue tax-exempt obligations.

Borrower. An individual to whom a GSL loan is made.

Co-maker. One of two individuals who are joint borrowers on a PLUS loan and who are equally liable for repayment of the loan.

Default. The failure of a borrower and endorser, if any, to make an installment

payment when due, or to meet other terms of the promissory note, if the Secretary or guarantee agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement. The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

Endorser. An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Escrow agent. A party that receives the proceeds of a Stafford or SLS loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrower or the borrower's school.

Estimated cost of attendance. The tuition and fees normally assessed to a student carrying the same academic workload as the student to whom or on whose behalf a GSL loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may not include the purchase of a motor vehicle. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except with regard to a student receiving all or part of his or her instruction by means of telecommunications technology, for the cost of rental or purchase of that equipment;

(2) For a student attending the institution on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the insurance premium for the loan;

(4) If applicable, the origination fee for the loan;

(5) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student without dependents residing at home with parents, an allowance of at least $1,500;

(ii) For a student without dependents residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(6) For a student enrolled in a correspondence study program, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(7) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(8) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(9) For a handicapped student, an allowance for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided by other assisting agencies.

Estimated financial assistance. The estimated amount of assistance that a student has been or will be awarded, during the period of enrollment for which the loan is sought, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(1) Benefits paid under section 156 of title 42 of the United States Code (formerly Social Security Benefits);

(2) Veterans' educational benefits paid under chapters 30, 31, 32, 34, and 35 of title 38 of the United States Code;

(3) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(4) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(5) The estimated amount of other Federal student financial aid, including, but not limited to, a Stafford loan for which interest benefits are payable under this part, Pell Grants and campus-based aid, that the student would be expected to receive if the student applied, whether or not the student has applied for that aid, but excluding Stafford loan amounts for which the interest benefits are not payable, SLS and PLUS loan amounts, and Perkins loan and College Work-Study funds that the school determines the student has declined for an acceptable reason; and

(6) If applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior GSL loan was received, the amount of Stafford, SLS and PLUS loan proceeds withheld by the lender on the prior loan to cover the origination fee or insurance premium, if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

Federal GSL programs. The Federal Insured Student Loan Program, the Federal Supplemental Loans for Students Program, the Federal PLUS Program, and the Federal Consolidation Program.

Foreign school. A school not located in a State.

Full-time student. (1) A student enrolled in an institution of higher education (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload, as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than 24 clock-hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Grace period. The period that begins on the day on which a Stafford loan borrower ceases to be enrolled as at least a half-time student at a participating school and ends on the day that the repayment period begins. See also "Post-deferment grace period".

Graduate or professional student. A student who, for a period of enrollment—

(1) Is enrolled in a program above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving aid under title IV of the Act as an undergraduate student for the same period of enrollment.

Guarantee agency. A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Half-time student. A student who is enrolled in a participating school, is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program (as defined in 34 CFR part 668) of study by correspondence is considered a half-time student.

Holder. A party who is in possession of a GSL loan note that is payable to, or has been assigned to, that party.

Legal guardian. An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2)–(4) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, a trust company, or a credit union—

(i) The phrase "subject to examination and supervision" in section 435(d) means "subject to examination and supervision in its capacity as a lender"; and

(ii) The phrase "does not have as its primary consumer credit function the making or holding of loans made to students under this part" in section 435(d) means that the lender does not, or, in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not—

(A) At any time, hold GSL loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages that the lender or subsidiaries own or service; and

(B) In any 12-month period, derive more than one-half of the lender's or subsidiaries' combined net income from consumer credit activities from the lender's or subsidiaries' activities as a lender under the GSL programs;

(3) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(d) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(d) of the Act.

(4) The term *eligible lender* does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has—

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any educational institution or other party to secure applicants for GSL loans;

(ii) Conducted unsolicited mailings to a student or a student's parents of GSL loan application forms, except to a student who has previously received a GSL loan from the lender or to a student's parent who has previously received a GSL loan from the lender;

(iii) Offered, directly or indirectly, a GSL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(iv) Engaged in fraudulent or misleading advertising.

National credit bureau. A credit bureau with a service area that encompasses more than a single State or region of the country.

Origination. A relationship between a school and a lender in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making GSL loans. In this situation, the school is considered to have "originated" a loan made by the lender.

Origination fee. A fee that a lender is allowed to charge a Stafford Loan borrower at the time the loan is made to help defray the Secretary's costs of subsidizing the loan.

Parent. A student's mother, father, or legal guardian. A parent by adoption is considered to be an individual's mother or father.

Participating school. A school that has in effect a current agreement with the Secretary under § 682.600.

Post-deferment grace period. For a loan made prior to October 1, 1981, a period of six consecutive months beginning on the day following the last day of an authorized deferment period.

School. (1) As used in this part, the term school includes—

(i) A "public or private nonprofit institution of higher education", or a "vocational school", as those terms are defined in 34 CFR part 600;

(ii) A hospital or health care facility that satisfies the definition of "a public or private nonprofit institution of higher education" in 34 CFR part 600, except that the facility need not satisfy § 600.4(a)(4), and that provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of such training; or

(iii) With respect to students who are nationals of the United States, a school outside the United States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the GSL programs.

(2) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility, including the definition of "eligible program" in 34 CFR part 600.

(3) The term does not include any educational institution that employs or uses commissioned salespersons to promote the availability of Stafford, SLS or PLUS loans for attendance at the institution. For this purpose—

(i) A *commissioned salesperson* is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(ii) *Promote the availability* means—

(A) Provide a prospective student with GSL loan application forms, or names of eligible lenders;

(B) Provide other information relating to the GSL programs to a prospective student in order to encourage the student to finance his or her education with a GSL loan; or

(C) Otherwise use the availability of GSL loans as a recruiting tool.

School lender. A school, other than a correspondence school, that has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

State lender. In any State, a single State agency or private nonprofit agency designated by the State that has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

Temporarily totally disabled. The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 90 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services from the borrower for a period of at least 90 days.

Totally and permanently disabled. The condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

Undergraduate student. A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five

academic years in length and is designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four academic years.

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087–2, 1088–1098, 1141)

§ 682.201 Eligible borrowers.

(a) *Student borrower.* Except for a refinanced SLS/PLUS loan made under § 682.209 (e) or (f), a student is eligible to receive a Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(3) of this section, a dependent undergraduate student, is eligible to receive an SLS loan, if the student meets the requirements for an eligible student under 34 CFR part 668, and—

(1) In the case of an undergraduate student who seeks a Stafford loan or SLS loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2) In the case of an incarcerated student, is scheduled for unconditional release prior to the end of the grace period, as calculated based on the student's anticipated graduation date at the time the loan is made;

(3) In the case of any student who seeks an SLS loan for the cost of attendance at a school that participates in the Stafford Loan Program, has received a determination of need for a Stafford loan, and if determined to have need, has filed an application with a lender for a Stafford loan;

(4) For purposes of a dependent undergraduate student's eligibility for an SLS loan, is a dependent undergraduate student for whom the financial aid administrator determines and documents in the institution's files, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents will likely be precluded by exceptional circumstances from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution;

(5) Reaffirms any GSL loan debt that was previously cancelled due to the student's total and permanent disability or was discharged in bankruptcy; and

(6)(i) In the case of a student whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the student's condition has improved and that the student is able to engage in substantial gainful activity; and

(ii) Signs a statement acknowledging that any new GSL loan the student receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(b) *Parent borrower.* A parent is eligible to receive a PLUS Program loan, other than a loan made under § 682.209 (e) or (f), if the parent—

(1) Is borrowing to pay for the educational costs of a dependent student who meets the requirements set forth in 34 CFR part 668;

(2) Provides his or her social security number;

(3) Meets the requirements set forth in 34 CFR part 668; and

(4) Meets the requirement of paragraphs (a)(5) and (a)(6) of this section.

(c) *Consolidation Program borrower.* An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(1) Has an outstanding indebtedness of not less than $5,000 on loans eligible for consolidation under this part; and

(2) Is in a grace period preceding repayment, or is in repayment and is not delinquent by more than 90 days, on each of the loans selected for consolidation.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1091)

§ 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest*—(1) *Applicable interest rates under the Stafford Loan Program.* (i) Subject to paragraph (a)(1)(ii) of this section, the applicable interest rate on a Stafford loan for a borrower who, on the date the promissory note is signed, does not have an outstanding balance on any loan under this part is—

(A) Seven percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) Nine percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983;

(C) Eight percent for a loan covering a period of instruction beginning on or after September 13, 1983, but before July 1, 1988; or

(D) For a loan covering a period of instruction beginning on or after July 1, 1988, eight percent until 48 months after the repayment period begins, and ten percent thereafter.

(ii)(A) Except as provided in paragraph (a)(1)(ii)(B) of this section, the applicable interest rate on a Stafford loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous Stafford loan, is the applicable interest rate on the previous loan.

(B) The applicable interest rate on a Stafford loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on any loan under this part for which the interest rate was determined under paragraph (a)(1)(i)(D) of this section, is eight percent until 48 months after the repayment period begins, and ten percent thereafter.

(2) *Applicable interest rates under the PLUS Program.* The applicable interest rate on a PLUS loan is—

(i) Nine percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(ii) Fourteen percent for a loan made on or after October 1, 1981, but before November 1, 1982;

(iii) Except as provided in paragraphs (a)(2) (iv) and (v) of this section, twelve percent for a loan made on or after November 1, 1982;

(iv) For a loan disbursed on or after July 1, 1987, and for any loan made under § 682.209 (e) or (f) of this part, a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) Twelve percent; and

(v) For a combined repayment schedule under § 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule.

(3) *Applicable interest rates under the SLS Program.* The applicable interest rate on an SLS Program loan is—

(i) Twelve percent for a loan covering a period of enrollment beginning on or after October 17, 1986, but before July 1, 1987;

(ii) For a loan disbursed on or after July 1, 1987, and for any loan made under § 682.209 (e) or (f) of this part, a variable rate, applicable to each July 1–June 30 period, that equals the bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately

preceding that July 1–June 30 period, plus 3.25 percent; and

(iii) For a combined repayment schedule under § 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule.

(4) *Actual interest rates under the Consolidation Program.* A Consolidation Program loan bears interest at the rate that is the greater of—

(i) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) Nine percent.

(5) *Actual interest rates under the Stafford Loan, SLS, and PLUS Programs.* A lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a) (1)–(3) of this section.

(b) *Capitalization.* (1) A lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance in accordance with paragraph (b)(2) of this section. This increase in the principal balance of a loan is called "capitalization."

(2) A lender may capitalize interest that has accrued—

(i) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note, (or with the written consent of the borrower;)

(ii) During a period of authorized deferment;

(iii) During a period of authorized forbearance; or

(iv) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(i) through (iii) of this section no more frequently than quarterly, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2)(iv) of this section only on the date repayment of principal is scheduled to begin.

(4) Under the SLS and PLUS programs, the lender shall require the borrower to pay on a monthly or quarterly basis, or with the borrower's written consent, capitalize on a quarterly basis, interest that has accrued during periods in which the borrower—

(i) Is pursuing a full-time course of study at an eligible institution;

(ii) Is pursuing at least a half-time course of study (as determined by the institution) during an enrollment period for which the student has obtained a GSL loan;

(iii) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(iv) Is pursuing a rehabilitation training program for disabled individuals that is approved by the Secretary.

(c) *Origination fee for a Stafford loan.* Except in the case of a Stafford loan on which the borrower does not qualify for interest benefits under § 682.301, a lender—

(1) May charge a borrower an origination fee on a Stafford loan not to exceed the maximum rate specified by Federal statute;

(2) May deduct the origination fee from the proceeds of the loan;

(3) Shall, in the case of a loan disbursed in multiple installments, deduct a *pro rata* portion of the fee from each disbursement; and

(4) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan or multiply-disbursed portion thereof attributable to the portion of the loan the proceeds of which are—

(i) Returned by the school to the lender;

(ii) Repaid within 120 days of disbursement; or

(iii) Not delivered to the borrower within 120 days of disbursement.

(d) *Insurance premium.* A lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor up to three percent of the principal amount of the loan, if that charge is provided for in the borrower's promissory note.

(e) *Administrative charge for a refinanced PLUS or SLS Loan.* A lender may charge a borrower up to $100 to cover the administrative costs of making a loan to a borrower under § 682.209(e) of this part for the purpose of refinancing a PLUS or SLS loan to secure a variable interest rate.

(f) *Late charge.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (f)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower—

(i) Fails to pay all or a portion of a required installment payment within 10 days after it is due; and

(ii) Fails to provide written evidence that verifies the borrower's eligibility for an authorized deferment of the payment.

(g) *Collection charges.* If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower pay costs incurred by the lender in collecting installments not paid when due, including, but not limited to—

(1) Attorney's fees;

(2) Court costs;

(3) Telegrams;

(4) Local and long distance telephone calls;

(5) Skip-tracing costs;

(6) Credit bureau reporting costs;

(7) Costs associated with preparing letters or notices; and

(8) Collection firm charges.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1087–1, 1091–a)

§ 682.203 Responsible parties.

(a) *Delegation of functions.* A school, lender, or guarantee agency may contract or otherwise delegate the performance of its functions under the Act and this part to a servicing agency or other party. This contracting or other delegation of functions does not relieve the school, lender, or guarantee agency of its duty to comply with the requirements of the Act and this part.

(b) *Trustee responsibility.* A lender that holds a loan in its capacity as a trustee assumes responsibility for complying with all statutory and regulatory requirements imposed on any other holders of a loan.

(Authority: 20 U.S.C. 1082)

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* The total amount a student may borrow for any academic year of study under the Stafford Loan Program, including the FISL Program, may not exceed—

(1) $2,625, in the case of an undergraduate student who has not successfully completed the first and second years of an undergraduate program;

(2) $4,000, in the case of an undergraduate student who has successfully completed the first and second years of an undergraduate program; and

(3) $7,500, in the case of a graduate or professional student.

(b) *Stafford Loan Program aggregate limits.* The aggregate guaranteed unpaid principal amount of all Stafford loans made to a student may not exceed—

(1) $17,250, in the case of an undergraduate student; and

(2) $54,750, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *PLUS Program annual limit.* The total amount of all PLUS loans that a parent may borrow on behalf of a dependent student for any academic year of study may not exceed $4,000.

(d) *PLUS Program aggregate limit.* The total guaranteed unpaid principal amount of PLUS Program loans made on behalf of a dependent student may not exceed $20,000.

(e) *SLS Program annual limit.* The total amount of all SLS loans that a student may borrow for any academic year of study may not exceed $4,000.

(f) *SLS Program aggregate limit.* The total guaranteed unpaid principal amount of SLS Program loans made to a student may not exceed $20,000.

(g) *Treatment of consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Consolidation loan counted against a borrower's aggregate loan limits under the Stafford Loan, SLS, PLUS, or Perkins Loan program shall equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program.

(h) In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(Authority: 20 U.S.C. 1075, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1089)

§ 682.205 Disclosure requirements for lenders.

(a) *Initial disclosure statement.* (1) Except in the case of a Consolidation loan, a lender shall disclose the information described in paragraph (a)(2) of this section to a borrower in writing and the borrower shall acknowledge receipt and understanding thereof by signing the lender's copy of the disclosure either before or at the time of the first disbursement on a GSL loan.

(2) The lender shall provide the borrower with—

(i) The lender's name, the address to which correspondence with the lender and payments should be sent, and a statement that the lender may sell the loan to another party, in which case the address and identity of the party to which correspondence and payments should be sent may change;

(ii) The principal amount of the loan;

(iii) The amount of any charges, including the origination fee and the insurance premium, to be collected by the lender before or at the time of the first disbursement on the loan, and an explanation of whether those charges are to be deducted from the proceeds of the loan or paid separately by the borrower;

(iv) The actual interest rate;

(v) The annual and aggregate maximum amounts that may be borrowed;

(vi) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a national credit bureau;

(vii) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

(viii) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(ix) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(x) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(xi) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(xii) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2171, note;

(xiii) The definition of "default" found in § 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation, a statement that the default will be reported to a national credit bureau, and statements that the borrower will be liable for substantial collection costs, that the borrower's Federal and State income tax refund may be withheld to pay the debt, that in certain cases the borrower's wages will be garnished or offset, and that the borrower will be ineligible for additional Federal student financial aid, as well as for assistance under most Federal benefit programs.

(xiv) An explanation of the possible effects of accepting the loan on the eligibility of the student for other forms of student financial assistance;

(xv) An explanation of any costs the borrower may incur in the making or collection of the loan; and

(xvi) In the case of a Stafford or SLS loan, other than an SLS loan made under § 682.209 (e) or (f), a statement that the loan proceeds will be transmitted to the school for delivery to the borrower; and

(xvii) A statement of the total cumulative balance, including the loan applied for, owed to that lender, and an estimate of the projected monthly payment amount based on that cumulative outstanding balance.

(b) *Separate statement of borrower rights and responsibilities.* In addition to the disclosures required by paragraph (a) of this section, the lender shall provide the borrower, at the time of the first disbursement, with a separate statement that—

(1) Summarizes the rights and responsibilities of the borrower with respect to the loan;

(2) Indicates the consequences to the borrower of defaulting on the loan described in paragraph (a)(2)(xiii) of this section; and

(3) Indicates that, except for a loan made by a school lender or a lender with an origination relationship with the school, the borrower must repay the loan, even if the student does not receive the services or equipment purchased from the school with the loan proceeds, the services or equipment provided are inadequate, the school fails to pay a refund it owes to the borrower, or the student fails to obtain employment upon graduation.

(c)(1) The lender shall disclose the information described in paragraph (c)(2) of this section in a written statement provided to the borrower at or prior to the beginning of the repayment period. The lender shall make the disclosures during the grace period, in the case of a FISL loan. If the borrower enters the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period.

(2) The lender shall provide the borrower with—

(i) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(ii) The scheduled date upon which the repayment period is to begin;

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or the date of the disclosure, whichever is later;

(iv) The actual interest rate on the loan;

(v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period;

(vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(vii) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(viii) The estimated total amount of interest to be paid on the loan, assuming

that payments are made in accordance with the repayment schedule; and

(ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1083(a))

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note.

(2) A lender that delegates substantial loan-making duties to a school on a loan thereby enters into a loan origination relationship with the school respecting that loan. If that relationship exists, the lender may rely in good faith upon statements of the borrower made in the loan application process, but may not rely upon statements made by the school in that process. A non-school lender that does not have an origination relationship with a school with respect to a loan may rely in good faith upon statements of both the borrower and the school in the loan application process. Except as provided in 34 CFR part 668, subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application process.

(b) *Processing forms.* Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before the borrower has provided on the form all information requested from the borrower.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may rely upon the information provided on the application by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought, in determining the borrower's eligibility for a loan.

(2) In determining the amount of the loan to be made, within the limitations of § 682.204, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance less the sum of—

(i) The student's estimated financial assistance for the period of enrollment for which the loan is intended; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(d) *Promissory note.* (1) The lender shall obtain from the borrower an executed legally enforceable promissory note for each loan as proof of the borrower's indebtedness.

(2) Without the guarantor's prior approval, a lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the guarantor.

(3) The lender shall give the borrower a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISL or Federal PLUS loan shall be made without security or endorsement.

(2) A Federal PLUS Program loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(3) A guarantee agency shall not require a lender to obtain security or endorsement for a Stafford or SLS loan.

(f) *Additional requirement for Consolidation loans.* (1) Prior to disbursement of a Consolidation loan, the lender shall obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(i) The loan is a legal, valid, and binding obligation of the borrower;

(ii) The loan was made and serviced in compliance with applicable laws and regulations; and

(iii) In the case of a GSL loan, that the guarantee on the loan is in full force and effect.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1) of this section by the holder of a loan to be consolidated.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1083, 1085)

§ 682.207 Due diligence in disbursing a loan.

(a)(1) This section prescribes procedures for lenders to follow in disbursing Stafford, SLS and PLUS loans, other than a refinancing SLS or PLUS Program loan made under § 682.209 (e) or (f). With respect to FISL, Federal SLS, and Federal PLUS loans, references to the "guarantee agency" in this section shall be understood to refer to the "Secretary."

(2) The requirements of paragraphs (b)(1) (ii) and (v) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to § 682.408. The lender shall comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b)(1) In disbursing a loan, a lender—

(i) May not disburse loan proceeds prior to the issuance of the guarantee commitment for the loan by the guarantee agency, except with the agency's prior approval;

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or, if required by the guarantor, is made co-payable to the borrower and the school identified on the loan application, and requires the personal endorsement of the borrower in order to be cashed; or

(B) If authorized by the guarantor, electronic funds transfer to a separate account maintained by the school as trustee for the lender, the guarantee agency, the Secretary, and the borrower, that requires the written approval of the borrower for the release of those funds from the account;

(iii) Shall not disburse loan proceeds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and, in no case without the Secretary's prior approval, disburse loan proceeds earlier than 30 days prior to the date on which the student is scheduled to enroll;

(iv) Shall require an escrow agent to disburse loan proceeds no later than 21 days after the agent receives the proceeds from the lender; and

(v) Shall disburse—

(A) Directly to the school, in the case of a student borrower attending a school located in a State; or

(B) Directly to the borrower, in the case of a parent borrowing on behalf of an eligible student or a student attending a school not located in a State, and shall notify the school of the amount of the loan within 30 days of the date on which the first disbursement on the loan is made.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse or otherwise approve the cashing of a loan check or the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power of attorney or authorization to anyone else. However, the school may present the loan check to a financial institution for deposit in an account of the borrower.

(c)(1) Except for a loan made to a student attending a foreign school, a lender shall disburse a Stafford or SLS loan in multiple installments if—

(i) The amount of the loan is $1,000 or more; and

(ii) On the date of the first disbursement, the time remaining in the period of enrollment for which the loan is made is greater than six months, or 180 days, whichever is less.

(2) In multiply disbursing a loan, a lender shall disburse as follows:

(i) Disbursement must be in two or more installments.

(ii) No installment may exceed one-half of the loan.

(iii) At least one-third of the period of enrollment for which the loan is made must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed on or after the first day of the next semester, quarter, or similar division of the period of enrollment.

(3) For purposes of paragraph (c) of this section, a lender shall consider all loans made for the same period of enrollment as a single loan.

(d)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the guarantee commitment, in accordance with paragraphs (d) (2) and (3) of this section.

(2) A disbursement described in paragraph (d)(1) of this section may be made—

(i) Only if the loan proceeds will be used to cover the student's outstanding institutional charges for a period of enrollment for which the loan was intended and during which the student was actually enrolled on at least a half-time basis;

(ii) Within 30 days after the date the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was made, whichever is earlier;

(iii) Within 31–60 days after the date the student ceased to be enrolled on at least a half-time basis or after the expiration of the period of enrollment for which the loan was made, whichever is earlier, if the lender receives a written certification from the school after that date, but prior to making the disbursement, setting forth—

(A) The beginning and ending dates during the loan period that the student was enrolled at the school as an eligible student on at least a halftime basis; and

(B) The student's outstanding institutional charges for the loan for that period of actual enrollment; and

(iv) With the guarantee agency's approval, provided on a case-by-case basis, within 61–90 days after the date the student ceased to be enrolled on at least a half-time basis or after the expiration date of the guarantee commitment, whichever is earlier.

(3) The lender shall give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (d)(2) of this section at the time the lender sends the loan proceeds to the school.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, and establishing the terms of repayment.

(b) An eligible lender or subsequent holder of a GSL loan shall report to at least one national credit bureau—

(1) The total amount of GSL loans the lender has made to the borrower, and the outstanding balance of the loans, within 90 days of each disbursement;

(2) Information concerning repayment of a loan, within 90 days after a change in that status from current to delinquent;

(3) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(4) The date of default by the borrower on the loan, not earlier than 30 days nor later than 90 days after that date, unless the borrower makes payments prior to that 30th day sufficient to bring the loan to less than 150 days delinquent; and

(5) Other information required by law to be reported.

(c)(1) A lender shall respond within 30 days after receipt to any inquiries from a borrower or any endorser on a loan.

(2) When a lender learns that a Stafford loan borrower is no longer enrolled at a participating school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(d) Subject to the rules regarding maximum duration of a repayment period and minimum annual payment described in § 682.209(a)(7), (c), and (h), nothing in this part is intended to limit a lender's discretion in establishing, or, with the borrower's consent, revising a borrower's repayment schedule to provide for graduated or income-sensitive repayment terms. The Secretary strongly encourages lenders to provide a graduated or income-sensitive repayment schedule to a borrower providing for at least the payment of interest charges, unless the borrower requests otherwise, in order to make the borrower's repayment burden commensurate with his or her projected ability to pay. The schedule may provide for graduated or income-sensitive payments for a period covering not more than the first 5 years of repayment, and equal payments must begin not later than the sixth year of repayment.

(e) If the assignment of a GSL, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignee of the loan shall, prior to or simultaneously with its receipt of a legal interest in the assigned loan, provide notice to the borrower of the assignment, the identity of the assignee, and the name and address of the party to whom subsequent payments must be sent. For purposes of this paragraph, the term "assigned" is defined in § 682.401(b)(15)(ii).

(f)(1) A lender shall follow the procedures in § 682.412 whenever it learns that, for any reason of which the borrower, but not the school or the lender, knew or should have known when the loan or a portion thereof was made, the borrower, or, if applicable, the student on whose behalf a parent has borrowed—

(i) Did not qualify for all or a portion of a loan made under this part;

(ii) Has received a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for some or all of those interest benefits; or

(iii) Has received loan proceeds and has not paid those amounts to the school or repaid them to the lender if the student was a registered student who—

(A) The school notifies the lender under § 682.604(d)(4) has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended; or

(B) Failed to attend school during that period.

(2) For purposes of this section, the term "guarantee agency" in § 682.412(e) refers to the Secretary in the case of a Federal GSL loan.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

§ 682.209 Repayment of a loan.

(a) *Conversion of a loan to repayment status.* (1) For a PLUS or Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date of disbursement.

(2) For an SLS loan, the repayment period begins on the date of the first disbursement made on the loan. The first payment is due within 60 days after the date of the final disbursement made on the loan.

(3)(i) Except as provided in paragraphs (a) (4) and (5) of this section, for a Stafford loan the repayment period begins—

(A) For a borrower with a loan for which the applicable interest rate is seven percent per year, not less than nine nor more than twelve months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISL Program, and by the guarantee agency for loans guaranteed by the agency; and

(B) For a borrower with a loan for which the applicable interest rate is eight or nine percent per year, six months following the month in which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(ii) The first payment on a Stafford loan is due on a date established by the lender that is no more than 45 days following the first day of the month in which the repayment period begins.

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3) of this section begins on the earliest of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 682.602. However, the school may excuse a borrower's first failure to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, in writing, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program under the schedule required under § 682.602.

(5) For a Stafford loan, the repayment period begins prior to the end of the grace period if the borrower requests and is granted a repayment schedule that so provides. In this event, a borrower waives the remainder of the grace period.

(6) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated or income-sensitive repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment.

(7)(i) Subject to paragraphs (a)(7) (ii) through (iv) of this section, a lender shall allow a borrower at least five years, but not more than ten years, to repay a Stafford, SLS, or PLUS loan, calculated from the beginning of the repayment period. Except in the case of a FISL loan for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a FISL loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in § 682.210 or § 682.211, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than five years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than five years. Subject to paragraph (a)(6)(iii) of this section, a borrower who makes such a request may, by written notice to the lender at any time during the repayment period, extend the repayment period to a minimum of five years.

(8) If, with respect to the aggregate of all loans held by a lender, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the lender may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Prepayment.* (1) The borrower may prepay the whole or any part of a loan at any time without penalty. Except as provided in paragraph (b)(2) of this section, unless the borrower requests that the lender credit the prepayment to future installments, the lender shall credit the entire prepayment to unpaid principal.

(2) If the prepayment amount equals or exceeds three full payments under the repayment schedule established for the loan, the lender may apply the prepayment to future installments, without the prior request of the borrower. If the lender does so, it shall notify the borrower that the payments have been so applied, and no less frequently than quarterly thereafter to remind the borrower of the repayment obligation and the due date of the next scheduled payment, until the next payment is made.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1) (ii) and (iii) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's GSL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(iii) If the borrower and the borrower's spouse have one or more GSL loans, only their combined annual payment must meet the requirement of paragraph (c)(1)(i) of this section.

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the 10-year maximum repayment period unless forbearance, as described in § 682.211, has been approved.

(d) *Combined repayment of a borrower's PLUS and SLS loans held by a lender.* (1) A lender may, at the request of a borrower, combine the borrower's PLUS and SLS loans under a single repayment schedule.

(2) The repayment period on the loans included in the combined repayment schedule must be calculated based on the commencement of repayment of the most recent included loan.

(3) The interest rate on the loans included in the new combined repayment schedule must be the weighted average of the rates of all included loans.

(e) *Refinancing a fixed-rate PLUS or SLS Program loan to secure a variable interest rate.* (1) Subject to paragraph (g) of this section, a lender may, at the request of a borrower, refinance a PLUS or SLS loan with a fixed interest rate in order to permit the borrower to obtain a variable interest rate.

(2) A loan made under paragraph (e)(1) of this section—

(i) Must bear interest at the variable rate described in § 682.202(a)(2)(iv); and

(ii) May not extend the repayment period provided for in paragraph (a)(7)(i) of this section.

(3) The lender may not charge an additional insurance premium on the loan, but may charge the borrower an administrative fee pursuant to § 682.202(e).

(f) *Refinancing of a fixed-rate PLUS or SLS Program loan to secure a variable interest rate by discharge of previous loan.* (1) Subject to paragraph (g) of this section, a borrower who has applied for, but been denied, a refinanced loan authorized under paragraph (e) of this section by the holder of the borrower's fixed-rate PLUS or SLS loan, may obtain a loan from

another lender for the purpose of discharging the fixed-rate loan and obtaining a variable interest rate.

(2) A loan made under paragraph (f)(1) of this section—

(i) Must bear interest at the variable interest rate described in § 682.202(a)(2)(iv);

(ii) May not operate to extend the repayment period provided for in paragraph (a)(7)(i) of this section; and

(iii) Must be disbursed to the holder of the fixed-rate loan to discharge the borrower's obligation thereon.

(3) Upon receipt of the proceeds of a loan made under paragraph (f)(1) of this section, the holder of the fixed-rate loan shall, within three business days thereafter, apply the proceeds to fully discharge the borrower's obligation on the fixed-rate loan, and mail to, or otherwise provide the refinancing lender with—

(i) The original promissory note evidencing the fixed-rate loan; or

(ii) The holder's written certification that the borrower's obligation on the fixed-rate loan has been fully discharged.

(4) The refinancing lender may charge the borrower an insurance premium on a loan made under paragraph (f)(1) of this section, but may not charge a fee to cover administrative costs.

(5) For purposes of deferments under § 682.210, the refinancing loan—

(i) Is considered a PLUS loan if any of the included loans is a PLUS loan made to a parent; or

(ii) An SLS loan if the combined loan does not include a PLUS loan made to a parent.

(g) *Conditions for refinancing certain loans.* (1) A lender may not refinance a loan under paragraph (e) or (f) of this section if that loan is in default, involves a violation of a condition of reinsurance described in § 682.406, or, in the case of a Federal SLS or PLUS loan, is uninsured by the Secretary.

(2)(i) Prior to refinancing a fixed-rate loan under paragraph (f) of this section, the lender shall obtain a written statement from the holder of the loan certifying that—

(A) The holder has refused to refinance the fixed-rate loan under paragraph (e) of this section; and

(B) The fixed-rate loan is eligible for reinsurance under paragraph (g)(1) of this section.

(ii) The holder of the fixed-rate loan shall, within 10 days of receiving a lender's written request to provide a certification under paragraph (g)(2)(i) of this section, provide the lender with that certification, or provide the lender and the guarantor on the loan with a written explanation of the reasons for its inability to provide the certification to the requesting lender.

(iii) The refinancing lender may rely in good faith on the certification provided by the holder of the fixed-rate loan under paragraph (g)(2)(ii) of this section.

(h) *Consolidation loans.* (1) For a Consolidation loan, the repayment period begins on the day of disbursement, with the first payment due within sixty days thereafter.

(2) If the sum of the amount of the Consolidation loan and the unpaid balance on other student loans to the applicant—

(i) Is equal to or greater than $5,000 but less than $7,500, the borrower shall repay the Consolidation loan in not more than 10 years;

(ii) Is equal to or greater than $7,500 but less than $10,000, the borrower shall repay the Consolidation loan in not more than 12 years;

(iii) Is equal to or greater than $10,000 but less than $20,000, the borrower shall repay the Consolidation loan in not more than 15 years;

(iv) Is equal to or greater than $20,000 but less than $45,000, the borrower shall repay the Consolidation loan in not more than 20 years; or

(v) Is equal to or greater than $45,000, the borrower shall repay the Consolidation loan in not more than 25 years.

(3) For the purpose of paragraph (h)(2) of this section—

(i) The unpaid balance on other student loans may not exceed the amount of the Consolidation loan; and

(ii) Does not include the unpaid balance on any loan on which the borrower is in default, unless the borrower has made satisfactory arrangements with the holder to repay that loan.

(4) A repayment schedule for a Consolidation loan—

(i) Shall be established by the lender; and

(ii) Must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(i) *Treatment by a lender of borrowers' refunds received from schools.* (1) A lender shall treat a payment of a borrower's refund of tuition or other institutional charges received by the lender from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2)(i) If a lender receives a refund payment from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under § 682.209(f) or by a Consolidation loan, the lender shall transmit the amount of the refund payment to the lender to whom it assigned the loan within 30 days of receipt, or who so discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund transmitted under paragraph (i)(2)(i) of this section, the holder of the loan shall promptly provide written notice to the borrower that the holder has received the refund.

(j) *Certification on loans to be repaid through consolidation.* Within 10 days after receiving a written request for a certification from a lender under § 682.206(f), a holder shall either provide the requesting lender the certification or, if it is unable to certify to the matters described in that paragraph, provide the requesting lender and the guarantor on the loan at issue with a written explanation of the reasons for its inability to provide the certification.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1085)

§ 682.210 Deferment.

(a) *General.* (1) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period, pursuant to paragraph (b) of this section.

(2)(i) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installments of principal deferred during the six-month period (post-deferment grace period) that commences after the completion of each deferment period or combination of those periods, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Once a borrower receives a post-deferment grace period following an unemployment deferment, as described in paragraph (b)(1)(v) of this section, the borrower does not qualify for additional post-deferment grace periods following subsequent unemployment deferments.

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless, in the case of a Stafford loan, the loan was determined to be eligible for interest benefits under § 682.301 when the loan was made.

(4)(i) As a condition for receiving a deferment, the borrower shall request the deferment in writing, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

(ii) A lender may grant a borrower a deferment based on substantially complete documentation that nevertheless does not include some

required information. If the lender does so, the lender shall diligently attempt to obtain the missing information from the borrower. If the lender is unable to obtain that information, it may grant forbearance in accordance with § 682.211(f).

(5) An authorized deferment period begins on the date the condition entitling the borrower to the deferment first exists, but not more than six months before the date the lender receives a request for the deferment and substantially complete documentation, including, without limitation, the signature of the authorized certifying official, required for the deferment under this section.

(6) An authorized deferment period ends on the earlier of—

(i) The date when the condition establishing the borrower's eligibility for the deferment ends;

(ii) Except as provided in paragraph (a)(6)(iv) of this section, the date on which, as certified by an authorized official, the borrower's eligibility for the deferment is expected to end;

(iii) Except as provided in paragraph (a)(6)(iv) of this section, the expiration date of the period covered by any certification required by this section to be obtained for the deferment;

(iv) In the case of an in-school deferment for a Stafford loan guaranteed by a guarantee agency whose student status confirmation report system includes student status reports for each borrower with a student deferment, and in the case of an SLS loan to a borrower received for a period of enrollment that commences at the same time as the deferment, the student's anticipated graduation date as indicated on the loan application, and as updated by notice to the lender from the school or guarantee agency; or

(v) The date when the condition providing the basis for the borrower's eligibility for the deferment has continued to exist for the maximum amount of time allowed for that type of deferment.

(7) A lender may not deny a borrower a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 180- or 240-day period required to establish default does not run during the deferment and post-deferment grace periods. When the deferment and, if applicable, the post-deferment grace period expire, a borrower resumes any delinquency status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment as to that loan, unless, in the case of a loan held by a lender, the borrower has made satisfactory repayment arrangements with the holder of the loan.

(9) The borrower must promptly inform the lender when the condition entitling the borrower to a deferment no longer exists.

(10) Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c)–(r) of this section.

(b) *Authorized deferments.* (1) Deferment is authorized for a GSL borrower during any period when the borrower is—

(i) Engaged in full-time study at a school, or at a school that is operated by the Federal Government (*e.g.*, the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State;

(ii) Engaged in a course of study under an eligible graduate fellowship program;

(iii) Engaged in a rehabilitation training program for disabled individuals;

(iv) Temporarily totally disabled, or unable to secure employment because the borrower is caring for a spouse or other dependent who is temporarily totally disabled, for up to three years; or

(v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years.

(2) For a borrower of a Stafford or SLS loan, and for a parent borrower of a PLUS loan made before August 15, 1983, deferment is authorized during any period when the borrower is—

(i) On active duty status in the United States Armed Forces, or an officer in the Commissioned Corps of the United States Public Health Service, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(i) of this section);

(ii) A full-time volunteer under the Peace Corps Act, for up to three years;

(iii) A full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years;

(iv) A full-time volunteer for a tax-exempt organization, for up to three years; or

(v) An intern, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(iii) of this section).

(3) For a borrower of a Stafford or SLS loan who has been enrolled on at least a half-time basis at an eligible institution during the six months preceding the commencement of this deferment, deferment is authorized during a period of up to six months during which the borrower is—

(i) Pregnant, caring for his or her newborn child, or caring for his or her adopted child immediately following adoption; and

(ii) Not attending a school or gainfully employed.

(4) For a "new" borrower, as defined in paragraph (b)(7) of this section, of a Stafford, SLS, or PLUS loan, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school for a period of enrollment for which the borrower received a Stafford or SLS loan, or at a school that is operated by an agency of the Federal Government (*e.g.*, the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(5) For a new borrower, as defined in paragraph (b)(7) of this section, of a Stafford or SLS loan, deferment is authorized during any period when the borrower is—

(i) On active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(i) of this section);

(ii) [Reserved]; or

(iii) Engaged in an internship or residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(v) of this section); or

(iv) A mother who has preschool-age children and who is earning not more than $1.00 per hour above the Federal minimum wage, for up to 12 months of employment, and who began that employment within one year of entering or re-entering the work force on a full-time basis.

(6) For a parent borrower of a PLUS loan, deferment is authorized during any period when the student on whose behalf the parent borrower received the loan—

(i) Is dependent; and

(ii) Meets the conditions and provides the required documentation, for any of the deferments described in paragraphs (b)(1)(i)–(iii) and (b)(4) of this section.

(7) For purposes of this section, a "new borrower" with respect to a loan is a borrower who, on the date he or she signs the promissory note, has no outstanding balance on—

(i) A GSL, SLS, or PLUS loan made prior to July 1, 1987, for a period of enrollment beginning prior to July 1, 1987; or

(ii) A Consolidation loan made prior to July 1, 1987.

(c) *Student deferment.* (1) Except as provided in paragraph (c)(3) of this section, to qualify for a deferment for full-time study or half-time study at a school, the borrower shall provide the lender with—

(i) A statement from an authorized official of the school certifying that the borrower is enrolled on a full-time basis, or, in the case of a deferment described in paragraph (b)(4) of this section, on at least a halftime basis; and

(ii) In the case of a deferment described in paragraph (b)(4) of this section for a borrower who is at least half-time but less than full-time, a statement from the financial aid administrator of the school that the borrower has received, or will receive, a Stafford or SLS loan for the period of enrollment for which the deferment is sought; and

(iii) A completed deferment application, as prescribed by the guarantee agency.

(2) Except as provided in paragraph (c)(3) of this section, the period of enrollment covered in a single certification under paragraph (c)(1) of this section may not exceed one academic year.

(3) An SLS loan application certified by the school for the period of enrollment commencing at the same time as the deferment constitutes sufficient documentation for a student deferment for that SLS loan, and for any outstanding SLS loan previously made to that borrower that is held by the lender receiving the application. The lender may treat the loan application as certifying a deferment period lasting until the anticipated graduation date appearing on the application, unless and until it receives notice that the borrower has ceased the level of study (*i.e.*, full-time or half-time) required for the deferment.

(d) *Graduate fellowship deferment.* (1) To qualify for a deferment for study in a graduate fellowship program, a borrower shall provide the lender with a statement from an authorized official of the borrower's fellowship program certifying—

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance into an eligible graduate fellowship program requiring full-time study in an academic or professional subject area; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (d)(1) of this section, an eligible graduate fellowship program is a fellowship program that—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) To qualify for a rehabilitation training program deferment, a borrower shall provide the lender with a statement from an authorized official of the borrowers's rehabilitation training program certifying that the borrower is either receiving, or is scheduled to receive, services under an eligible rehabilitation training program for disabled individuals.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services program;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Temporary total disability deferment.* (1) To qualify for a temporary total disability deferment, a borrower shall provide the lender with a statement from a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower is temporarily totally disabled.

(2) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the condition substantially deteriorated, as established by the statement required under paragraph (f)(1) of this section, since he or she submitted the loan application so as to render the borrower temporarily totally disabled.

(3) A lender may not grant a deferment based on a single certification under paragraph (f)(1) of this section beyond the date that is six months after the date of certification.

(g) *Dependent's temporary total disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse or other dependent is temporarily totally disabled, the borrower shall provide the lender with a statement—

(i) From a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower's spouse or dependent—

(A) Is temporarily totally disabled; and

(B) Requires continuous nursing or similar services; and

(ii) From the borrower, certifying that the borrower is unable to secure full-time employment because he or she is providing nursing or similar services to the borrower's spouse or other dependent who is temporarily totally disabled. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(2) A lender may not grant a deferment based on a single certification under paragraph (g)(1) of this section beyond the date that is six months after the date of the certification.

(h) *Unemployment deferment.* (1) To qualify for an unemployment deferment, a borrower shall provide the lender with a written certification—

(i) Describing the borrower's conscientious search for full-time employment, including, for each of at least six attempts to secure employment during the period covered by the certification—

(A) The name of the employer contacted:

(B) The employer's address and phone number;

(C) The name or title of the person contacted; and

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is accessible, specifying the agency's name and address and the date of registration.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) An unemployment deferment is not justified if the borrower refuses to seek or accept employment for which the borrower feels overly qualified by virtue of education or previous experience.

(4) For the purpose of this paragraph, full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(5) A lender may not grant a deferment based on a single certification under paragraph (h)(1) of this section beyond the date that is six months after the date of the certification.

(i) *Military deferment.* (1) To qualify for a military deferment, a borrower shall provide the lender with a statement from the borrower's commanding or personnel officer certifying—

(i) That the borrower is on active duty in the Armed Forces of the United States; and

(ii) The date on which the borrower's service is expected to end.

(2) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps and the Coast Guard.

(3) A borrower enlisted in a reserve component of the Armed Forces may qualify for a military deferment only for service on a full-time basis for a period of at least one year in length, as evidenced by official military orders.

(4) A borrower enlisted in the National Guard qualifies for a military deferment only while the borrower is on active duty status as a member of the U.S. Army or Air Force Reserves, and meets the requirements of paragraph (i)(3) of this section.

(j) *Public Health Service deferment.* To qualify for a Public Health Service deferment, the borrower shall provide the lender with a statement from an authorized official of the United States Public Health Service (USPHS) certifying—

(1) That the borrower is engaged in full-time service as an officer in the Commissioned Corps of the USPHS; and

(2) The date on which the borrower's service is expected to end.

(k) *Peace Corps deferment.* To qualify for a deferment for service under the Peace Corps Act, the borrower shall provide the lender with a statement from an authorized official of the Peace Corps certifying—

(1) That the borrower has agreed to serve for a term of at least one year; and

(2) The date on which the borrower's service is expected to end.

(l) *Full-time volunteer service in the ACTION programs.* To qualify for a deferment as a full-time paid volunteer in an ACTION program, the borrower shall provide the lender with a statement from an authorized official of the program certifying—

(1) That the borrower has agreed to serve for a term of at least one year; and

(2) The date on which the borrower's service is expected to end.

(m) *Deferment for full-time volunteer service for a tax-exempt organization.* To qualify for a deferment as a full-time paid volunteer for a tax-exempt organization, a borrower shall provide the lender with a statement from an authorized official of the volunteer program certifying—

(1) That the borrower—

(i) Serves in an organization that has obtained an exemption from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) Does not receive compensation that equals or exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization;

(iv) Does not, as part of his or her duties, give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(v) Has agreed to serve on a full-time basis for a term of at least one year; and

(2) The date on which the borrower's service is expected to end.

(n) *Internship or residency deferment.* (1) To qualify for an internship or residency deferment under paragraph (b)(2)(v) or (b)(5)(iii) of this section, the borrower shall provide the lender with a statement from an authorized official of the organization with which the borrower is undertaking the internship or residency program certifying—

(i) That the internship or residency program is a supervised training program that requires the borrower to hold at least a baccalaureate degree prior to acceptance into the program;

(ii) That, except for a borrower that provides the statement from a State official described in paragraph (n)(2) of this section, the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(iii) That the borrower has been accepted into the internship or residency program;

(iv) That the borrower holds at least a baccalaureate degree; and

(v) The anticipated dates on which the borrower will begin and complete the internship or residency program, or, in the case of a borrower providing the statement described in paragraph (n)(2) of this section, the anticipated date on which the borrower will begin and complete the minimum period of participation in the internship program that the State requires be completed before an individual may be certified for professional practice or service.

(2) For a borrower who does not provide a statement certifying to the matters set forth in paragraph (n)(1)(ii) of this section to qualify for an internship deferment under paragraph (b)(2)(v) of this section, the borrower shall also provide the lender with a statement from an official of the appropriate State licensing agency certifying that the internship or residency program, or a portion thereof, is required to be completed before the borrower may be certified for professional practice or service.

(o) *Parental leave deferment.* (1) To qualify for the parental leave deferment described in paragraph (b)(3) of this section, the borrower shall provide the lender with—

(i) A statement from an authorized official of a participating school certifying that the borrower was enrolled on at least a half-time basis during the six months preceding the beginning of the deferment period;

(ii) A statement from the borrower certifying that the borrower—

(A) Is pregnant (or the borrower's spouse is pregnant), caring for his or her newborn child, or caring for his or her adopted child immediately following placement of the child through the adoption process;

(B) Is not, and will not be, attending school during the deferment period; and

(C) Is not, and will not be, engaged in full-time employment during the deferment period; and

(iii) A physician's statement, birth certificate, or adoption certificate demonstrating the existence of the pregnancy, birth, or adoption.

(2) For purposes of paragraph (o)(1)(ii)(C) of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(p) *NOAA deferment.* To qualify for a National Oceanic and Atmospheric Administration (NOAA) deferment, the borrower shall provide the lender with a statement from an authorized official of the NOAA corps, certifying—

(1) That the borrower is on active duty service in the NOAA corps; and

(2) The date on which the borrower's service is expected to end.

(q) *Targeted teacher deferment.* [Reserved]

(r) *Working mother deferment.* (1) To qualify for the working mother deferment described in paragraph (b)(5)(iv) of this section, the borrower shall provide the lender with a statement certifying that she—

(i) Is the mother of a preschool-age child;

(ii) Entered or reentered the workforce not more than one year before the commencement of the period for which the deferment is being sought;

(iii) Is currently engaged in full-time employment; and

(iv) Does not receive compensation that exceeds $1.00 per hour above the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage).

(2) In addition to the certification required under paragraph (r)(1) of this section, the borrower shall provide to the lender documents demonstrating the age of the child (*e.g.*, a birth certificate) and the rate of her compensation (*e.g.*, a pay stub showing her hourly rate of pay).

(3) For purposes of this paragraph—

(i) A preschool-age child is one who has not yet enrolled in first grade or a higher grade in elementary school; and

(ii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1085)

§ 682.211 Forbearance.

(a)(1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower in order to prevent the borrower from defaulting on the borrower's repayment obligation, or to permit the borrower to resume honoring that obligation after default.

"Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance of payments of principal and interest under paragraphs (b) and (c) of this section only if—

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two individuals are liable for repayment of a PLUS Program loan as co-makers, the lender may grant forbearance only if the ability of both individuals to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

(b) A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10-year maximum repayment period if the lender and borrower agree in writing to the terms of the forbearance, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment and the 10-year maximum repayment period only if both the borrower and an authorized official of the lender agree in writing to the forbearance.

(d) A lender may grant forbearance to permit a borrower to resume honoring the repayment obligation after default consistent with the minimum annual payment requirements and the 10-year maximum repayment period. The terms of the forbearance agreement in this situation must include a new repayment schedule.

(e) Except in the case of forbearance of interest payments during a deferment period, if a forbearance involves the postponement of all payments, the lender must contact the borrower at least once every three months during the period of forbearance and remind the borrower of the outstanding obligation to repay.

(f) A lender may grant forbearance, upon notice to the borrower, with respect to payments of interest and principal that are overdue—

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify, plus up to 30 days for processing of the forbearance by the lender;

(2) Upon the commencement of an authorized deferment period; or

(3) If a lender is unable to obtain missing information from a borrower under § 682.210(a)(4)(ii) within 30 days of receiving substantially complete deferment documentation, for the previously granted deferment period, plus up to 30 days for processing of the forbearance by the lender.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1080, 1082)

§ 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market, or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the GSL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the then most recently-prescribed special allowance under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the seller of those loans a warranty that—

(1) Covers future reductions by the Secretary or a guarantee agency in computing the amount of loss payable on default claims filed on the loans, where the reductions are attributable to an act or failure to act on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a GSL loan shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1097)

§ 682.213 Prohibition against the use of the Rule of 78's.

For purposes of the calculations required by this part, a lender shall not use the Rule of 78's to calculate the outstanding principal balance of a loan.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.214 Compliance with equal credit opportunity requirements.

In making a Stafford loan, a lender shall comply with the equal credit opportunity requirements of regulation B (12 CFR part 202). With regard to regulation B, the Secretary considers the Stafford loan program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, under 12 CFR 202.8(d), the lender may request a loan applicant to disclose his or her marital status, income from alimony, child support, and separate maintenance income, and the spouse's financial resources.

(Authority: 20 U.S.C. 1071–1087–2)

§ 682.215 Defenses to the borrower's obligation to repay a GSL loan.

(a) Except as provided in paragraph (b) of this section, a borrower may not assert as a defense to repayment of any portion of a GSL loan the failure of the school attended by the student to or for whom the loan was made to—

(1) Provide the student with a particular amount or quality of educational services for the period of enrollment for which the GSL loan is made;

(2) Make a refund of institutional charges for that period on account of the withdrawal of the student;

(3) Otherwise perform in accordance with representations made to the student regarding its services or the employment prospects in the fields for which it purports to prepare its students; or

(4) Comply with the requirements of—

(i) Accrediting agency standards; or

(ii) Applicable Federal, State, or local law.

(b) Subject to paragraph (d) of this section, a borrower may assert a defense to repayment of a GSL loan made or originated by a school due to a failure by the school described in paragraphs (a)(1) through (4) of this section—

(1) Only to the extent that the failure entitles the student to a refund of some portion of the tuition and fees paid to the school and the refund is allocable to the GSL loan under the policy adopted by the school in accordance with 34 CFR part 668; and

(2) In the case of a loan originated by a school, unless the lender or subsequent holder notifies the borrower in writing of the matters described in paragraph (c) of this section, prior to or at the time of the first disbursement on the loan, and, in the case of a Stafford loan, within 60 days prior to the beginning of the repayment period.

(c) The notice described in paragraph (b)(2) of this section shall inform the borrower that—

(1) The borrower's loan was made, and, if the loan has been sold, is held, by a lender that is not affiliated with the school attended by the borrower by common ownership, control, or management;

(2) The borrower's loan repayment obligation is therefore separate and distinct from the school's obligations to the borrower, and

(3) A failure by the school described in paragraph (a) of this section cannot excuse any portion of the borrower's obligation to repay the loan.

(d)(1) Neither the guarantee agency nor the Secretary is subject to a defense otherwise available under this section or other applicable law unless the agency had actual notice of facts establishing the defense at the time the agency paid a default claim on the loan.

(2) The Secretary is not subject to a defense otherwise available under this section or other applicable law on a Federal GSL loan unless the Secretary had actual notice of facts establishing the defense at the time that the Secretary paid a default claim on the loan.

(3) For purposes of this paragraph, the guarantor (*i.e.*, the guarantee agency or, in the case of a Federal GSL loan, the Secretary) does not have notice of a fact unless—

(i) The documents presented to the guarantor by the holder of the loan to support a claim for payment upon default on the loan demonstrate the existence of the fact;

(ii) Findings contained in a report of an audit or program review performed by the guarantor of the school attended by the student or the lender that made the loan establish the existence of the fact; or

(iii) An official of the guarantor with authority to approve default claims, or to initiate or approve an action to limit, suspend or terminate the school or lender, has actual knowledge of the existence of the fact.

(e) Upon acquiring a GSL loan, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the loan. A GSL loan note is not a negotiable instrument, and a subsequent holder of such a note is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder, unless the new holder is a guarantee agency or the Secretary and is not subject to the defense by operation of paragraph (d) of this section.

(f) The inclusion in this part of a requirement applicable to a school, lender, or guarantee agency does not mean that a violation of that requirement constitutes a defense to the

borrower's obligation to repay a GSL loan. This includes, but is not limited to, a lender's duty to engage in the due diligence activities specified in §§ 682.207, 682.208, and 682.411, and a guarantee agency's duty to engage in the due diligence activities specified in § 682.410(b).

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082)

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of interest benefits on Stafford loans.

(a) *General.* The Secretary pays a lender a portion of the interest on a Stafford loan on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) *Covered interest.* (1) The Secretary pays a lender the interest that accrues on an eligible Stafford loan—

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraph (b)(2) of this section;

(ii) During any period when the borrower has an authorized deferment, and, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (d)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on the earliest of—

(i) The date the borrower's loan is repaid;

(ii) With respect to the portion of a loan represented by a single disbursement of loan proceeds—

(A) The date the check for the disbursement is returned uncashed to the lender; or

(B) The 120th day after the date of that disbursement, if—

(1) The check for the disbursement has not been cashed on or before that date; or

(2) The proceeds of the disbursement made by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date;

(iii) The date of default by the borrower;

(iv) The date that the lender receives payment of a claim for loss on the loan;

(v) The date the borrower's loan is discharged in bankruptcy;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor.

(3) Section 682.412(a) sets forth circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guarantee agency.

(c) *Interest not covered.* The Secretary does not pay—

(1) Interest for which the borrower is not otherwise liable; or

(2) Interest paid on behalf of the borrower by a guarantee agency.

(d) *Rate.* (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender at the actual interest rate on a loan provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to three percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.301 Eligibility of borrowers for interest benefits on Stafford loans.

(a) *General.* (1) A borrower must demonstrate financial need in accordance with part F of the Act to qualify for interest benefits on a Stafford loan.

(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(A) Directs the member to pursue the course of study; or

(B) Provides subsistence support to its members.

(b) *Application for interest benefits.* To apply for interest benefits, the student shall submit a loan application to the lender. The application must include a certification from the student's school of the following information:

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended.

(2) The estimated financial assistance for the student for the academic period for which the loan is intended.

(3) The student's expected family contribution, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(4) The amount of the student's need for a loan, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a SLS, PLUS, or non-subsidized Stafford loan obtained for a period of enrollment to replace the expected family contribution determined under paragraph (b)(3) of this section for that period of enrollment.

(Authority: 20 U.S.C. 1078, 1082, 1087-1)

§ 682.302 Payment of special allowance on GSL loans.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible GSL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest, computed in accordance with paragraph (c) of this section.

(b) *Eligible loans.* (1) Except for Stafford loans disbursed on or after October 1, 1981 that do not qualify for interest benefits under § 682.301, or as provided in paragraph (b)(2) or (e) of this section, GSL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the SLS or PLUS Program on or after July 1, 1987 or made under § 682.209 (e) or (f) no special allowance is paid for any period for which the interest rate determined under § 682.202(a)(2)(iv)(A) for that loan does not exceed 12 percent.

(c) *Rate.* (1) Except as provided in paragraph (c)(2) of this section, the special allowance rate for an eligible loan during a three-month period is calculated by—

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the three-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) Three and one-quarter percent to the resulting percentage, for a loan made on or after November 16, 1986;

(B) Three and one-quarter percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(C) Three and one-half percent to the resulting percentage, for a loan made prior to October 17, 1986, or for a loan described in paragraph (c)(2) of this section; or

(D) Three and one-half percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

(iv) Rounding the result upward to the nearest one-eighth of one percent, for a loan made prior to October 1, 1981; and

(v) Dividing the resulting percentage by four.

(2) The special allowance rate determined under paragraph (c)(1)(iii)(C) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

(i) Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(ii) South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(3)(i) Subject to paragraph (c)(3)(ii) of this section, the special allowance rate is one-half the rate calculated under paragraph (c)(1)(iii)(C) of this section for a loan made or guaranteed on or after October 1, 1980, that was made or purchased with funds obtained by the holder from—

(A) The issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1986;

(B) Collections or payments by a guarantor on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(C) Interest benefits or special allowance payments on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(D) The sale of a loan that was made or purchased with funds obtained by the holders from obligations described in paragraph (c)(3)(i)(A) of this section; or

(E) The investment of the proceeds of obligations described in paragraph (c)(3)(i)(A) of this section.

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section may not be less than—

(A) Two and one-half percent per year on eligible loans for which the applicable interest rate is seven percent;

(B) One and one-half percent per year on eligible loans for which the applicable interest rate is eight percent; or

(C) One-half of one percent per year on eligible loans for which the applicable rate is nine percent.

(d) *Termination of special allowance payments on a loan.* (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of the date—

(i) The borrower's loan is repaid;

(ii) The borrower's loan check is returned uncashed to the lender;

(iii) The lender receives payment on a claim for loss on the loan;

(iv) The loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(v) Forty-five days after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to that 45th day; or

(vi) The 120th day after the date of disbursement, if—

(A) The loan check has not been cashed on or before that date; or

(B) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date; or

(vii) The date the guarantee agency returns a claim for loss on the loan to the lender for additional documentation.

(2) Section 682.412(a) sets forth the circumstances under which a lender may be required to repay special allowance received on a loan guaranteed by a guarantee agency.

(e) *Special allowance payments for loans financed by proceeds of a tax-exempt obligations.* (1) The Secretary pays a special allowance on a loan described in paragraph (c)(3)(i) of this section that is held by or on behalf of an Authority only if the loan meets the requirements of § 682.800.

(2) The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) of this section on a loan described in paragraph (c)(3)(i) of this section—

(i) After the loan is pledged or otherwise transferred in consideration of funds derived from sources other than those described in paragraph (c)(3)(i) of this section and—

(ii) If the authority retains a legal or equitable interest in the loan—

(A) The prior tax-exempt obligation is retired; or

(B) The prior tax-exempt obligation is rendered null and void by means of obligations that the Authority certifies in writing to the Secretary bear a yield that does not exceed the yield permitted under Internal Revenue Service regulations, 26 CFR 1.103–14, with regard to investments of proceeds of a tax-exempt refunding obligation.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

§ 682.303 [Reserved]

§ 682.304 Methods for computing interest benefits and special allowance.

(a) *General.* The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on a lender's loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, and divides the sum by the number of days in the quarter and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary computes the interest benefits due on all qualified, loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year.

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year, or alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter equal the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) *Average daily balance method for special allowance.* (1) To compute the average daily balance outstanding for special allowance purposes, the lender

adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter and divides this sum by the number of days in the quarter and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.305 Procedures for payment of interest benefits and special allowance.

(a) *General.* (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect, and the amount of those fees refunded to borrowers, during the quarter covered by the report.

(3) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under § 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under § 682.202(c).

(4)(i) If a lender sells or otherwise transfers a loan within the calendar quarter in which the loan is disbursed, either the lender making the loan or the new holder may report the amount of the origination fee to the Secretary.

(ii) A lender that makes a loan and any subsequent holder are jointly and severally liable for payment of the origination fee on the loan to the Secretary.

(b) *Penalty interest.* (1)(i) If the Secretary does not pay interest benefits or special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance is deemed to occur, for purposes of this paragraph, when the Secretary—

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt that the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due the lender to another Federal agency for credit against a debt that the agency has determined is owed it by the lender.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed at the daily rate of the sum of—

(i) The interest rate applicable to the eligible loans on which payment is requested; and

(ii) The special allowance rate applicable to loans made on or after November 16, 1986 under § 682.302(c)(1)(iii) (A), for the quarter for which payment is requested.

(3) The Secretary pays penalty interest from the later of—

(i) The 31st day after the final day of the quarter covered by the request for payment; or

(ii) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender.

(4) Penalty interest continues to accrue through the day the Secretary pays the interest benefits and special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(5) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(6) A request for interest benefits and special allowance is not considered accurate and complete if it—

(i) Requests payments to which the lender is not entitled under § 682.300–§ 682.302;

(ii) Includes loans that the Secretary has directed the lender in writing to exclude from the request;

(iii) Does not contain all information required by the Secretary or contains conflicting information; or

(iv) Is not provided and certified on the form and in the manner prescribed by the Secretary.

(c) *Independent audits.* (1) A lender that originates in excess of or whose outstanding GSL loan volume during any fiscal year exceeds $10 million shall arrange for an independent financial and compliance audit of the lender's billings for interest benefits and special allowance payments.

(2) The audit required under paragraph (c)(1) of this section must—

(i) Examine the lender's compliance with the Act and applicable regulations.

(ii) Examine the lender's financial management of its GSL program activities.

(iii) Be conducted in accordance with the general standards for financial and compliance audits of the United States General Accounting Office's (GAO) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* Procedures for audits are contained in audit guides developed by and available from the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO standards.

(iv) Be conducted annually and must be submitted to the Secretary within 90 days of the end of the Federal fiscal year. The first audit must cover the lender's interest and special allowance billings for the Federal fiscal year that ended September 30, 1989. Each subsequent audit must cover each fiscal year thereafter.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

Subpart D—Administration of the Guaranteed Student Loan Programs by a Guarantee Agency

§ 682.400 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guarantee agency to participate in the GSL programs and to receive the various payments and benefits incident to that participation.

(b) There are three agreements:

(1) *Basic program agreement.* In order to participate in the GSL programs a guarantee agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose Stafford loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guarantee agency program may receive special allowance payments from the Secretary, and have death, disability, and bankruptcy claims paid by the Secretary through the guarantee agency; and

(iii) The guarantee agency may apply for the administrative cost allowance, and for the other agreements described in this section.

(2) *Federal advances for claim payments agreement.* A guarantee agency must have an agreement for Federal advances for claim payments to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guarantee agency must have a

reinsurance agreement to receive reimbursement from the Secretary for its losses on default claims.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act, in other applicable Federal statutes, and in regulations that apply to the GSL programs.

(Authority: 20 U.S.C. 1072, 1078–1, 1078–2, 1078–3, 1082, 1087, 1087–1)

§ 682.401 Basic program agreement.

(a) *General.* In order to participate in the GSL programs, a guarantee agency shall enter into a basic agreement with the Secretary.

(b) *Terms of agreement.* In the basic agreement, the guarantee agency shall agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all Stafford, SLS, and PLUS loans made to a borrower may not exceed the amounts set forth in § 682.204 (b), (d), and (f).

(2) *Annual loan limits.* (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in § 682.204 (a), (c), and (e).

(ii) A guarantee agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either—

(A) A period of not less than seven nor more than 12 months; or

(B) A period of not less than seven months in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore) or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iii) The amount of a loan guaranteed may not exceed the student's estimated cost of attendance for the academic period for which the loan is intended, less the estimated financial assistance.

(3) *Duration of borrower eligibility.* (i) A student borrower under the Stafford Loan Program or the SLS Program, and a parent borrower under the PLUS Program, is eligible to receive a guaranteed loan for any year of the student's study at a participating school; and

(ii) Loans must be available to or on behalf of any student for at least six academic years of study.

(4) *Borrower responsibilities.* (i) The borrower shall indicate his or her preferred lender on the loan application, if he or she has such a preference.

(ii) The borrower shall give the lender, as part of the application process for a Stafford, SLS, or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) Information demonstrating that the borrower is eligible for the loan;

(C) Information concerning the outstanding GSL loans of the borrower and, for a parent borrower, of the student, including the portion of any Consolidation loan used to discharge a Stafford, SLS, or PLUS loan.

(D) A statement of the sources and amount of the student's estimated financial assistance, as defined in § 682.200, for the period of enrollment for which the loan is intended;

(E) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (*e.g.*, the student's enrollment status, financial assistance, and employment records); and

(F) Information from the school demonstrating that the student qualifies as an eligible student and providing the maximum amount that may be borrowed by or on behalf of the student.

(iii) The borrower shall give the lender, as part of the application process for a Consolidation loan—

(A) Information demonstrating that the borrower is eligible for the loan under § 682.201(c); and

(B) A statement that the borrower does not currently have another application for a consolidation loan pending.

(iv) The borrower shall promptly notify—

(A) The lender or the guarantee agency of any change of name, address, or student status to less than half-time; and

(B) The school of any change in local address, employer, or employer's address.

(5) *School eligibility.* A school that has in effect a program participation agreement with the Secretary under § 682.600 is eligible to participate in the program of the agency except to the extent that—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR part 668, or by the guarantee agency under standards and procedures that are substantially the same as those in 34 CFR part 668;

(ii) The school is disqualified by the Secretary under section 432(h)(3) of the Act;

(iii) There is a State constitutional prohibition affecting the school's eligibility; or

(iv) The school's programs consist of study solely by correspondence.

(6) *Lender eligibility.* (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guarantee agency except to the extent that—

(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part, or by the agency under standards and procedures that are substantially the same as those in subpart G of this part or in section 432(h)(2) of the Act; or

(B) The lender is disqualified by the Secretary under section 432(h)(1) of the Act and § 682.712; or

(C) There is a State constitutional prohibition affecting the lender's eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographical area that the agency serves.

(iii) The guarantee agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(7) *Out-of-State schools.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are legal residents of any State served by the agency under § 682.404(i)(2), but who attend schools out of that State, and for parents who are legal residents of that State and are borrowing on behalf of students attending schools out of that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(8) *Out-of-State residents.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are not legal residents of any State served by the agency under § 682.404(i)(2), but who attend schools in that State, and for parents who are not legal residents of that State and who are borrowing on behalf of students attending schools in that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal

residents of the State and who are borrowing for students attending in-State schools.

(9) *Insurance premiums.* (i) Except for a SLS or PLUS loan refinanced under § 682.209(f), the guarantee agency may charge the lender an insurance premium on each Stafford, SLS, or PLUS loan it guarantees.

(ii) The guarantee agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guarantee agency in the administration of its loan guarantee program.

(iii) The lender may deduct the amount of the premium from the borrower's loan proceeds. For a multiple-disbursed loan, the insurance premium must be deducted proportionately from each disbursement of the loan proceeds.

(iv) The amount of the insurance premium may not exceed three percent of the principal balance of the loan, excluding interest or other charges the lender may have added to the principal balance.

(v) The lender shall refund to the borrower, by a credit against the borrower's loan balance, all or a part of the insurance premium paid by the borrower on a loan under the following circumstances:

(A) The premium, or the portion attributable to a portion of a multiple disbursed loan, must be refunded if the loan check is returned uncashed to the lender.

(B) The premium must be refunded if, within 120 days of disbursement—

(i) The loan is repaid in full;

(ii) The loan check has not been cashed; or

(iii) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school.

(10) *Payments for lender referral service.* (i) The guarantee agency may not use insurance premiums to pay incentive fees to lenders, except to those lenders who agree to participate in, and make GSL loans (other than Stafford loans that do not qualify for interest benefits) to all eligible students referred under, a qualified lender referral service.

(ii) For purposes of this paragraph, the term "qualified lender referral service" means a lender referral service offered by a guarantee agency under which the agency refers to a participating lender each eligible student applying for the service who is either a resident of the State in which the agency is the designated guarantee agency or attending a school in that State, and who has sought and been unable to find a lender willing to make a GSL loan (other than a Stafford loan that does not qualify for interest benefits) to the student.

(11) *Administrative fee for Consolidation loans.* The guarantee agency may charge a lender a fee, not to exceed $50, reasonably calculated to cover the agency's cost of increased or extended liability incurred in guaranteeing a Consolidation loan. The lender may not pass the fee on to the borrower. If it charges the fee, the agency must charge it for all loans made under the agency's Consolidation program.

(12) *Administrative fee for refinancing fixed-rate PLUS or SLS loans.* The guarantee agency may require a lender to pay to the guarantee agency up to 50 percent of the fee the lender charges a borrower under § 682.202(e) for the purpose of defraying the agency's administrative costs incident to the guarantee of a lender's reissuance of a fixed-rate PLUS or SLS loan at a variable interest rate.

(13) *Guarantee liability.* The guarantee agency shall guarantee 100 percent of the unpaid principal balance of each loan guaranteed.

(14) *Guarantee agency administration.* In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(5) *Loan assignment.* (i) The guarantee agency shall allow a loan to be assigned only to—

(A) An eligible lender;

(B) A guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closes;

(C) An educational institution, whether or not it is an eligible lender, in connection with the institution's repayment to the agency or to the Secretary of guarantee or reinsurance claim payments made on a loan that was ineligible for those payments; or

(D) The Secretary.

(ii) For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(16) *Transfer of guarantees.* The guarantee agency may transfer its guarantee obligation on a loan to another guarantee agency, but only with the approval of the transferee agency and the holder of the loan.

(17) *Standards and procedures.* (i) The guarantee agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(d) of the Act;

(B) School and lender participation in its program;

(C) Limitation, suspension, or termination of school and lender participation;

(D) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(E) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guarantee agency shall ensure that its program, and all participants in its program, at all times meet the requirements of subparts B, C, D and F of this part.

(18) *Student status confirmation.* The guarantee agency shall use a form containing data elements and report format approved by the Secretary for monitoring the enrollment status of a student borrower that includes, at a minimum—

(i) Transmitting to the school, for attendance at which the student received a GSL loan, a student status confirmation report for completion at least semi-annually in accordance with a schedule established by the agency;

(ii) Reporting to the current holder of the loan, within 60 days of the receipt of the completed report from the school, any change in the student's enrollment status reported by the school that triggers—

(A) The commencement of the borrower's grace period; or

(B) The commencement or resumption of the borrower's immediate obligation to make scheduled payments; and

(iii) The use of the data elements and report format provided in appendix B to this part.

(19) *Submission of interest and special allowance information.* Upon the Secretary's request, the guarantee agency shall submit, or require its lenders to submit, information that the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(20) *Submission of information for reports.* The guarantee agency shall require lenders to submit to the agency

the information necessary for the agency to complete the reports required by § 682.414(b).

(21) *Guarantee agency transfer of information.* (i) A guarantee agency from which another guarantee agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guarantee agency as defined in § 682.800(d), shall provide—

(A) The name and social security number of the student; and

(B) The amount borrowed under the loan and the cumulative amount borrowed by the student in loans under the Stafford and SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(21)(i) of this section must be paid by the guarantee agency making the request.

(c)(1) *Lender of last resort.* The guarantee agency shall ensure that it, or an eligible lender described in section 435(d)(1)(D) of the Act, serves as a lender of last resort in the State in which it is the principal guarantee agency, as defined in § 682.800(d).

(2) The lender of last resort shall make a Stafford loan to any eligible student who—

(A) Qualifies for interest benefits, pursuant to § 682.301, for a loan amount of at least $200; and

(B) Has been otherwise unable, after conscientious efforts, to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guarantee agency, or an eligible lender described in 435(d)(1)(D) of the Act, may arrange for a loan required to be made by this paragraph to be made by another eligible lender.

(d) *Review of forms and procedures.* (1) The guarantee agency shall submit to the Secretary its application forms, promissory notes, write-off criteria and procedures. The agency may not use these materials until the Secretary approves them. The agency's application form may request the student's and the student's parents' names, addresses, and social security numbers. However, the Secretary will not approve any application form that requests any other information from a student or the student's parents that the student or the student's parents have already provided for on the common financial aid form required by section 483(a)(1) of the Act.

(2) The guarantee agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, and other materials that substantially affect the operation of the agency's program, and any proposed changes to those materials. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guarantee agency shall ensure that all program materials meet the requirements of Federal and State law, including, but not limited to, the Act and the regulations in this part and part 668.

(e) *Prohibited inducements.* A guarantee agency shall not—

(1) Offer, directly or indirectly, any premium, payment, or other inducement to an employee or student of a school, or an entity or individual affiliated with a school, to secure applicants for GSL loans;

(2) Conduct unsolicited mailings of student loan application forms to students enrolled in secondary school;

(3) Conduct fraudulent or misleading advertising concerning loan availability.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

§ 682.402 Death, disability, and bankruptcy payments.

(a) *General.* (1) Rules governing the cancellation of loans due to death, total and permanent disability, or discharge in bankruptcy are set forth in paragraphs (a)(2), (b), (c), and (d) of this section.

(2)(i) If a PLUS loan was obtained by two parents as co-makers and only one of the borrowers dies, becomes totally and permanently disabled, or has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(ii) If the borrower dies or becomes totally and permanently disabled, the obligation of the borrower and any endorser to make further payments on the loan is cancelled.

(3) The Secretary does not pay a death, disability, or bankruptcy claim if the loan would not qualify either for payment of a default claim or for reinsurance payments, in the event of default.

(b) *Death.* (1) If an individual borrower dies, the obligation of the borrower and any endorser to make any further payments on the loan is cancelled.

(2) In determining that a borrower has died, the lender may rely on a death certificate or other proof of death that is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan can be cancelled only if the guarantee agency determines that other evidence establishes that the borrower has died.

(3) After receiving information indicating that the borrower has died, the lender shall, if it believes the information to be reliable, suspend any collection activity against the borrower and promptly request that the borrower's representative provide the documentation described in paragraph (b)(2) of this section. During the suspension of collection activity, which shall not exceed 30 days, the lender shall diligently attempt to obtain documentation from the borrower's representative. If, despite the lender's diligent attempts, the borrower's representative fails to provide the documentation within 30 days, the lender shall resume collection activity from the point that it had been discontinued, and is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined, under paragraph (b)(2) of this section, that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's death.

(c) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is cancelled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender shall promptly request that the borrower or the borrower's representative submit, on a form provided or approved by the Secretary, a certification by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State, that the borrower is totally and permanently disabled. The lender shall continue collection until it receives either the certification of total disability or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. Except as provided in paragraph (c)(4) of this

section, after receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After receiving the physician's certification described in paragraph (c)(2) of this section, the lender shall return any payments that it received from or on behalf of the borrower after the date the borrower or the borrower's representative notified the lender of the borrower's claim of total disability.

(4) If the lender determines that a borrower who claims to be totally and permanently disabled is not in fact disabled, or if the lender does not receive the physician's certification of total disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter requesting additional time and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(d) *Bankruptcy*—(1) *General.* If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan in accordance with paragraphs (d) through (i) of this section.

(2) *Notice of bankruptcy filing.* The lender shall determine that a borrower has filed a bankruptcy petition on the basis of a notice of the first meeting of creditors received from the bankruptcy court, other documents showing a petition has been filed, or written notice from the debtor's attorney of the filing date of the petition.

(3) *Suspension of collection activity.* If a lender receives notice that a borrower has filed a petition for relief in bankruptcy, the lender shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(i) Against the borrower, and

(ii) If the borrower has filed for relief under chapter 13, against any co-maker or endorser.

(4) *Proof of claim.* The lender shall file a proof of claim with the bankruptcy court within 30 days after the lender receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets.

(5) *Filing of bankruptcy claim with the guarantee agency.* (i) The lender shall file a bankruptcy claim on the loan with the guarantee agency, in accordance with paragraph (e) of this section, if—

(A) The borrower has filed a petition for relief under chapter 13 of the Bankruptcy Code; or

(B) The borrower has filed a petition for relief under chapters 7, 11, or 12, and—

(*1*) The loan has been in repayment for more than five years (exclusive of any applicable suspension of the repayment period) from the date of the filing of the petition for relief;

(*2*) The loan has been in repayment for less than 5 years (exclusive of any applicable suspension of the repayment period) from the date of the filing of the petition for relief, and the borrower has commenced an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) If the loan has been in repayment for less than 5 years, (exclusive of any applicable suspension of the repayment period) from the date of the filing of the petition for relief, but the borrower has not commenced an action to have the loan obligation determined to be dischargeable on grounds of undue hardship, the lender shall continue to hold the loan notwithstanding the bankruptcy proceeding. Once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed.

(e) *Claim procedures for a loan held by a lender*—(1) *Documentation.* A lender shall provide the guarantee agency with the following documentation when filing a death, disability, or bankruptcy claim:

(i) The original promissory note.

(ii) The loan application.

(iii) In the case of a death claim, those documents that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim—

(A) Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and, except in the case of a proceeding under chapter 7 in which the notice states that the borrower has no assets, an assignment to the guarantee agency of the lender's proof of claim; and

(B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy, and all documents supporting those facts.

(2) *Filing deadlines.* A lender shall file a death, disability, or bankruptcy claim within the following periods:

(i) A lender shall file a death or disability claim within 60 days of the date on which the lender determines that a borrower has died or is totally and permanently disabled.

(ii) As a condition for obtaining payment, a lender shall file a bankruptcy claim with the guarantee agency within the timeframe established by the guarantee agency as required to provide the agency sufficient time to oppose discharge of the loan, but in no case more than—

(A) Thirty days after the date the lender receives the notice of the first meeting of creditors, or other information described in paragraph (d)(2) of this section, in a proceeding under chapter 13 of the Bankruptcy Code;

(B) In a proceeding under chapters 7, 11, or 12 of the Bankruptcy Code, 30 days after the date the lender receives notice of the first meeting of creditors, or other information described in paragraph (d)(2) of this section, if the loan has been in repayment for more than 5 years on the date the petition for relief in bankruptcy was filed (exclusive of any applicable suspension of the repayment period); or

(C) In a proceeding under chapters 7, 11, or 12 of the Bankruptcy Code, 10 days after the holder is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship if the loan has been in repayment for less than 5 years on the date the petition for relief in bankruptcy was filed (exclusive of any applicable suspension of the repayment period), unless the holder, before filing the claim, secures an extension of time within which an answer may be filed and submits the claim not less than 25 days prior to the date on which the answer must be filed.

(f) *Payment of death, disability, and bankruptcy claims by the guarantee agency*—(1) *General.* (i) The guarantee agency shall review a death, disability, or bankruptcy claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with this paragraph, not later than 45 days after the claim was filed by the lender; and

(ii) In the case of a bankruptcy claim, the guarantee agency shall, upon receipt of the claim from the lender, immediately oppose the discharge of the loan by the bankruptcy court in

accordance with paragraph (g) of this section.

(2) *Amount of loss to be paid on a claim.* (i) The amount of loss payable on a death, disability, or bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (f)(3) of this section.

(ii) The unpaid balance of principal may include interest capitalized in accordance with § 682.202(b).

(3) *Payment of interest.* If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (e)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the guarantee agency for additional documentation necessary for the claim to be approved by the guarantee agency.

(iii) During the period required by the guarantee agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(g) *Guarantee agency participation in bankruptcy proceedings on loans acquired by the guarantee agency through payment of bankruptcy claims in chapters 7, 11, and 12 cases.*—(1) *Undue hardship claims.* (i) In response to a petition by the borrower for discharge under 11 U.S.C. 523(a)(8)(B) on the grounds of undue hardship, the guarantee agency shall determine on the basis of reasonably available information—

(A) Whether the first payment on the loan was due less than five years (exclusive of any applicable suspension of the repayment period) before the filing of the petition for relief commencing the bankruptcy case; and

(B) Whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(ii) If the agency determines that repayment would not constitute an undue hardship, the agency shall then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iii) If the expected costs of opposing the discharge petition do not exceed one-third of the total amount owed on the loan, the agency shall—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(iv) In opposing a petition for a determination of dischargeability on the ground of undue hardship, a guarantee agency may agree to discharge a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

(2) *Mandatory repurchase by lender.* The lender shall repurchase the loan from the guarantee agency if—

(i) A judgment is entered that the loan is not dischargeable; or

(ii) A discharge is denied to the borrower on any ground.

(3) *Claim for reimbursement from the Secretary.* The guarantee agency may submit a claim to the Secretary for reimbursement—

(i) In the case of a loan in repayment more than five years (exclusive of applicable suspensions of the repayment period) before the filing of the petition for relief commencing the bankruptcy case, but after entry of a general discharge order; or

(ii) In any other case, only after the court determines that all or part of a loan is dischargeable by reason of undue hardship.

(h) *Responding to a proposed chapter 13 repayment plan.* (1) The guarantee agency shall follow the procedures in this paragraph in responding to a repayment plan proposed by a borrower who has filed for relief under chapter 13 of the Bankruptcy Code.

(2) The agency is not required to respond to a proposed repayment plan, if—

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the agency shall determine from its own records and court documents—

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Bankruptcy Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the chapter 13 case.

(ii) Unless the agency reasonably concludes that the costs of the appropriate actions will exceed one-third of the dischargeable loan debt, the agency shall—

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) If grounds can be established under 11 U.S.C. 1307, either—

(*1*) Move to dismiss the case; or

(*2*) Move to convert to a case under chapter 7 of the Code a case involving a loan on which less than 5 years of the repayment period (excluding any applicable suspension of that period) had passed before the borrower filed the petition for relief in bankruptcy.

(4)(i) The agency shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the debtor does not make the payments required under the plan, or files a request for a "hardship discharge" under 11 U.S.C. 1328(b), the agency shall determine from its own records and any documents on file with the court—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) Unless the agency reasonably concludes that the costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will exceed one-third of the dischargeable loan debt, the agency shall—

(A) If grounds can be established under 11 U.S.C. 1307—

(*1*) Move to dismiss the case; or

(*2*) Move to convert to a case under chapter 7 of the Code a case involving a loan on which less than 5 years of the repayment period (excluding any applicable suspension of that period) had passed before the borrower filed the petition for relief in bankruptcy; and

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(iii) The agency shall follow the procedures in paragraph (g)(1) of this section if a borrower who seeks a hardship discharge under 11 U.S.C. 1328(b) also commences an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(5) *Mandatory repurchase by lender.* The lender shall repurchase the loan from the guarantee agency if—

(i) A judgment is entered that the loan is not dischargeable; or

(ii) A discharge is denied to the borrower on any ground.

(6) *Claim for reimbursement from the Secretary.* The guarantee agency may submit a claim to the Secretary for reimbursement upon payment of a bankruptcy claim to the lender. The guarantee agency shall refund the amount of reimbursement paid by the Secretary if the lender repurchases the loan.

(i) *Claim procedures for loans acquired by a guarantee agency through payment of default claims.* (1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by a guarantee agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement with the Secretary only if—

(i) The guarantee agency determines that the borrower has died, become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures set forth in paragraphs (b) through (d) of this section. For purposes of this paragraph, references to the "lender" and "guarantee agency" in paragraphs (b) through (d) of this section mean the guarantee agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guarantee agency determines that the borrower (or, in the case of a PLUS Program loan, each of the co-makers) has died, become totally and permanently disabled since applying for the loan or filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period;

(iii) In the case of a Consolidation loan, the guarantee agency determines that the borrower has died, become totally and permanently disabled since applying for the Consolidation loan, or filed the petition for relief in bankruptcy within the maximum repayment period described in § 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guarantee agency has not written off the loan in accordance with the procedures established by the agency pursuant to § 682.410(b)(6)(x); and

(v) The guarantee agency has exercised due diligence in the collection of the loan, in accordance with the procedures established by the agency pursuant to § 682.410(b)(6)(x), until the borrower (or, in the case of a PLUS loan, each of the co-makers) died, became totally and permanently disabled, filed a chapter 12 or 13 petition, or had the loan discharged in bankruptcy; and

(vi) In the case of a bankruptcy claim, the guarantee agency has complied with the requirements of paragraph (g) or (h) of this section, as applicable.

(2)(i) The Secretary pays the guarantee agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during the shorter of—

(A) The period from the date the guarantee agency determines that the borrower (or each of the co-makers) died, became totally and permanently disabled, filed a Chapter 13 bankruptcy petition or had the loan discharged in bankruptcy, until the Secretary authorizes payment; or

(B) Sixty days.

(ii) In addition, the Secretary pays the guarantee agency for any unpaid interest that the agency paid as part of the default claim and for which the agency was not previously reimbursed by the Secretary.

(j) *Payments received after the Secretary's payment of a death, disability, or bankruptcy claim.* If the guarantee agency receives any payments from or on behalf of the borrower on or attributable to a loan on which the Secretary previously paid a bankruptcy claim, the guarantee agency shall remit 100 percent of these payments to the Secretary.

(k) *Applicable suspension of the repayment period.* For purposes of this section, the term "applicable suspension of the repayment period" means any period of time during which the lender, pursuant to a request from the borrower, did not require the borrower to make payments (e.g., periods of deferment or forbearance).

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

§ 682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guarantee agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guarantee agency; or

(2) One or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guarantee agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guarantee agency—

(A) Agrees to establish at least one office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution, and that it does not have any substantial affiliation with an eligible educational institution.

(b) A guarantee agency shall apply to the Secretary in order to receive an initial advance.

(c)(1) An advance may be made to a new guarantee agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2)(i) A guarantee agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same day that the initial advance was made for each of the four succeeding calendar years.

(ii) An additional advance may be made to a private nonprofit guarantee agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in a Federal advances for claim payments agreement between the Secretary and the guarantee agency.

(e) In the case of a private nonprofit guarantee agency, the repayment of advances is determined separately for each State for which the agency has received an advance under this section, in accordance with section 422(c)(4).

(f) A guarantee agency shall return advances provided under this section in accordance with the provisions of sections 422 (c), (d), and (e) of the Act.

(Authority: 20 U.S.C. 1072, 1082)

§ 682.404 Federal reinsurance agreement.

(a) *General.* (1) The Secretary may enter into a reinsurance agreement with a guarantee agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement, the Secretary reimburses the guarantee agency for 100 percent of its losses on default claim payments to lenders.

(2) For purposes of this section—

(i) *Losses* means the amount of unpaid principal and accrued interest the agency paid on a default claim filed by a lender on a reinsured loan, minus payments made by, or on behalf of, the borrower after the lender's claim was paid but before the Secretary reimburses the agency, and an amount, not to exceed the lesser of $100 or two percent of the amount of unpaid principal the agency pays on a default claim, expended by the agency for the administrative costs of supplemental preclaims assistance for default prevention with regard to the loan, to the extent the agency has not been reimbursed for those costs under paragraph (g)(2)(ii) of this section or under § 682.407.

(ii) *Preclaims assistance* means collection assistance provided to the lender by the guarantee agency that involves the initiation by the agency of at least three collection activities, including at least one letter to the borrower designed to encourage the borrower to begin or resume payment.

(iii) *Administrative costs of supplemental preclaims assistance* means any administrative costs, excluding overhead costs, that are—

(A) Incurred by a guarantee agency in connection with a loan on which the guarantor has provided preclaims assistance to the lender, and on which the borrower is at least 120 days delinquent in making payments;

(B) Directly related to providing collection assistance to the lender on the loan prior to a claim being filed with the agency, including that portion of compensation of appropriate personnel that is properly allocable to the performance of collection assistance, fees paid to locate the borrower, postage, equipment, supplies, telephone, and similar charges;

(C) Directly related to collection assistance that is clearly supplemental to the preclaims assistance provided to the lender by the agency on the loan;

(D) Incurred for collection assistance that begins no earlier than 60 days following the date preclaims assistance began;

(E) Incurred for services provided by the guarantee agency directly or by another organization or entity that does not—

(*1*) Hold or service the loan;

(*2*) Own, control, or share common ownership with the holder or servicer of the loan; or

(*3*) Hold a contract with the agency to perform collection services on the loan in the event of default;

(F) Not in excess of 2 percent of the outstanding principal balance of the claim amount, or $100, whichever is less;

(G) Charged for a borrower for whom no previous such charges have been reimbursed by the Secretary; and

(H) Not charged to a borrower more than once.

(3) If supplemental preclaims assistance results in the borrower beginning or resuming payments—

(i) The guarantee agency may charge the lender for the costs of providing the assistance; and

(ii) The lender may charge the borrower the costs of supplemental preclaims assistance assessed against it by the guarantee agency.

(4) A guarantee agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(b) *Reinsurance rate.* (1) If the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches five percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year equals 90 percent of its losses.

(2) If the total of reinsurance claims paid during a fiscal year by the Secretary to a guarantee agency reaches nine percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year is 80 percent of its losses.

(3) For purposes of this section, the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year does not include amounts paid on claims by the guarantee agency—

(i) On loans considered in default under § 682.412(e);

(ii) Under a policy established by the agency that is consistent with § 682.509(a)(1); or

(iii) That were filed by lenders at the direction of the Secretary.

(4) Notwithstanding paragraphs (b) (1) and (2) of this section, for a guarantee agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976, the Secretary pays 100 percent of its losses during five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors these programs and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(5) For purposes of this section, *amount of loans in repayment* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency;

(C) The borrower has not yet reached the repayment period;

(D) Payment in full has been made by the borrower;

(E) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(F) The amount paid by the agency for guarantee claims on loans, excluding the amount of all loans in which—

(*1*) The agency paid a claim under § 682.412(e):

(*2*) The agency paid a claim under a policy established by the agency that is consistent with § 682.509(a)(1); or

(*3*) The agency paid a claim filed by a lender at the direction of the Secretary.

(c) *Submission of reinsurance rate base data.* The guarantee agency shall submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30 containing complete and accurate data, in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year. The Secretary does not pay a reinsurance claim to the guarantee agency after the date the quarterly report is due until the guarantee agency submits a complete and accurate report.

(d) *Reinsurance fee.* (1) Except for loans made under § 682.209 (e), (f) and (h), a guarantee agency shall pay to the Secretary during each fiscal year in quarterly installments, a reinsurance fee equal to—

(i) 0.25 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year; or

(ii) 0.5 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year, if the agency's reinsurance claims paid reach the amount described in paragraph (b)(1) of this section at any time during that fiscal year.

(2) The agency that is the original guarantor of a loan shall pay the reinsurance fee to the Secretary even if the guarantee agency transfers its guarantee obligation on the loan to another guarantee agency.

(3) The guarantee agency shall pay the reinsurance fee required by paragraph (d)(1) of this section, due the Secretary for each calendar quarter ending March 31, June 30, September 30 and December 31, within 90 days after the end of the applicable quarter, or within 30 days after receiving written notice from the Secretary that the fees are due, whichever is earlier.

(e) *Initiation or extension of agreements.* In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guarantee agency and the lenders to which it provides guarantees to collect outstanding loans as required by § 682.410(b) (6) or (7), and § 682.411;

(2) Efforts by the guarantee agency to make GSL loans available to all eligible borrowers; and

(3) Other relevant aspects of the guarantee agency's program operations.

(f) *Application of borrower payments.* Payments made to a guarantee agency by a borrower may, at the agency's option, be applied first to the payment of reinsured interest owed, or to defray the agency's collection costs on the loan. The borrower's payments may be applied to other charges, such as late charges, only after the repayment of all principal and interest.

(g) *Federal share of borrower payments.* (1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For purposes of this section, "the Secretary's equitable share" means that portion of borrower payments that remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage that was in effect when the reinsurance payment was made by the Secretary; and

(ii) (A) 30 percent of borrower payments; or

(B) If the agency satisfies the requirements of paragraph (h) of this section, 35 percent of borrower payments on a loan that are received—

(*1*) Prior to the agency's commencement of a civil suit on the loan; and

(*2*) After the agency sends a notice of intent to initiate a garnishment proceeding, as described in paragraph (h)(1)(ii) of this section, against a borrower who has made no payments on the loan for at least 90 consecutive days.

(*3*) Unless the Secretary approves otherwise, the guarantee agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 30 days of its receipt of the payments.

(h) *Administrative wage garnishment.* (1) For an agency to be eligible to retain 35 percent of payments it receives from a borrower on a loan under paragraph (g)(2)(ii)(B) of this section, the statute, regulations, and other provisions of law under which the agency would initiate the proceeding must provide—

(i) That the employer shall deduct and pay to the agency, from a borrower's pay, an amount that does not exceed 10 percent of disposable pay for a pay period, unless the borrower provides the agency or the employer with written consent to deduct a greater amount.

(ii) That the guarantee agency must provide the borrower, at least 30 days prior to initiation of garnishment proceedings, with written notice of the nature and amount of the indebtedness, the intention of the guarantee agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower's rights under applicable law;

(iii) That the guarantee agency must offer the borrower an opportunity to inspect and copy records of the guarantee agency related to the debt;

(iv) That the guarantee agency must afford the borrower an opportunity to enter into a written agreement with the guarantee agency, under terms agreeable to the agency, to establish a schedule for the repayment of the debt;

(v) That the guarantee agency must afford the borrower an opportunity for a hearing in accordance with paragraph (h)(3) of this section, concerning the existence or the amount of the debt, and, in the case of a borrower whose repayment schedule is established other than by a written agreement under paragraph (h)(1)(iv) of this section, concerning the terms of the repayment schedule;

(vi) For no mandatory administrative or judicial procedure, other than those described in paragraphs (h)(1) (ii) through (v) of this section, that would delay collection of the debt by garnishment (such as reduction of the debt to a judgment);

(vii) That the employer will be liable to the guarantee agency for any amount that the employer, after receipt of the garnishment notice provided by the agency under paragraph (h)(2) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle; and

(viii) For the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any borrower subject to wage withholding required by the garnishment law because of the withholding or any obligations it imposes upon the employer.

(2)(i) A guarantee agency shall send a notice of withholding order to the employer within 20 days after the borrower fails to timely request a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after the final decision is made after the hearing to proceed with garnishment.

(ii) The notice given to the employer pursuant to paragraph (h)(2)(i) of this section shall contain only such information as may be necessary for the employer to comply with the withholding order.

(3)(i) If the borrower requests a hearing on the existence or amount of the debt or the terms of the repayment schedule on or before the 15th day following the borrower's receipt of the notice described in paragraph (h)(1)(ii) of this section, the guarantee agency shall provide a hearing to the borrower within 60 days after the date of the filing of the request in accordance with such procedures as the agency may prescribe.

(ii) The timely filing of a petition for a hearing stays the commencement of wage withholding by the employer.

(iii) The guarantee agency shall provide a hearing to a borrower pursuant to an untimely request for a hearing, but shall not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control.

(iv) A hearing may not be conducted by an individual under the supervision or control of the agency, except that an

agency may appoint an administrative law judge to conduct the hearing.

(v) The hearing official shall issue a final written decision at the earliest practicable date, but not later than 60 days after the filing of the petition request for the hearing.

(4) For the purpose of this paragraph, the term "disposable pay" means that part of the pay of any individual remaining after the deduction of any amounts required by law to be withheld.

(i) *Non-discrimination.* (1) A guarantee agency may not engage in any pattern or practice that results in a denial of a borrower's access to GSL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular school within any State served by the guarantee agency, length of the borrower's educational program, or the borrower's academic year in school.

(2) For purposes of this section a guarantee agency is deemed to be serving a State if it guarantees a loan that is—

(i) Made by a lender located in a State not served by the agency;

(ii) Made to a borrower who is a resident of a State not served by the agency; and

(iii) Made for attendance at a school located in the State.

(j) *Other terms.* The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

(1) Promote the purposes of the GSL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.405 [Reserved]

§ 682.406 Conditions of reinsurance coverage.

(a) A guarantee agency is entitled to reinsurance payments on a loan only if—

(1) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds—

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school within 120 days after disbursement;

(2) The lender provided an accurate collection history and an accurate payment history to the guarantee agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of § 682.411;

(3) The loan was in default before the agency paid a default claim filed thereon;

(4) The lender filed a default claim thereon with the guarantee agency within 90 days of default;

(5) The lender resubmitted a properly documented default claim to the guarantee agency not later than 30 days from the date the agency had rejected that claim due solely to inadequate documentation.

(6) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition, pursuant to written policies and procedures established by the agency;

(7) The agency paid, or returned to the lender for additional documentation a default claim thereon filed by the lender with the agency within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 45th day after the date the lender filed the claim, together with all required documentation, is not reinsured;

(8) The agency submitted a request for the payment on a form required by the Secretary no earlier than 90 days following default, in the case of a loan payable in monthly installments, no earlier than 30 days following default, in the case of a loan payable in less frequent installments;

(9) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(10) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b) (6) or (7).

(11) The agency and lender complied with all other Federal requirements with respect to the loan; and

(12) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of § 682.409.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment when, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a)(3) or (a)(6) of this section is set forth in appendix D to this part.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.407 Administrative cost allowance for guarantee agencies.

(a)(1) The Secretary pays an administrative cost allowance to a guarantee agency having a basic program agreement.

(2) The administrative cost allowance paid to a guarantee agency for any fiscal year equals one percent of the total principal amount of loans guaranteed by the agency during that fiscal year, other than Consolidation loans.

(b)(1) To receive an administrative cost allowance payment, the guarantee agency shall submit an application to the Secretary by January 1 of the fiscal year for which it is requesting the allowance.

(2) In addition to other information and assurances that the Secretary may reasonably require, the application must contain—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs to be incurred in that fiscal year that will be eligible for payments under this section;

(iii) Assurances that the agency will use sufficient administrative and fiscal procedures, including an independent audit conducted in accordance with § 682.410(b)(1), to ensure that administrative cost allowances are used in accordance with the provisions of this section;

(iv) A report of the most recent audit, conducted in accordance with § 682.410(b)(1), submitted in a format satisfactory to the Secretary;

(v) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(vi) An estimate of the total amount of new GSL program loans, other than Consolidation loans, expected to be guaranteed during the fiscal year; and

(vii) Assurances that the agency's program meets and will continue to meet all the requirements contained in § 682.401(b).

(4) The application for an administrative cost allowance by a guarantee agency and the Secretary's payment of that allowance establishes an agreement between the Secretary and the guarantee agency with respect

to the assurances contained in the application.

(c)(1) A guarantee agency may use the administrative cost allowance only to meet administrative costs related to the GSL programs.

(2) A guarantee agency may not use the administrative cost allowance to meet costs—

(i) For which the agency has been or will be reimbursed from the 30 or 35 percent retention of collections permitted under § 682.404(g)(2)(ii); or

(ii) For which the agency has been or will be reimbursed from a source other than the payment made under this section.

(d) The Secretary pays an administrative cost allowance on a loan only to the guarantee agency that originally guaranteed the loan, even if the guarantee agency transfers its guarantee obligation on the loan to another guarantee agency.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.408 Stafford and SLS loan disbursement through an escrow agent.

(a) *General.* (1) A guarantee agency or an eligible lender may act as an escrow agent for the purpose of receiving Stafford or SLS loan proceeds disbursed by an eligible lender other than a school or State lender, and transmitting those proceeds to the borrower's school, if the lender and the escrow agent have entered into a written agreement for this purpose.

(2) The agreement must provide that—

(i) The lender may make payments into an escrow account that is administered by the escrow agent in accordance with the requirements of paragraph (c) of this section and § 682.207(b)(1)(iv);

(ii) The lender shall promptly notify the borrower's school when funds are escrowed for the borrower; and

(iii) The escrow agent is authorized to—

(A) Transmit the proceeds according to the note evidencing the loan;

(B) Commingle the proceeds of the loans paid to it pursuant to an escrow agreement;

(C) Invest the loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(D) Retain for its own use interest or other earnings on those investments.

(b) *Disbursement by the lender.* Subject to § 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) *Transmittal of loan proceeds to a school by the escrow agent.* The escrow agent shall transmit loan proceeds received from a lender under this section to a school in accordance with the requirements of § 682.207(b)(1) (ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

(d) *Return of untransmitted proceeds.* The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after receiving information indicating that the student has not enrolled, or has ceased to be enrolled on at least a half-time basis, for the period of enrollment for which the loan was intended.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.409 Mandatory assignment by guarantee agencies of defaulted loans to the Secretary.

(a) If the Secretary determines that such action is necessary to protect the Federal fiscal interest, the Secretary may direct a guarantee agency to assign to the Secretary any loan held by the agency on which the agency seeks or has received payment under §§ 682.402(d), 682.402(i), or 682.404. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the agency. The Secretary may identify particular loans to be assigned, or may require assignment of particular categories of loans that share characteristics that the Secretary determines make those loans appropriate for assignment.

(b)(1) A guarantee agency that assigns a defaulted loan to the Secretary under this section thereby releases all rights and title to that loan. The Secretary does not pay the guarantee agency any compensation for a loan assigned under this section.

(2) The agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guarantee agency shall assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency shall submit this information and documentation in the form (*e.g.*, computer tape) and in the format specified by the Secretary.

(2) The guarantee agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option—

(i) Allow the agency to revise the agency's submission to include the required information and documentation in the specified form and format;

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of that activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency's submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

(i) The promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application.

(v) A payment history for the loan, as described in § 682.414(a)(1)(C).

(vi) A collection history for the loan, as described in § 682.414(a)(1)(D).

(5) The agency may submit certified copies of required documents in lieu of originals when no originals exist.

(d)(1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c)(3)(i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) The Secretary assesses against the agency that portion of the amount paid to the agency under the reinsurance agreement, and interest at the rate applicable to the borrower under § 682.410(b)(3) accrued thereon from that payment date, equal to the amount of a loan assigned by the agency the collectibility of which the Secretary determines under paragraph (d)(2) of this section to be impaired due to the

failure of the agency to submit a document required by the Secretary.

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements*—(1) *Reserve fund assets.* The guarantee agency shall establish and maintain a reserve fund to which the guarantee agency shall credit—

(i) Federal advances obtained and matching funds required under section 422(a) of the Act;

(ii) Funds appropriated by a State for the agency's loan guarantee program;

(iii) Federal advances obtained under section 422(c) of the Act;

(iv) Funds received by the guarantee agency as loan insurance premiums;

(v) Administrative cost allowances received by the guarantee agency under § 682.407;

(vi) Funds received by the guarantee agency for the agency's loan guarantee program from gift, grant, or other sources;

(vii) Funds collected on GSL loans;

(viii) Death, disability, bankruptcy, and reinsurance payments received from the Secretary; and

(ix) Investment earnings on the reserve fund.

(2) *Uses of reserve fund assets.* Except as provided in paragraphs (a)(3) through (a)(5) of this section, a guarantee agency may use the assets of the reserve fund established under paragraph (a)(1) of this section only to—

(i) Pay default claims;

(ii) Pay death, disability, and bankruptcy claims;

(iii) Refund overpayments of insurance premiums;

(iv) Pay to the Secretary the Secretary's equitable share of borrower payments;

(v) Repay advances and excess reserves to the Secretary; and

(vi) Make payments to lenders that participate in the loan referral service under section 428(e) of the Act.

(3) *Special rules for uses of certain reserve fund assets.* (i) Except as provided in paragraph (a)(4) of this section, a guarantee agency may also use funds received as insurance premiums, administrative cost allowances, interest or investment earnings, and receipts described in paragraph (a)(1)(vi) of this section for payments necessary for the proper administration of the guarantee agency's GSL loan guarantee activities.

(ii) The guarantee agency shall use funds received as Federal advances received under section 422(c) of the Act, and interest or other earnings on those advances, only to pay default claims.

(iii) The guarantee agency shall account separately for the funds described in paragraph (a)(4)(i) of this section.

(iv) The guarantee agency shall use the borrower payments it retains under § 682.404(g)(2)(i) of this part only for the administrative costs of collection of loans, the administrative costs of preclaims assistance for default prevention, the administrative costs of supplemental preclaims assistance for default prevention, and the administrative costs of monitoring the enrollment status of students and repayment status of borrowers, to the extent the agency has not been reimbursed for these costs under § 682.404(a)(2) or § 682.407.

(v) The terms *administrative costs of collection of loans, administrative costs of preclaims assistance for default prevention, administrative costs of supplemental preclaims assistance for default prevention,* as used in this paragraph, are defined in section 428(c)(6) of the Act. The term *administrative costs of monitoring the enrollment status of students and repayment status of borrowers,* as used in this paragraph, has the same meaning as *administrative costs of monitoring the enrollment and repayment status of students,* as defined in section 428(c)(6)(B)(iii) of the Act, except that the reference to repayment status, if the borrower is a parent, refers to that of the parent borrower.

(vi) The term *overhead costs* used in those definitions includes space and utilities costs.

(4) The guarantee agency may invest the assets of the reserve fund described in paragraph (a)(1) of this section only in low-risk securities, such as obligations issued or guaranteed by the United States or a State, and shall exercise the level of care in that investment required of a fiduciary charged with the duty of investing the money of others.

(5) If the guarantee agency uses any funds required to be credited to the reserve fund under paragraph (a)(1) of this section to develop or purchase an asset of any kind—

(i) If the agency subsequently sells or otherwise derives revenue from uses of the asset that are unrelated to GSL program guarantee activities, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section, a percentage of the sale proceeds or revenue equal to the percentage of the original development cost or purchase price of the asset paid with the reserve fund monies;

(ii) If the agency subsequently converts the asset, in whole or in part, to a use unrelated to its GSL loan guarantee activities, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the fair market value or, in the case of a temporary conversion, the rental value of the portion of the asset employed for the unrelated use, equal to the percentage of the original development cost or purchase price paid with the reserve fund monies.

(b) *Administrative requirements*—(1) *Independent biennial audits.* The guarantee agency shall arrange for an independent financial and compliance audit of the agency's GSL Program activities that meets each of the following requirements:

(i) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(ii) The audit must examine the agency's financial management of its GSL Program activities.

(iii) The audit must be conducted in accordance with the general standards and the standards for financial and compliance audits of the United States General Accounting Office's (GAO) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* Procedures for audits are contained in audit guides developed by, and available from, the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's *Standards.*

(iv) The audit must be conducted at least once every two years, and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period beginning no later than December 26, 1986. Each subsequent audit must cover the agency's activities for a period beginning no later than the end of the period covered by the preceding audit.

(v) With regard to a guarantee agency that is an agency of a State government, an audit conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G, satisfies the requirements of this paragraph for the period covered by the audit.

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note, the guarantee agency shall charge a borrower an amount equal to reasonable costs incurred by

the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorneys' fees, collection agency charges, and court costs. The amount charged a borrower shall equal the lesser of—

(i) The amount that would be charged for the costs of collection by a guarantee agency under 34 CFR 30.60; or

(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

(3) *Interest charged by guarantee agencies.* The guarantee agency shall charge the borrower interest on the amount for which the Secretary has paid a reinsurance claim to the guarantee agency, at a rate that is the greater of—

(i) The rate establisbed by the terms of the borrower's original promissory note;

(ii) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(4) *Capitalization of unpaid amounts.* The guarantee agency shall capitalize any unpaid charges due the lender from the borrower at the time the agency pays a default claim to the lender.

(5) *Credit bureau reports.* (i) After completion of the procedures set forth in paragraph (b)(5)(ii) of this section, the guarantee agency shall report promptly, and on a regular basis, to all national credit bureaus—

(A) The total amount of loans made to the borrower and the remaining balance of those loans;

(B) The date of default;

(C) Information concerning collection of the loan, including the repayment status of the loan;

(D) Any changes or corrections in the information reported by the agency that result from information received after the initial report; and

(E) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability.

(ii) The guarantee agency shall ensure that, promptly after it pays a default claim on a loan but before it reports the default to a credit bureau or assesses collection costs against a borrower, it provides the borrower with—

(A) Written notice that meets the requirements of paragraph (b)(5)(vi) of this section regarding the proposed actions;

(B) An opportunity to inspect and copy agency records pertaining to the loan obligation;

(C) An opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation; and

(D) An opportunity to enter into a repayment agreement on terms satisfactory to the agency.

(iii) The procedures set forth in § 682.404(h) (administrative wage garnishment), and the procedures set forth in 34 CFR 30.20 through 30.33 (administrative offset), satisfy the requirements of paragraph (b)(5)(ii) of this section.

(iv)(A) In response to a request for access to records, an administrative review, or an opportunity to enter into a repayment agreement, submitted by a borrower after the deadlines established under agency rules, the agency shall provide the requested relief but may continue reporting the debt to credit bureaus until it determines that the borrower has demonstrated that the loan obligation is not legally enforceable or that alternative repayment arrangements satisfactory to the agency have been made with the borrower.

(B) The deadline established by the agency for requesting administrative review under paragraph (b)(5)(ii)(C) of this section must allow the borrower at least 60 days from the date the notice described in paragraph (b)(5)(ii)(A) of this section is sent, to request that review.

(v) An agency may not permit an employee, official, or agent to conduct the administrative review required under this paragraph if that individual is—

(A) Employed in an organizational component of the agency or its agent that is charged with collection of loan obligations; or

(B) Compensated on the basis of collections on loan obligations.

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must—

(A) Advise the borrower that the agency has paid a default claim filed by the lender, and has taken assignment of the loan;

(B) Identify the lender that made the loan and the school for attendance at which the loan was made;

(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;

(D) Demand that the borrower immediately commence repayment of the loan;

(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;

(F) Notify the borrower that the agency will report the default to all national credit bureaus to the detriment of the borrower's credit rating;

(G) Explain the opportunities available to the borrower under agency rules for access to agency records on the loan, for an administrative review of the legal enforceability or past-due status of the loan obligation, and for reaching agreement on repayment terms satisfactory to the agency in order to avoid the reporting of the loan as defaulted to credit bureaus, and describe the deadlines for requesting this relief and the manner in which the borrower must request relief;

(H) Unless the agency uses a separate notice to advise the borrower regarding other proposed enforcement actions, describe specifically any other enforcement action, such as offset against State income tax refund or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, an administrative review, or agreement to alternative repayment terms;

(I) Describe the grounds on which the borrower may object that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;

(J) Describe any appeal rights available to the borrower from an adverse decision on administrative review of the loan obligation;

(K) Describe any right to judicial review of an adverse decision by the agency regarding the legal enforceability or past-due status of the loan obligation; and

(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the loan to the Secretary for collection by offset against Federal income tax refunds or the filing of a lawsuit against the borrower by the Federal Government.

(6) *Collection efforts on defaulted loans.* (i) The guarantee agency shall engage in at least the collection activities described in paragraphs (b)(6)(iii) through (xii) of this section on a loan on which it pays a default claim filed by a lender, except that the agency may engage in the collection activities described in paragraphs (b)(7) of this section in lieu of the activities described in paragraphs (b)(6)(iii) through (vi) of this section.

(ii)(A) The periods of time set forth in paragraphs (b)(6) (iii) through (xii) and (b)(7) of this section refer to the number of days that elapse from the date the agency pays a default claim on a loan, or, in the case of a borrower whom the agency locates through the use of skip-tracing under paragraph (b)(6)(xii)(A) of this section, the number of days that elapse from the date the agency obtains the borrower's correct address. These periods of time do not include any periods during which the agency is engaged in the activities related to administrative wage garnishment described in § 682.404(h) or receiving a payment through garnishment at least once every 60 days, or during which the agency is engaged in an administrative review of the borrower's indebtedness on the loan pursuant to a request by the borrower under paragraph (b)(iv) of this section. References to the "borrower" in this paragraph and paragraph (b)(7) of this section include all endorsers on a loan.

(B) The agency may institute a civil suit against the borrower earlier than the first day of the period described in paragraph (b)(6)(vii) of this section. Upon instituting suit, the agency is not required thereafter to follow the procedures in paragraph (b)(6)(iii) or (b)(7) of this section.

(C) Upon receipt of a payment from a borrower during a period described in paragraph (b)(6) (iii) or (iv) of this section, the agency is not required to follow the specific collection efforts described in paragraphs (b)(6) (iii) through (vii), but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraphs (b)(6) (iv) through (ix) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(6)(iv) of this section.

(iii) One—45 days: During this period, the agency shall—

(A) Send to the borrower the written notice described in paragraph (b)(vi) of this section, or a written notice stating—

(*1*) That the agency has paid a default claim filed by the lender on the loan, and has taken assignment of the loan;

(*2*) That the borrower must immediately commence repayment of the loan;

(*3*) That all costs incurred to collect the loan will be charged to the borrower;

(*4*) That the agency will report the default to all national credit bureaus, to the detriment of the borrower's credit rating;

(*5*) That the agency may bring suit against the borrower to compel repayment of the loan;

(*6*) That the agency may assign the debt to the U.S. Department of Education for collection by offset against Federal income tax refunds due the borrower, or by other means; and

(*7*) That the agency may collect the loan by offset against State tax refunds and/or by wage garnishment, if these steps are available to the agency; and

(B) Diligently attempt to contact the borrower by telephone, as defined in § 682.411(1) (with references to "the lender" understood to mean "the agency"), to demand repayment of the loan.

(iv) Forty-six—180 days: During this period the agency shall—

(A) Engage in at least two diligent attempts to contact the borrower by telephone, as defined in § 682.411(1) (with references to "the lender" understood to mean "the agency"), to demand repayment of the loan; and

(B) Send at least three written notices to the borrower forcefully demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to all national credit bureaus, if that is the case, and that the borrower's credit rating may thereby have been damaged. The final notice must also indicate that it is the final notice the borrower will receive before the agency will take more forceful action, including the possibility of instituting a civil suit, to compel repayment of the loan; and

(v) At no point during the periods described in paragraphs (b)(6) (iii) and (iv) of this section may the agency permit the occurrence of a gap in collection activity of more than 60 days.

(vi) For purposes of paragraph (b)(6)(v) of this section, the term "gap in collection activity" means, with respect to a loan, any period—

(A) Beginning on the date that is the day after—

(*1*) The date the agency paid a default claim to the lender thereon;

(*2*) The day on which the agency receives the correct address for a borrower who has made no payment in the preceding 60 days; or

(*3*) The day on which the agency completes a collection activity, as defined in § 682.411(k) (1) through (3) (with references to "the lender" therein understood to mean "the agency"); and

(B) Ending on the date of the earliest of—

(*1*) The day on which the agency receives the first subsequent payment;

(*2*) The day on which the agency commences the first subsequent collection activity, as defined in § 682.411(k) (1) through (3) (with references to the lender therein understood to mean "the agency"); or

(*3*) The last day of the period described in paragraph (b)(6)(iv) of this section.

(vii) One hundred eighty-one—545 days:

(A) Except as provided in paragraphs (b)(6)(vii) (B), (C), and (D) of this section, during this period, but not sooner than 30 days after sending the borrower a notice of the agency's intent to do so, the agency shall institute a civil suit against the borrower for repayment of the loan.

(B) Except as provided in paragraph (b)(6)(vii)(C) of this section, in the case of a loan that was assigned to the Secretary prior to the 545th day and returned to the agency less than 180 days prior to the 545th day, the agency has 180 days from the date it receives the returned loan to institute the civil suit.

(C) Except as provided in paragraph (b)(6)(vii)(D) of this section, in the case of a loan not assigned to the Secretary, during this period, but not sooner than 30 days after sending the final notice described in paragraph (b)(6)(iv) of this section, the agency shall institute a civil suit against the borrower by the 225th day, unless that loan is subsequently assigned to the Secretary by the deadline for the next available opportunity to collect by Internal Revenue Service (IRS) tax refund offset, or a payment is received from the borrower less than 120 days before the deadline for the next available opportunity to collect by IRS tax refund offset.

(D) The agency need not file suit if the agency determines and documents in the borrower's file that—

(*1*) The cost of litigation would exceed the judgment amount likely to be obtained if litigation were commenced; or

(*2*) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion thereof, based on the agency's review of the debtor's file, and of a credit report obtained by the agency from a credit bureau serving the geographic area where the debtor resides, or if the debtor's current address is unknown, a credit bureau serving the geographic area that includes the debtor's last known address.

(viii)(A) If, as a result of a determination made pursuant to paragraph (b)(6)(vii)(C)(2) of this section, the agency does not institute a civil suit against the borrower for

repayment of the loan, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy a judgment on the debt, or a substantial portion thereof.

(B) If the agency determines that the borrower has acquired the means to satisfy at least a substantial portion of the debt, and that the cost of litigation would not exceed the amount likely to be obtained if litigation were commenced, then, if subsequent collection efforts are not successful, the agency shall, no later than 60 days after the determination and before the applicable limitations period under section 484A of the Act expires, institute a civil suit against the borrower for repayment of the loan.

(C) The guarantee agency shall document in the borrower's file determinations made pursuant to this paragraph.

(ix)(A) The agency shall diligently attempt to enforce a judgment obtained against a borrower on a loan and shall ensure that the judgment is renewed as permitted by applicable law. If, despite diligent attempts, the agency cannot recover the full amount of the judgment because the borrower lacks sufficient assets or income attachable under applicable law to fully satisfy the judgment, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired sufficient attachable assets or income to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired sufficient attachable assets or income to satisfy the remainder of the judgment and that the cost of enforcing the judgment would not exceed the likely recovery, the agency shall, not later than 60 days thereafter, notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment in full of all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in paragraph (b)(6)(ix)(B) of this section, the agency shall, within 30 days thereafter, proceed to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraphs (b)(6) (viii) and (ix) of this section before the expiration of the applicable statute of limitations only in accordance with criteria and procedures approved by the Secretary.

(xi) Notwithstanding paragraphs (b)(6) (vii) through (x) of this section, the agency shall file a civil suit against the borrower for repayment of the loan, and shall enforce a judgment obtained thereon, prior to the date on which the applicable statute of limitations lapses, unless the agency—

(A) Determines, and documents in the borrower's file, that the cost of litigation would exceed the judgment amount likely to be obtained if litigation were commenced, or, in the case of a proceeding to enforce a judgment, that the cost of such a proceeding would exceed the likely recovery from the debtor; or

(B) Has previously discontinued semi-annual inquiries on the debt in accordance with paragraph (b)(6) (viii) or (ix) of this section.

(xii) Not later than 10 days after its receipt of information indicating that it does not know the current address of a borrower on a loan on which the agency has neither declined to sue under paragraph (b)(6)(vii)(C)(*1*) of this section nor discontinued semi-annual inquiries under paragraph (b)(6)(x) of this section, or the 60th day after its payment of a default claim on the loan, whichever is later, the agency shall diligently attempt to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the Internal Revenue Service, credit bureaus, and State motor vehicle departments.

(*7*) *Alternative collection procedures for defaulted loans.* (i) A guarantee agency may engage in the following collection activities in lieu of the activities described in paragraphs (b)(6) (iii) through (vi) of this section. The rules in paragraphs (b)(6)(ii) (A) and (B) of this section apply to the periods of time set forth in paragraphs (b)(7) (iii) through (v) of this section.

(ii) Upon receipt of a payment from a borrower, the agency is not required to follow the specific collection efforts described in paragraphs (b)(7) (iii) through (vi) of this section, but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraph (b)(7) (iii) through (vi) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(7)(iv) of this section.

(iii) One—30 days: During this period the agency shall send to the borrower a written notice stating—

(A) The information listed described in paragraph (b)(5)(vi) of this section; or

(B) The information set forth in paragraphs (b)(6)(iii)(A) (*1*) through (*7*) of this section.

(iv)(A) Thirty-one—180 days: During this period the guarantee agency shall diligently attempt to collect the loan using such collection tools and activities as it deems appropriate, provided, however, that the agency must make at least one diligent effort to contact the borrower by telephone, as defined in § 682.411(l) (with references to "the lender" understood to mean "the agency"), and send at least two forceful collection letters to the borrower.

(B) By the end of this period, or the 30th day after the Secretary's return of the loan to the agency upon completion of the first Federal tax refund offset process available for that loan, whichever is later, the agency shall refer the loan to a collection contractor in accordance with paragraph (b)(7)(iv)(C) of this section.

(C) The collection contractor to whom the agency refers a loan under paragraph (b)(7)(iv)(B) of this section must—

(1) Be compensated for its services on all GSL loans referred by the agency solely on a contingency fee basis;

(2) Be one of at least two collection contractors simultaneously providing collection services to the agency on GSL loans under a competitive system established by the agency that provides for periodic assessment by the agency of the performance of the competing contractors, and for periodic adjustments in the volume of loans referred by the agency to each competing contractor based on those assessments; and

(3) Not receive referral of more than 70% of the agency's referred loans in any calendar year.

(v) Notwithstanding the deadline for instituting a civil suit set forth in paragraph (b)(6)(vii) of this section, an agency that uses the procedures in paragraphs (b)(7) (i) through (iv) of this section shall institute a civil suit required by that paragraph prior to the earliest of—

(A) The 90th day following the collection contractor's return of the loan to the agency; or

(B) The 365th day following the later of the agency's referral of the loan to the collection contractor, or the contractor's receipt of a payment on the loan.

(8) *Special conditions for agency payment of a claim.* (i) A guarantee agency may adopt a policy under which it pays a claim to a lender on a loan under the conditions described in § 682.509(a)(1).

(ii) Upon the payment of a claim under a policy described in paragraph (b)(8)(i) of this section, the guarantee agency shall—

(A) Perform the loan servicing functions required of a lender under § 682.208, except that the agency is not required to follow the credit bureau reporting requirements of that section;

(B) Perform the functions of the lender during the repayment period of the loan, as required under § 682.209;

(C) If the borrower is delinquent in repaying the loan at the time the agency pays a claim thereon to the lender, or becomes delinquent while the agency holds the loan, exercise due diligence in attempting to collect the loan from the borrower and any endorser or co-maker; and

(D) After the date of default on the loan, if any, comply with paragraph (b)(6)(i) of this section with respect to collection activities on the loan, with the date of default treated as the claim payment date for purposes of those paragraphs.

(9) *Preemption of State law.* The provisions of paragraphs (b) (2), (5), (6) and (7) of this section preempt any State law, including State statutes, regulations or rules, that would conflict with the requirements of these provisions.

(c) *Enforcement requirements.* A guarantee agency shall take such measures, and establish such controls, as are necessary to ensure its vigorous enforcement of all Federal, State, and guarantee agency requirements, including agreements, applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews, using statistically valid techniques to calculate liabilities to the Secretary that each review indicates may exist, of at least—

(i)(A) Each participating lender whose dollar volume of GSL loans made or purchased by the lender and guaranteed by the agency in the preceding year—

(*1*) Equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency;

(*2*) Was one of the ten largest lenders whose loans were guaranteed in that year by the agency; or

(*3*) Equaled or exceeded $10 million in the most recent fiscal year;

(B) Each lender described in section 435(d)(1)(D), or (J) of the Act, that is located in any State in which the agency is the principal guarantor, as defined in § 682.302(e)(3)(ii), and, at the option of each guarantee agency, the Student Loan Marketing Association; and

(C) Each participating school, located in a State for which the guarantee agency is the principal guarantee agency, that has a fiscal year default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in § 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under § 668.15 to take specific default reduction measures, or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed $100,000; or

(ii) The schools and lenders selected by the agency as an alternative to the reviews required by paragraphs (c)(1) (i) through (iii) of this section, if the Secretary approves the agency's proposed alternative selection methodology.

(2) Demanding prompt repayment by the responsible parties to lenders, borrowers, the agency, or the Secretary, as appropriate, of all funds found in those reviews to be owed by the participants with regard to loans guaranteed by the agency, whether or not the agency holds the loans, and monitoring the implementation by participants of corrective actions, including these repayments, required by the agency as a result of those reviews.

(3) Referring to the Secretary for further enforcement action any instance in which repayment of funds to the Secretary is not made in full within 60 days of the date of the agency's written demand to the school, lender, or other party for payment, together with all supporting documentation and any correspondence and other documentation submitted by that party regarding the repayment.

(4) Adopting procedures for identifying fraudulent loan applications.

(5) Undertaking, or arranging with State or local law enforcement agencies for, the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct by its program participants, including violations of Federal law or regulations.

(6) Promptly referring to appropriate State and local regulatory agencies and to accrediting agencies for investigation information received by the guarantee agency that may affect the retention or renewal of the license or accreditation of a program participant.

(7) Promptly reporting all of the allegations and indications of misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof, to the Secretary.

(8) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(9) Promptly notifying the Secretary of—

(i) Any action it takes affecting the GSL program eligibility of a participating lender or school;

(ii) Information it receives regarding an action affecting the GSL program eligibility of a participating lender or school taken by an accrediting agency or a State licensing agency;

(iii) Any judicial or administrative proceeding relating to the enforceability of GSL loans guaranteed by the agency or in which tuition obligations of a school's students are directly at issue, other than a proceeding relating to a single borrower or student; and

(iv) Any petition for relief in bankruptcy, application for receivership, or corporate dissolution proceeding brought by or against a school or lender participating in its loan guarantee program.

(10) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(11) Taking prompt and appropriate action to protect the rights of borrowers and the Federal fiscal interest respecting loans the agency has guaranteed when the agency learns that a participating school or holder of loans is experiencing problems that threaten the solvency of the school or holder, including—

(i) Conducting on-site program reviews;

(ii) Providing appropriate training and technical assistance;

(iii) Upon written request of a lender or school, acting as the escrow agent for the purpose of transmitting to borrowers proceeds of loans made for attendance at a school experiencing problems that threaten its solvency;

(iv) Filing a proof of claim with a bankruptcy court for recovery of any funds due the agency, and any refunds due the agency or other holders on GSL loans that it has guaranteed, when the agency learns that a school has filed a bankruptcy petition;

(v) Promptly notifying the Secretary that the agency has determined that a school or holder of loans is experiencing potential solvency problems; and

(vi) Promptly notifying the Secretary of the results of any actions taken by the agency to protect Federal funds involving such a school or holder.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1091a, 1099)

§ 682.411 Due diligence by lenders in the collection of guarantee agency loans.

(a) *General.* In the event of delinquency on a GSL loan that is guaranteed by a guarantee agency, the

lender shall engage in at least the collection efforts described in paragraphs (c) through (l) of this section, except that, in the case of a loan made to an incarcerated borrower or to a borrower residing outside the United States, the lender may send a forceful collection letter in lieu of each telephone effort required by this section. References to the "borrower" throughout this section include all endorsers and co-makers on a loan, except that the lender is not required to attempt collection on a loan from a co-maker or endorser prior to the 90th day of delinquency.

(b) *Delinquency.* For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment more than half of which is not later made. The due date of the first payment is established by the lender, but must occur no later than 45 days following the end of the grace period, or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns. If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment more than half of which is not later made.

(c) *One—10 days delinquent:* Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, during this period the lender shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) *Eleven—180 days delinquent (11–240 days delinquent for a loan repayable in installments less frequent than monthly).* (1) Except as provided in paragraphs (a), (d)(3), and (f) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone.

(2) For each instance in which its required diligent effort at telephone contact is unsuccessful, for each diligent effort that the lender is excused from making under paragraph (a) or (f) of this section, and for each successful effort to contact the borrower by telephone that occurs within 10 days of another successful effort, the lender shall send the borrower at least one forceful collection letter urging the borrower to cure the delinquency. The letter shall also warn the borrower that, if the delinquency is not cured, the lender will assign the loan to the guarantee agency that in turn will report the default to all national credit bureaus, and that the agency may bring suit against the borrower to compel repayment of the loan.

(3) Notwithstanding paragraph (d)(1) of this section, following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, or the expiration of an authorized deferment or forbearance period, the lender—

(i) Is only required to engage in two diligent efforts to contact the borrower by telephone during this period, if the loan is delinquent by one—90 days (one—120 days for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment or forbearance; or

(ii) Is not required to engage in any efforts to contact the borrower by telephone during this period, if the loan is delinquent by more than 90 days (120 days for a loan repayable in installments less frequent than monthly) upon that receipt or expiration.

(4) At no point during this period may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (i) of this section, of more than 45 days (60 days in the case of a transfer).

(e) *Final demand.* After completion of the collection steps described in paragraph (d) of this section, the lender shall send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. After default, the lender shall allow the borrower until at least the thirtieth day after the date of default to make payments sufficient to bring the loan to less than 150 days delinquent before filing a default claim on the loan (unless the agency returns the default claim to the lender thereafter because the borrower has made those payments) or reporting that default to a credit bureau.

(f) *Collection procedures when borrower's telephone number is not available.* Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower, as required by paragraph (d) of this section, the lender is excused from any further efforts to contact the borrower by telephone during the delinquency period in which the unsuccessful effort was made.

(g) *Skip-tracing.* (1) Within 10 days of its receipt, during the periods described in paragraphs (c) and (d) of this section, of information indicating that it does not know the borrower's current address, the lender shall diligently attempt to locate the borrower through the use of normal commercial skip-tracing techniques. These efforts must include, but are not limited to, contacting the endorser, relatives, references, and any other individuals and entities identified in the borrower's loan file.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender shall discontinue the collection efforts described in paragraphs (c) through (e) of this section.

(3) If the lender is unable to ascertain the borrower's current address, despite its performance of the activities described in paragraph (g)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c) through (e), and (k) of this section until it receives a payment or other communication from the borrower.

(h) *Preclaims assistance.* If the agency that guaranteed the loan offers preclaims assistance, the lender shall request that assistance within 10 days of the date established by the agency that assistance is first available from the agency, and shall, not later than 30 days after sending that request unless the loan has been brought current prior to that thirtieth day, notify the school for attendance at which the loan was made of the request by providing the school with a copy of that request, or by other means.

(i) *Gap in collection activity.* For purposes of this section, the term *gap in collection activity* means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The first day of delinquency, unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives from the drawee a dishonored check submitted as a payment on the loan; or

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or properly completed deferment request or forbearance agreement;

(ii) The day on which the lender commences the first subsequent collection activity; or

(iii) Default.

(j) *Transfer.* For purposes of this section, the term *transfer* with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(k) *Collection activity.* For purposes of this section, the term *collection activity* with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower, at an address that the lender reasonably believes to be the borrower's current address, a collection letter or final demand letter that satisfies the timing and content requirements of paragraph (c) or (d) of this section;

(2) Making a diligent effort to contact the borrower by telephone to urge the borrower to commence or resume repayment;

(3) Undertaking skip-tracing efforts, in accordance with paragraph (f) of this section, to locate a borrower whose correct address is unknown to the lender; or

(4) Mailing or otherwise transmitting to the guarantee agency a request for preclaims assistance available from the agency on the loan at the time the request is transmitted.

(l) *Diligent effort for telephone contact.* For purposes of this section, the term *diligent effort* with respect to telephone contact with a borrower means—

(1) A successful effort to contact the borrower by telephone;

(2) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number and at a time the lender reasonably expects the borrower to be at home; or

(3) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and an attempt to contact each reference, relative, and individual identified in the most recent loan application for that borrower held by the lender.

(m) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations or rules, that would conflict with the requirements of this section.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087–1)

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send to the borrower a final demand letter meeting the requirements of § 682.411(e) when it learns that, due to facts of which the borrower or student on whose behalf a parent has borrowed, but neither the school nor the lender, was or should have been aware when the loan was made, the borrower or student—

(1) Did not qualify to receive or benefit from all or a portion of a GSL loan;

(2) Has received a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for some or all of those interest benefits; or

(3) Has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended, or failed to attend school during that period, but received loan proceeds and has not paid those funds to the school or repaid them to the lender.

(b) The lender shall neither bill the Secretary for, nor be entitled to, interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that, within 30 days, the borrower repay in full the principal amount of the ineligible portion of the loan, accrued interest thereon, and all special allowance paid by the Secretary thereon.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall—

(1) On its next quarterly interest billing submitted under § 682.305, refund to the Secretary the interest benefits and special allowance repaid by the borrower, and all other interest benefits and special allowance previously paid by the Secretary on the ineligible portion of the loan; and

(2) Treat that payment of the principal amount of the ineligible portion of the loan as a prepayment of principal.

(e) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the lender shall treat the entire loan as in default, and—

(1) With its next quarterly interest billing submitted under § 682.305, refund to the Secretary the amount of the interest benefits received from the Secretary on the ineligible portion of the loan, whether or not repaid by the borrower; and

(2) Within the time specified in § 682.406(a)(4), file a default claim thereon with the guarantee agency for the entire unpaid balance of principal and accrued interest.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

§ 682.413 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance received on a loan guaranteed by a guarantee agency—

(1) For any period beginning on the date of a failure by the lender, with respect to the loan, to comply with any of the requirements set forth in § 682.406(a)(1) through (a)(5) and (a)(9);

(2) For any period beginning on the date of the lender's failure, with respect to the loan, to meet a condition of guarantee coverage established by the guarantee agency, to the date, if any, on which the guarantee agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(3) For any period in which the lender, with respect to the loan, violates the requirements of Subpart C of this part; and

(4) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(b) The Secretary requires a guarantee agency to repay reinsurance payments received on a loan if the lender or the agency failed to meet the requirements of § 682.406(a).

(c) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guarantee agency that makes an incomplete or incorrect statement in connection with any agreement entered into under this part, or violates any applicable Federal requirement:

(1) Require the agency to return payments made to the agency.

(2) Withhold payments to the agency.

(3) Limit the terms and conditions of the agency's continued participation in the GSL programs.

(4) Suspend or terminate agreements with the agency.

(5) Impose a fine on the agency.

(6) Require repayment from the agency of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans that violate § 682.206(f)(1)(i) through (iii).

(7) Require repayment from the agency of any related payments that the Secretary became obligated to make to others as a result of the incomplete or incorrect statement or violation of applicable Federal requirement.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender or guarantee agency. Reference to "the institution" in those regulations should be understood to mean the lender or guarantee agency as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guarantee agency.

(e)(1) The Secretary's decision to require repayment of funds, withhold funds, or to limit, suspend, or terminate a lender or agency from participation in the GSL programs does not become final until the Secretary provides the lender or agency with written notice of the intended action and an opportunity to be heard thereon, at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the guarantee agency requests an opportunity to be heard.

(2)(i) The Secretary may withhold payments from an agency or suspend an agreement with an agency, prior to giving notice and an opportunity to be heard, if the Secretary finds that emergency action is necessary to prevent substantial harm to Federal interests.

(ii) The Secretary follows the notice and show cause procedures described in § 682.704 applicable to emergency actions against lenders in taking an emergency action against a guarantee agency.

(3) The Secretary follows the procedures in 34 CFR 30.20 through 30.32 in collecting a debt by offset against payments otherwise due a guarantee agency or lender.

(f) Notwithstanding paragraphs (a) through (e) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of § 682.406(a)(3) or (a)(5) is set forth in appendix D to this part.

(g) The Secretary's final decision to require repayment of funds or to take other remedial action, other than a fine, against a lender or guarantee agency under this section is conclusive and binding on the lender or agency.

Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1, 1097)

682.414 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1)(i) The guarantee agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days.

(ii) The agency shall maintain—

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower's address.

(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, accrued interest, preclaims assistance, and collection costs;

(D) A collection history, showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each communication between the agency and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for supplemental preclaims assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset;

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary due to the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3)(i) The guarantee agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including but not limited to, the records described in paragraph (a)(3)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep—

(A) A copy of the loan application;

(B) A copy of the signed promissory note, including the repayment instrument;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs;

(J) A collection history, showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication other than regular reports by the lender showing that an account is current, between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address is unknown at any time and each request by the lender for preclaims assistance on the loan; and

(K) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower, or the lender is reimbursed on a claim. However, in particular cases, the Secretary or the guarantee agency may require the retention of records beyond this minimum period.

(4)(i) A guarantee agency or lender may store the records specified in paragraphs (a)(3)(ii) (C) through (K) of this section on microfilm or computer format.

(ii) A lender or guarantee agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guarantee agency shall either return the original note to the borrower or notify the borrower, under an alternate procedure that is acceptable

under State law, that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or guarantee agency shall retain the original loan application and, until the loan is fully repaid, the promissory note.

(b) *Reports.* A guarantee agency shall accurately complete and submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program, at the time and in the manner that the Secretary may reasonably require. The Secretary will not pay the agency any funds, the amount of which are determined by reference to data in the report, until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) By July 1 of each year, a report on—

(i) Its eligibility criteria for schools and lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) Any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(iv) The steps the agency has taken to ensure its compliance with § 682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Information consisting of those extracts from its computer data base, and supplied in the medium and the format, prescribed in the Stafford, SLS, and PLUS Loan Tape Dump Procedures (ED Forms 1070 and 1071).

(5) Any other information concerning its loan insurance program requested by the Secretary.

(c) *Inspection requirements.* (1) A guarantee agency shall cooperate with the Secretary, the Department of Education's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by applicable regulations and to any other pertinent books, documents, papers, and records; and

(2) Providing reasonable access to the agency's personnel associated with the agency's administration of its loan insurance program for the purpose of obtaining relevant information. Examples of restrictions that would not result in reasonable access to personnel include the following:

(i) Limiting the extent or type of relevant information to be supplied.

(ii) Requiring the presence of agency representatives during personnel interviews.

(iii) Requiring that personnel interviews be recorded, for the records of the agency.

(3) A guarantee agency shall require in its agreement with a lender, or in its published rules or procedures, that the lender, or its agent, give the Secretary or the Secretary's designee and the guarantee agency access to the lender's records for inspection and copying in order to verify the accuracy of the information provided by the lender pursuant to § 682.401(b) (18), (19), and (20), and the right of the lender to receive or retain payments made under this part, or to permit the Secretary or the agency to enforce any right acquired by the Secretary or the agency under this part.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

Subpart E—Federal Guaranteed Student Loan Programs

§ 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—

(1) FISL, Federal SLS, and Federal PLUS loans made by lenders located in a State in which no State or private nonprofit guarantee agency has in effect an agreement with the Secretary under § 682.401 to serve as guarantor in that State;

(2) Federal Consolidation loans made by the Student Loan Marketing Association, and Federal Consolidation loans made by any other lender that has applied for and been denied guarantee coverage on Consolidation loans by the guarantee agency that guarantees the largest dollar volume of GSL loans made by the lender; and

(3) FISL, Federal SLS, Federal PLUS, and Federal Consolidation loans made by lenders located in a State in which a guarantee agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISL, Federal SLS, Federal PLUS and Federal Consolidation loans made by a lender located in a State where a guarantee agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guarantee agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guarantee agency, a student who has previously received from the same lender a FISL loan that has not been repaid; or

(4) All students at a school located in the State, if the Secretary finds that—

(i) No single guarantee agency program is reasonably accessible to students at that school, as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to GSL Program loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guarantee agency does not recognize the school as being eligible, but the school is eligible under the FISL program; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISL loans, but are not recognized as eligible under the guarantee agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has an origination relationship with the school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the Federal GSL programs, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender that has entered into an agreement with the Secretary under § 682.600, the Secretary denies loan guarantees on the basis of this section only if the Secretary first determines that all eligible students at

that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys that the Secretary considers satisfactory.

(Authority: 20 U.S.C. 1071, 1073, 1078–1, 1078–2, 1078–3, 1082)

§ 682.501 Extent of Federal guarantee under the Federal GSL programs.

(a) *General.* Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any Federal GSL loan is 100 percent of the unpaid principal balance and, to the extent permitted under § 682.512, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance, plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year do not include paid claims filed by the lender under the provisions of § 682.208(f) or § 682.509.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a Federal GSL Program lender and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the Federal GSL loans in repayment" means the original principal amount of all loans guaranteed by the Secretary less—

(i) The original principal amount of loans on which—

(A) Under the FISL program, the borrower has not yet reached the repayment period;

(B) Payment in full has been made by the borrower;

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin, and remains in deferment status; or

(D) The amount paid by the Secretary on a claim filed under section 437 of the Act; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under § 682.208(f) or § 682.509.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate Federal GSL loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1082)

§ 682.502 The application to be a lender.

(a) To be considered for participation in the Federal GSL programs, a lender shall submit an application to the Secretary.

(b) In determining whether to enter into a guarantee agreement with an applicant, and, if so, what the terms of the agreement will be, the Secretary considers—

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(d)(1) of the Act and the definition of "lender" in § 682.200;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status.

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the criteria in this section.

(d)(1) If the Secretary decides not to approve the application for a guarantee agreement, the Secretary's response includes the reason for the decision.

(2) The Secretary provides the lender an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within six months of a previous denial.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.503 The guarantee agreement.

(a)(1) To participate in the Federal GSL programs, a lender must have a guarantee agreement with the Secretary. The Secretary does not guarantee a loan unless it is covered by such an agreement.

(2) In general, under a guarantee agreement, the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the Federal GSL programs. In return, the Secretary agrees to guarantee each eligible Federal GSL loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in an agreement a limit on the duration of the contract and the number or amount of Federal GSL loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee agreement with a school lender limits the Federal GSL loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are—

(i) In attendance at that school;

(ii) In attendance at other schools under the same ownership as that school; or

(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) The Secretary may, on a school-by-school basis, impose limits under paragraph (b)(1)(iii) of this section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees, of those other schools.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee agreement shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan will be guaranteed and the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The Secretary issues a guarantee on a Federal GSL loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in § 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with the regulations in this part.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.505 Insurance premium.

(a) *General.* The Secretary charges the lender an insurance premium for each Federal GSL Program loan that is guaranteed, except that no insurance premium is charged on a Federal Consolidation loan, or on a Federal SLS or Federal PLUS loan made under § 682.209(f).

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *FISL loans—insurance premium calculation.* (1) The insurance premium for FISL loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) If the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *PLUS and SLS loans—insurance premium calculation.* The insurance premium for a Federal PLUS or SLS loan is calculated by—

(1) Using the projected repayment period as a base;

(2) Amortizing the loan in equal monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Computing the total of monthly amounts calculated under paragraph (d)(3) of this section.

(e) *Collection from lenders.* (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective if the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the guarantee coverage on a loan, if the Secretary is satisfied that at the time the premium is paid—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(f) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement's contribution to the premium amount.

(g) *Refund provisions.* The insurance premium is not refundable by the Secretary, and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.506 Limitations on maximum loan amounts.

(a) The Secretary does not guarantee a FISL, Federal SLS, or Federal PLUS loan in an amount that would—

(1) Result in an annual loan amount in excess of the student's estimated cost of attendance for the period of enrollment for which the loan is intended less—

(i) The student's estimated financial assistance; and

(ii) The student's expected family contribution for that period, in the case of a FISL loan; or

(2) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in § 682.204.

(b) The Secretary does not guarantee a Federal Consolidation loan in an amount greater than that required to discharge loans eligible for consolidation under § 682.100(a)(4).

(Authority: 20 U.S.C. 1075, 1077, 1078–1, 1078–2, 1079, 1082, 1089)

§ 682.507 Due diligence in collecting a loan.

(a) *General.* (1) Except as provided in paragraph (4) of this section, a lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section if a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender receives notice that the borrower has entered the repayment period.

(4) In lieu of the procedures described in this section, a lender may use the due diligence procedures in § 682.411 in collecting a Federal Consolidation loan.

(b) *Initial delinquency.* If a borrower is delinquent in making a payment, the lender shall remind the borrower within 10 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower—

(1) At least six more times at regular intervals during the remainder of the six-month period that started on the due date of the delinquent payment, for loans repayable in monthly installments; or

(2) At least eight more times during the remainder of the eight-month period

that started on the due date of the delinquent payment, for loans repayable in installments less frequent than monthly.

(c) *Skip-tracing assistance.* (1) If a lender does not know the borrower's current address, the lender shall promptly attempt to locate the borrower through normal commercial collection activities, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender shall promptly attempt to learn the borrower's current address through use of the Department of Education's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) *Preclaims assistance.* When the borrower is 60 days delinquent in making a payment, the lender shall request preclaims assistance from the Department of Education. This preclaims assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) *Final demand letter.* A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown to the lender.

(f) *Litigation.* (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest, together with reasonable attorneys' fees, late charges, and court costs.

(2) Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that, unless the borrower or endorser makes payments sufficient to bring the account out of default, the lender will seek a judgment under which the borrower or endorser will be liable for payment of late charges, attorneys' fees, collection agency charges, court costs, and other reasonable collection costs, in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii) of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its attorneys' fees, court costs, collection agency charges and other reasonable collection costs, whether or not the judgment provides for these fees and costs.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1081, 1082, 1085)

§ 682.508 Assignment of a loan.

(a) *General.* A Federal GSL loan may not be assigned except to another eligible lender. In this section, "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A loan assigned from one lender to another must be made subject to a blanket endorsement together with other loans being assigned, or must individually bear effective words of assignment. Either the blanket endorsement or the loan note must be signed and dated by an authorized official of the seller.

(2) The buyer shall—

(i) Notify the Secretary of the assignment if the right to receive special allowance has been assigned; and

(ii) Ensure that the borrower is notified promptly if the assignment results in the borrower being required to make installment payments, or to direct other matters connected with the loan, to a party other than the party with whom the borrower dealt before the assignment. The buyer shall include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities that arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c) *The Secretary's approval.* The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under § 682.503.

(d) *Warranty.* (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions that are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the regulations in this part.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.509 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in § 682.511(e)(3), if—

(1) In the case of a loan that was not made or originated by the school, the lender learns that, while the student was enrolled at the school, the school terminated its teaching activities for that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not, as a result of a claim filed with the Secretary under this section, report a borrower's loan as in default to any credit bureau or other third party.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

(a) The procedures in § 682.402(a) through (d) for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, apply to the Federal GSL programs.

(b) For purposes of this section, references to the "guarantee agency" in § 682.402 (b)(2) and (d)(5) shall be understood to refer to the Secretary.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1082, 1087)

§ 682.511 Procedures for filing a claim.

(a) *Filing a claim application.* (1) A lender may file a claim against the Secretary's guarantee on a Federal GSL loan for any of the following reasons:

(i) The loan is in default, as defined in § 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in § 682.208(f) or § 682.509.

(iii) The borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with § 682.510.

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, the reason for filing a claim must hold true for both parents.

(3) A lender may file a claim against the Secretary's guarantee only on a form provided by the Secretary. The lender shall attach to the claim all documents required by the Secretary. If the lender fails to do so, the Secretary denies the claim.

(b) *Documentation required for claims.* (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument, in the case of a FISL loan.

(iv) A payment history, as described in § 682.414(a)(3)(ii)(I), if any payments have been made.

(v) A collection history, as described in § 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter, if required by § 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department of Education for skip-tracing assistance under § 682.507(c), and for preclaims assistance under § 682.507(d).

(ix) Any additional documentation that the Secretary determines is relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in § 682.402(e)(1) apply to the Federal GSL programs. For purposes of this section, references to the "guarantee agency" in § 682.402(e)(1) mean the Secretary.

(c) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim.

(d) *Bankruptcy subsequent to default.* If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(e) *Claim filing deadlines.* To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) *Default claims.* Unless the lender has already filed suit against the borrower in accordance with § 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after a default has occurred on the loan. For a claim filed pursuant to § 682.208, the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to § 682.411(e), if the borrower failed to comply with the terms of the letter within 30 days of the transmission.

(2) *Death, total and permanent disability, or bankruptcy claims.* The claim filing deadlines in § 682.402(e)(2) apply to the Federal GSL programs. For purposes of this section, references to the "guarantee agency" in § 682.402(e)(2) mean the Secretary.

(3) *Special condition claims.* In the case of a special condition claim filed pursuant to § 682.509, the lender shall file a claim with the Secretary within 45 days of the date the lender determines that the conditions set forth in § 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to § 682.509(a)(2).

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082, 1087)

§ 682.512 Determination of amount payable on a claim.

(a) *Default claims*—(1) *Amount payable.* The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or from August 19, 1972 through February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) From July 1 through August 18, 1972, or after February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the principal and interest in accordance with paragraph (a)(2) of this section. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by § 682.202(b).

(2) *Payment of interest.* If the guarantee covers unpaid interest, the payment of a valid claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in § 682.511(e) for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) During the period, after the claim is filed, that is required by the Secretary to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(3) *Recovery of outstanding debts.* The Secretary may reduce the amount of loss due to the lender on a claim by the amount the Secretary determines is owed to the Secretary by the lender.

(b) *Death, total and permanent disability, or bankruptcy claim.* (1) In the case of a death or disability claim, the amount to be paid on a valid claim—

(i) Is equal to the unpaid balance of the original principal loan amount disbursed, if the loan was disbursed prior to December 15, 1968; or

(ii) Is calculated in accordance with § 682.402 (f)(2) and (f)(3) if the loan was disbursed after December 14, 1968.

(2) In the case of a bankruptcy claim, the amount of loss is calculated in accordance with § 682.402 (f)(2) and (f)(3).

(3) For purposes of this section, references to the "guarantee agency" in § 682.402(f)(3) mean the Secretary.

(c) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082, 1087)

§ 682.513 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation under § 682.215, and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in § 682.509 the Secretary does not pay a claim unless—

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in § 682.511(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in § 682.511(b).

(b) Except as provided in § 682.509, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary or if it would not be payable as a default claim by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this part, once final, is conclusive and binding on the lender that filed the claim.

Note: A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefit, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary's judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in appendix C to this part.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082)

§ 682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

(a) *Records.* (1) A lender shall maintain current, complete, and accurate records of each loan that it holds, including but not limited to the records described in § 682.414(a)(3)(ii). The records must be maintained in a system that allows ready identification of each loan's current status.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in § 682.414(a)(3)(ii) (C) through (K) on microfilm or computer format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the holder shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) *Reports.* A lender shall submit reports to the Secretary at the time and in the manner that the Secretary may reasonably require.

(c) *Inspections.* Upon request, a lender or its agent, shall cooperate with the Secretary, the Department of Education's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by applicable regulations and to any other pertinent books, documents, papers, and records; and

(2) Providing reasonable access to lender personnel associated with the lender's administration of the loan insurance programs for the purpose of obtaining relevant information. Examples of restrictions that would not result in reasonable access to personnel include the following:

(i) Limiting the extent or type of relevant information to be supplied.

(ii) Requiring the presence of lender representatives during personnel interviews.

(iii) Requiring that personnel interviews be recorded, for the records of the lender.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 682.600 Agreement between an eligible school and the Secretary for participation in the GSL programs.

(a) *General.* Participation of a school in the GSL programs means that the school's students are eligible to receive GSL loans. To participate in the GSL programs, a school must—

(1) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as an institution of higher education or a vocational school as defined in 34 CFR part 600 through certification by the Secretary; and

(2) Enter into a written program participation agreement with the Secretary that is signed by a duly authorized official of the school on a form approved by the Secretary.

(b) *Program participation agreement.* The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(1) The Act and the regulations in this part;

(2) The Student Assistance General Provisions, 34 CFR part 668; and

(3) The Institutional Eligibility regulations, 34 CFR part 600.

(c) *Appeal of denial or limitations.* (1) If the Secretary denies a request for an agreement or approves only limited participation in the GSL programs by a school, the Secretary's response includes the reason for the decision. The Secretary also provides the school with an opportunity to meet with a designated Department official to appeal that decision.

(2) The Secretary does not, however, grant an opportunity for appeal, or give reasons for denying the participation or approving only the limited participation of a school, if the school submits its request within six months of a previous denial or limited approval.

(d) *Foreign schools.* A foreign school is required to comply with the provisions of the regulations except only to the extent that the Secretary has stated in these regulations or in other official publications or documents that such schools do not have to so comply.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1094)

§ 682.601 Rules for a school that makes or originates loans.

(a) *General.* To make or originate loans under the GSL programs:

(1) The school shall employ full-time at least one person whose responsibilities are limited to the administration of financial aid programs for students attending the school.

(2) The school must not be a correspondence school.

(3) The school shall not make or originate loans that would be outstanding to or on behalf of more than 50 percent of the undergraduates in attendance at that school on at least a half-time basis, unless the Secretary

waives this rule pursuant to paragraph (b) of this section.

(4) The school shall inform any undergraduate student who has not previously obtained a loan that was made or originated by the school, and who seeks to obtain such a loan, that he or she must first make a good faith effort to obtain a loan from a commercial lender.

(b) *Waiver of the 50 percent lending limit.* A school may request the Secretary to waive the 50 percent lending limit described in paragraph (a)(3) of this section if adherence to that limit would create a substantial hardship for the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering, among other factors—

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of those students enrolled at the school who—

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without Stafford, SLS, or PLUS loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1085)

§ 682.602 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students, and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must commence, and the period of time within which that resident training must be completed.

(c) The school's schedule must conform to the requirements set forth in the definition of "vocational school" in 34 CFR part 600.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1085)

§ 682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with § 682.201;

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought; and

(4) For a Stafford loan, the student's eligibility for interest benefits, as determined in accordance with § 682.301.

(c) Beginning not later than 60 days after a school receives notice from the Secretary that its fiscal year default rate, as defined in 34 CFR part 668, exceeded 30 percent for any fiscal year after fiscal year 1986, and continuing until the school is notified by the Secretary that its rate was equal to or less than 30 percent for a subsequent fiscal year, a school shall delay certification of the loan application of any student applying for his or her first Stafford or SLS loan for attendance at the school, so that, in compliance with § 682.604, the school ensures the student's endorsement of the check for (or written approval for the release of funds disbursed by electronic funds transfer representing) the first disbursement of the loan, the delivery of any loan proceeds to such a borrower, and the crediting of any proceeds to the borrower's account, do not occur until the borrower has attended the institution for at least 30 days during the period of enrollment for which the loan was made.

(d) A school may not certify a Stafford, PLUS, or SLS loan application, or combination of loan applications, for a loan amount that—

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts set forth in § 682.204; or

(2) Exceeds the student's estimated cost of attendance, less—

(i) The student's estimated financial assistance for that period, and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period;

(e) Subject to paragraph (c) of this section, a school may not refuse to certify an application on behalf of an eligible borrower for a loan from a lender that participates in the GSL programs.

(f) A school may certify an application for a loan only for a period of enrollment corresponding to—

(1) An academic year, as defined in 34 CFR part 668;

(2) The length of the program for a program of less than two academic years in length; or

(3) An academic period of less than one academic year established by the school (such as a semester, trimester or quarter), that is used by the school as the basis for billing all of its students for institutional charges.

(g) A school may not assess the borrower a fee for the completion or certification of any GSL loan application.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1085, 1094)

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's Stafford or SLS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) *General.* (1) Except in the case of a PLUS Program loan to a parent borrower, or a Stafford or SLS loan to a student attending a school not located in a State, the proceeds of a Stafford or SLS loan must be sent directly to the school by the lender.

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2) (iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student whom the school determines, after the school receives those proceeds from the lender, has continuously maintained eligibility in accordance with the provisions of § 682.201, from the

beginning of the loan period certified by the school on the student's loan application.

(ii) In the event a student notifies the school on or before the first day of classes that he or she will be delaying attending school for a period of time and commences attendance less than 30 days after the date the student first so notifies the school, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment for which the loan is intended.

(iii) If, after the proceeds of the first disbursement are transmitted to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may transmit the proceeds of the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iv) If, prior to the transmittal of the proceeds of a disbursement to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may transmit the proceeds of that disbursement and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) *Processing of the loan proceeds by the school.* (1) Except as provided in paragraph (c)(3) of this section, if a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended, and then follow the procedures in paragraph (c)(2) of this section.

(2)(i) After the student has registered, if the loan proceeds are disbursed by means of a check that requires the endorsement only of the student, the school shall deliver the check to the student, subject to paragraph (d)(2) of this section, within 45 days of the school's receipt of the check.

(ii) If the loan proceeds are disbursed by means of a check that requires the endorsement of both the student and the school, the school shall—

(A) In the case of the initial disbursement on a loan, endorse the check on its own behalf and, after the student has registered, deliver it to the student, subject to paragraph (d)(2) of this section within 45 days of the school's receipt of the check; or

(B) Obtain the student's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student, subject to paragraph (d)(2) of this section, within 45 days of receipt.

(3) If the loan proceeds are disbursed by electronic transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school shall, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended except for a student who receives the initial counseling described in paragraph (f) of this section in person or by videotape, obtain the student's written authorization for the release of the funds, and, after the student has registered, either—

(i) Deliver the proceeds to the student subject to paragraph (d)(2) of this section not later than 45 days after the student's registration; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section, notify the student in writing that it has so credited that account, and deliver the remaining loan proceeds to the student, subject to paragraph (d)(2) of this section, not later than 45 days after the student's registration.

(4) A school shall not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 682.605(c).

(d) *Applying the loan proceeds.* (1)(i) For purposes of paragraphs (c)(2)(ii)(B) and (c)(3)(ii) of this section, a school may not credit a registered student's account earlier than three weeks before the first day of classes of the period of enrollment for which the loan is intended.

(ii)(A) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(B) The school, as a fiduciary for the benefit of the guarantee agency, the Secretary, and the student, shall hold any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year. The school shall deposit these funds in a designated trust account and may not commingle them with other funds or use them for any other purpose.

(2)(i) For purposes of paragraphs (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, an institution may not deliver loan proceeds to a registered student earlier than 10 days before the first day of classes of the period of enrollment for which the loan is intended.

(ii) Notwithstanding the 45-day deadlines set forth in paragraph (c)(2) of this section, in the case of a second or subsequent disbursement on a multiply disbursed loan, the school may hold the loan proceeds until the beginning of the next scheduled semester, trimester, quarter, or similar division in the academic period within the period of enrollment for which the loan is intended, or, in the case of a school that does not use semesters, trimesters, quarters, or similar divisions, until the beginning of the second half of the period of enrollment for which the loan was intended, whereupon the school shall transmit the loan proceeds to the student and, if applicable, the student's account, within 30 days thereafter.

(3) If a student does not register for the period of enrollment for which the loan was made, the school shall return the loan proceeds to the lender by the latter of—

(i) Thirty days after the first day of that period of enrollment; or

(ii) In the case of a student that provides timely notice to the school of intent to register late in accordance with § 682.604(b)(2)(ii), 60 days after the date of that notice.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is intended, or fails to attend school during that period, or the school is unable for any other reason to document that the student attended school during that period, the school shall, within 30 days of the period described in § 682.607(c) of this part, notify the lender of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the lender—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of payments made directly by the student to the school, to the extent that they do not exceed the amount of any loan proceeds delivered by the school to the student.

(e) *Processing a late disbursement.* (1) For the purpose of this paragraph, a disbursement is late if the lender disburses the student's loan proceeds either—

(i) After the end of the period of enrollment for which the loan was made; or

(ii) Before the end of the period of enrollment for which the loan was made, but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school shall follow the procedures described in paragraphs (e)(3)–(6) of this section in processing a late disbursement, except that, notwithstanding those provisions, a school may not—

(i) Deliver the proceeds of a late disbursement to a student borrower whose last recorded day of attendance is earlier than the 30th day of the period of enrollment for which the loan is intended, if the loan was subject to delayed certification under § 682.603(c); or

(ii) Deliver to a borrower any portion of the proceeds of a late disbursement that, under 34 CFR part 668, is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(3) If a lender makes a disbursement after the earlier of the dates set forth in paragraph (e)(1) of this section, and the lender has informed the school that its late disbursement policy prohibits a late disbursement described in § 682.207(d)(2), the school shall return the loan proceeds to the lender within 30 days after its determination that one of the conditions described in paragraph (e)(1) of this section exists. The school shall send a notice to the lender with the loan proceeds informing the lender as to which of the conditions described in paragraph (e)(1) of this section exists.

(4) If a disbursement is received by the school within 30 days after the earlier of the dates described in paragraph (e)(1) of this section, the lender has not informed the school that the lender's policy prohibits a late disbursement under § 682.207(d)(2)(i), and the total amount of the disbursement and all prior disbursements on the loan does not exceed that portion of the student's cost of attendance for the period of enrollment completed by the student before the earlier of the dates described in paragraph (e)(1) of this section, the school shall deliver the borrower's loan proceeds to the borrower in accordance with this section. If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's cost of attendance, the school shall—

(i) Return the borrower's loan proceeds to the lender with a notice certifying—

(A) The beginning and ending dates of the period during which the borrower was enrolled at the school as an eligible student during the loan period; and

(B) The borrower's correct financial need for the loan for that period of enrollment; and

(ii) Advise the borrower that the lender may redisburse funds for the borrower's cost of attendance incurred before the earlier of the dates described in paragraph (e)(1) of this section.

(5)(i) If a late disbursement is received by the school within 31–60 days after the earlier of the dates described in paragraph (e)(1) of this section, the lender has not informed the school that its late disbursement policy prohibits a late disbursement described in § 682.207(d)(2)(iii), and the total amount of the late disbursement and all prior disbursements does not exceed the student's cost of attendance for the period of enrollment completed by the student before the earlier of the dates described in paragraph (e)(1) of this section, the school shall deliver the borrower's loan proceeds in accordance with this section after it certifies in writing to the lender the information in paragraph (e)(4)(i) of this section.

(ii) If the total amount of a late disbursement described in paragraph (e)(5)(i) of this section and all prior disbursements exceeds the borrower's cost of attendance incurred before that date, the school shall follow the procedures described in paragraphs (e)(4) (i) and (ii) of this section.

(6)(i) If a late disbursement is received by the school within 61–90 days after the earlier of dates described in paragraph (e)(1) of this section, the lender has not informed the school that its late disbursement policy prohibits a late disbursement described in § 682.207(d)(2)(iv) and the total amount of the late disbursement and all prior disbursements does not exceed the borrower's cost of attendance incurred before that date, the school shall—

(A) Send a notice to the lender certifying the information in paragraph (e)(4)(i) of this section;

(B) Advise the borrower that the lender may choose to permit a late disbursement, if the guarantee agency, after reviewing the documentation described in paragraph (e)(4)(i) of this section, approves a late disbursement; and

(C) Upon receiving notice from the lender that the late disbursement has been approved by the guarantor, deliver the borrower's loan proceeds in accordance with this section.

(ii) If the total amount of a late disbursement described in paragraph (e)(6)(i) of this section and all prior disbursements exceeds the borrower's cost of attendance incurred before the earlier of the dates described in paragraph (e)(1) of this section, the school shall—

(A) Return the loan proceeds to the lender with a notice certifying the information in paragraphs (e)(4)(i) (A) and (B) of this section; and

(B) Advise the borrower of the matters described in paragraph (e)(6)(i)(B) of this section.

(iii) If the redisbursed loan funds are accompanied by a notice from the lender that the redisbursed late disbursement has been approved by the guarantor, deliver the borrower's loan proceeds in accordance with this section.

(f) *Initial counseling.* (1) Except in the case of a correspondence school, a school shall conduct counseling with each Stafford and SLS borrower, either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first Stafford or SLS loan made to the borrower for attendance at the school, and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. A correspondence school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a student borrower of a Stafford or SLS loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Stafford and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge, or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling the school must—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained Stafford or SLS program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (*e.g.*, loan consolidation, refinancing);

(iv) Suggest to the borrower debt management strategies that the school determines would best facilitate repayment by the borrower; and

(v) Include the matters described in paragraph (f)(2) of this section.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f) through (g) of this section as to that borrower.

(h) *Treatment of excess loan proceeds.* If, after a school certifies a loan application, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which a GSL loan was made that exceeds the student's estimated cost of attendance, or in the case of a Stafford loan subject to payment of interest benefits under § 682.301, the student's financial need, the school shall—

(1) If no loan proceeds have been credited to the student's account or delivered to the student, immediately return to the lender any proceeds in its possession and provide the lender with a written statement describing the reason for the return of funds, if any, and setting forth the student's revised cost of attendance or financial need.

(2) If any proceeds of the first disbursement of a multiply-disbursed loan have been credited to the student's account or delivered to the student prior to the school's learning of the excess aid, promptly provide the lender with a written statement setting forth the student's revised cost of attendance or financial need, and directing the lender to reduce the second disbursement by the amount of the excess;

(3) If the entire loan proceeds have been credited to the student's account or delivered to the student, attempt to eliminate the excess by reducing the amount of other financial aid, if any, that—

(i) Is to be delivered to the student; or

(ii) Has been or is to be credited to the student's account.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1082, 1085, 1092, 1094)

§ 682.605 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the lender the date that the student has withdrawn from the school, and for determining when a refund must be paid under § 682.606 of this part.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal, as determined by the school.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month and year of the withdrawal date determined under paragraphs (b)(1) through (b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any twelve-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) Sixty days; or

(ii) Six months, under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.606 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board and other charges, to a student who received a Stafford or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for a period of enrollment for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete a period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student prior to the student's enrollment, and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund, but the school shall pay to the lender the portion of a refund allocable to the student's Stafford, SLS, or PLUS

program loans under 34 CFR part 668 whether or not the student follows those procedures. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii)(A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) If no such standards exist, the specific refund policy standards contained in Appendix A to this part, or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its fiscal year default rate, as defined in 34 CFR part 668, exceeded 30 percent for any fiscal year after 1986, and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the *pro rata* refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose last recorded day of attendance is after the earlier of—

(i) The halfway point (in time) for the student's program of study; or

(ii) Six months after the commencement of the student's program.

(c) (1) "*Pro rata* refund," as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent but never less than 10 percent, of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less—

(i) A reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or $100; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of week remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school would reissue to another student be returned by a student once the school determines that the student has withdrawn, if the school makes a written request for that return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing prior to enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under § 682.607 by reason of this process.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.607 Payment of a refund to a lender.

(a) *General.* By applying for a GSL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a GSL loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower and, if the borrower is a parent, to the student on whose behalf the loan was made, if the school pays a refund to a lender on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to a GSL loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the earliest of the—

(i) Student's withdrawal as determined under § 682.605 (b)(1)(i) or (b)(3);

(ii) Expiration of the academic term (*e.g.*, semester, quarter, or trimester) in which the student withdrew, as determined under § 682.605(b)(1)(ii);

(iii) Expiration of the period of enrollment for which the loan was made; or

(iv) The date on which the school makes a determination that the student has withdrawn under § 682.605(b)(1)(ii); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.608 Termination of a school's lending eligibility.

(a) *General.* The Secretary may terminate a school's eligibility to make loans under this part, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary may terminate a school's eligibility to make loans if, at the end of each of the two most recent consecutive Federal fiscal years for which data are available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section:

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all GSL loans made by the school, whether the loans are held by the school or by a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will reduce the school's loan default rate significantly within the next year. Examples of these improvements include—

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* (1) The Secretary notifies the school of the proposed termination and provides an opportunity for a hearing before the Secretary terminates the lending eligibility of a school under this section.

(2) The Secretary or his designee begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination; and

(iii) Informs the school that it has 15 days to—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request an oral hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request an oral hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested an oral hearing. The date of the hearing is at least 15 days from the date of receipt of the request. A presiding officer—

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the designated official is subject to review by the Secretary.

(e) *Effects of termination.* A school that has its lending eligibility terminated under this section may not—

(1) Make further loans under this part until it has entered into a new guarantee agreement with the Secretary; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes a loan to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determination required by this section by—

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085)

§ 682.609 Remedial actions.

(a) The Secretary may require a school to repay funds paid to other program participants by the Secretary. The Secretary may also require a school to purchase from the holder of a GSL loan that portion of the loan that is unenforceable, that the borrower was ineligible to receive, or for which the borrower was ineligible to receive interest benefits contrary to the school's certification, and to make arrangements acceptable to the Secretary for reimbursement of the amounts the Secretary will be obligated to pay to program participants respecting that loan in the future. The repayment of funds and purchase of loans may be required if the Secretary determines that the payment to program participants, the unenforceability of the loan, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits, resulted, in whole or in part, from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to another party, or to purchase loans from a holder in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or repurchase of loans by a school, if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school, or limit, suspend, or terminate a school's participation in the GSL programs, in accordance with 34 CFR part 668, subpart G.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1094)

§ 682.610 Administrative and fiscal requirements for participating schools.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR Part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, and PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application and a record of—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of attendance for which the loan was intended;

(4) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(5) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period, in accordance with § 682.200.

(6) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(7) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(8) In the case of a Stafford loan for which the borrower applies for interest benefits under § 682.301, the data used to determine the student's expected family contribution, and the corresponding certification by the school to the lender;

(9) In the case of a Stafford or SLS loan—

(i) The date the school received each loan disbursement and the amount of that disbursement;

(ii) The date the school endorsed each loan check; and

(iii) The date or dates of transmittal of the loan proceeds by the school to the student;

(10) The student's job placement, if known; and

(11) Any other matter a record of which is required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(c) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report form from the Secretary or a similar student status confirmation report form from any guarantee agency, complete and return that report, within 30 days of receipt, to the Secretary or the guarantee agency, as appropriate; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary or the guarantee agency within the next 60 days, notify the lender within 30 days—

(i) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(d) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1) Shall keep all records required under the regulations in this part for five years following the last day of the period for which the loan was intended;

(2) Shall keep for five years after completion, copies of reports and other forms used by the school relating to the Stafford, SLS, or PLUS programs;

(3) Shall provide, in the event of the school's closure, termination, suspension, or change of ownership, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(4) May keep records and copies of reports on microfilm or in computer format.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with the Secretary, any guarantee agency, the Department of Education's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by the applicable regulations and to any other pertinent books, documents, papers and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the title IV, HEA programs for the purpose of obtaining relevant information. Examples of restrictions that would not result in reasonable access to personnel include the following:

(i) Limiting the extent or type of relevant information to be supplied.

(ii) Requiring the presence of institutional representatives during personnel interviews.

(iii) Requiring that personnel interviews be recorded, for the records of the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a lender, or a guarantee agency, a school shall promptly provide a lender or guarantee agency with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who has received a Stafford or SLS loan has changed his or her permanent address, the school shall notify the holder of the loan within 30 days thereafter, either directly or through the guarantee agency.

(g) *Reports to the Secretary.* With respect to each program for which a disclosure to a prospective student is required by 34 CFR 668.44 to be made using a form set forth in appendix A, part 668, a school shall, between October 1 and December 31 of each year, transmit to the Secretary—

(1) A completed copy of that form containing the most recent data required by part 668 to be included on the form; and

(2) Information showing the total amount of charges for tuition, fees, equipment, books, and supplies for the program.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1094)

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the GSL programs. The regulations in this subpart apply to a lender that violates any statutory provision governing the GSL programs or any regulations, special arrangements, agreements, or limitations prescribed under those programs. These regulations apply to lenders that participate only in a guarantee agency program as well as to lenders that participate in the Federal GSL programs. These regulations also govern the disqualification of a lender or

school from participation in the GSL programs under sections 432(h)(2) and (h)(3) of the Act.

(b) This subpart does not apply—

(1) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in § 682.200, for any reason other than a violation of the prohibitions set forth in section 435(d)(5) of the Act;

(2) To a school's loss of lending eligibility under § 682.608; or

(3) To an administrative action by the Department of Education based on any alleged violation of—

(i) The Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act), which is governed by 34 CFR part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders or schools under other authorities.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.701 Definitions of terms used in this subpart.

The following definitions apply to terms used in this subpart:

Designated Departmental official. An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing disqualification or limitation, suspension, or termination proceedings.

Disqualification. The removal of a lender's or school's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender or school by a guarantee agency.

Limitation. The continuation of a lender's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guarantee agency, or imposed as the result of a limitation or termination proceeding.

Suspension. The removal of a lender's eligibility for a specified period of time or until the lender fulfills certain requirements.

Termination. The removal of a lender's eligibility for an indefinite period of time—

(a) By a guarantee agency; or

(b) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under § 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings by the Secretary do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in paragraph (c) of this section and in § 682.709.

(b) A limitation imposes on a lender—

(1) A limit on the number or total amount of loans that a lender may make, purchase, or hold under the GSL programs;

(2) A limit on the number or total amount of loans a lender may make to, or on behalf of, students at a particular school under the GSL programs; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(c) After the effective date of the termination of a lender's eligibility, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guarantee agency after that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender a reasonable opportunity to—

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the GSL programs; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments by the Secretary and guarantee agencies, and to withhold payment of interest benefits and special allowance to a lender, if the Secretary—

(1) Receives reliable information that the lender is in violation of applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parent borrowers, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The effective date of the action is the date the notice is mailed to the lender.

(d) (1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) Upon the written request of the lender, the Secretary may provide the lender with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension by the Secretary removes a lender's eligibility under the GSL programs, and the Secretary does not guarantee or reinsure a new loan made by the lender during a period not to exceed 60 days from the effective date of the suspension, unless—

(i) The lender and the Secretary agree to an extension of the suspension period, if the lender has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary

may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender that the suspension will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to correct voluntarily any alleged violations.

(c) *Hearing.* (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender of the effective date of the suspension.

(2) If the lender requests an oral hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed suspension takes effect until a hearing is held.

(3) The oral hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision, based on findings of fact and conclusions of law, that may suspend the lender's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender.

(7) The Secretary automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender of the decision by mail.

(8) A suspension takes effect on either the date that the notice of a decision imposing the suspension is mailed to the lender, or on the original proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender that the limitation or termination will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender to correct voluntarily any alleged violations; and

(viii) Notifies the lender that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing.* (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender of the effective date of the limitation or termination.

(2) If the lender requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender, and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating the lender's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender and the Secretary or designated Department official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued, unless the lender or designated Department official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer is convicted of, or pled *nolo contendere* or guilty to, a crime involving the unlawful acquisition, use, or expenditure of GSL funds, that conviction or guilty plea is automatic grounds for terminating the lender's eligibility to participate in the GSL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9)—

(1) An appeal is made to the Secretary by the submission to the Secretary and the opposing party within 15 days of the date of the appealing party's receipt of the presiding officer's decision, of a brief or other written material explaining why the decision of the presiding officer should be overturned or modified; and

(2) The opposing party shall submit its brief or other written material to the Secretary and the appealing party within 15 days of its receipt of the brief or written material of the appealing party.

(b) The Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(c) Any party submitting material to the Secretary shall provide a copy to each party that participates in the hearing.

(d) If the presiding officer's initial decision would limit or terminate the lender's eligibility, it does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the GSL programs, students, or parents.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart must be evidenced by the original receipts from the U.S. Postal Service.

(b) If a lender refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender refuses to accept the notice.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender improperly received, withheld, disbursed, or caused to be disbursed.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender.

(Authority: 20 U.S.C. 1080, 1082, 1094)

§ 682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the effective date of the limitation.

(b) The request must be in writing and must show that the lender has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d) (1) If the Secretary denies the request or establishes other limitations, the lender, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender may continue to participate in the GSL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the effective date of the termination.

(b) The request must be in writing and must show that—

(1) The lender has corrected any violations on which the termination was based; and

(2) The lender meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR part 668 may not be considered for reinstatement as a lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e) (1) If the Secretary denies the lender's request, or allows reinstatement subject to limitations, the lender, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender, whose eligibility to participate in the GSL programs is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guarantee agency against a lender participating in the GSL programs. Upon completion of the Secretary's review, the Secretary notifies the guarantee agency and the lender of the decision by mail.

(b) The Secretary disqualifies a lender from participation in the GSL programs if—

(1) The lender waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(U) of the Act.

(c) (1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The lender has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the lender will comply with the requirements of the GSL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guarantee agency shall refer a limitation, suspension, or termination action that it takes against a lender to the Secretary within 30 days of its final decision to limit, suspend, or terminate the lender's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a lender's eligibility only when the guarantee agency's action is final, *i.e.*, the lender is not entitled to any further appeals within the guarantee agency. A subsequent court challenge to an agency's action does not, by itself, affect the timing of the Secretary's review.

(f) The guarantee agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guarantee agency's letter initiating the action.

(2) The lender's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or lender review report that led to the action.

(8) All other documents relevant to the action.

(g) The guarantee agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h) (1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(U) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exists, the Secretary notifies the lender that the Secretary will review the guarantee agency's action to determine whether to disqualify the lender from further participation in the GSL programs, and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a hearing on the record.

(i) The Secretary's review of the guarantee agency's action is limited to—

(1) Whether the agency action was taken in reliance on—

(A) Agency requirements that were no more onerous than requirements for initial and continuing participation in the Federal Insured Student Loan Program in effect on January 1, 1985; or

(B) A State constitutional prohibition affecting the eligibility of the lender; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, termination of eligibility of a lender under the Federal Insured Student Loan Program.

(j) In the case of an action by an agency that limits or suspends a lender's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has fully satisfied all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided assurances satisfactory to the agency of future compliance with program requirements; or

(3) The guarantee agency determines that special circumstances warrant disqualification of the lender from the GSL programs for a significant period, notwithstanding the agency's decision not to terminate the lender's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082)

§ 682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guarantee agency against a school participating in the GSL programs. Upon completion of the Secretary's review, the Secretary notifies the guarantee agency and the school of the decision by mail.

(b) The Secretary disqualifies a school from participation in the GSL programs if—

(1) The school waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(T) of the Act.

(c) (1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The school has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the school will comply with the requirements of the GSL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guarantee agency shall refer a limitation, suspension, or termination action that it takes against a school to the Secretary within 30 days of its final decision to limit, suspend, or terminate the school's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a school's eligibility only when the guarantee agency's action is final, *i.e.*, the institution is not entitled to any further appeals within the guarantee agency. A subsequent court challenge to an agency's action does not, by itself, affect the timing of the Secretary's review.

(f) The guarantee agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guarantee agency's letter initiating the action.

(2) The school's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or program review repor that led to the action.

(8) All other documents relevant to th action.

(g) The guarantee agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h) (1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(T) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(T) of the Act, and, if applicable, one or more of the circumstances described in paragraph (j) of this section exists, the Secretary notifies the school that the Secretary will review the guarantee agency's action to determine whether to disqualify the school from further participation in the GSL programs, and affords the school an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a hearing on the record.

(i) The Secretary's review of the guarantee agency's action is limited to—

(1) Whether the agency action was taken in reliance on—

(i) Agency requirements that were no more onerous than requirements for initial and continuing participation in the Federal Insured Student Loan Program in effect on January 1, 1985; or

(ii) A State constitutional prohibition affecting the eligibility of the school; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a school under the Federal Insured Student Loan Program.

(j) In the case of an action by an agency that limits or suspends a school's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The school has not corrected the violation. A violation is corrected if, among other things, the school has fully satisfied all liabilities incurred by the school as a result of the violation, including its liability to the Secretary, or the school has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The school has not provided assurances satisfactory to the agency of future compliance with program requirements; or

(3) The guarantee agency determines that special circumstances warrant disqualification of the school from the GSL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082, 1085, 1094)

Subpart H—Special Allowance Payments on Loans Made or Purchased with Proceeds of Tax-Exempt Obligations

§ 682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.

(a) The Secretary pays a special allowance on a loan that was made or acquired with the proceeds of an obligation exempt from taxation under section 103 of the Internal Revenue Code of 1986 and is held by or on behalf of an Authority if—

(1) For loans financed by an obligation issued after December 31, 1980 and before November 16, 1986, the Secretary approved—

(A) The Plan for Doing Business of the Authority that issued the obligation; and

(B) The justification of need for the obligation, if the obligation was issued after August 14, 1983; or

(2) For loans financed by an obligation issued after November 16, 1986, the Governor of the State from which the Authority received or will seek an allocation under section 103(n) of the Internal Revenue Code of 1986 after consultation with the principal guarantee agency for the State, has approved the Plan for Doing Business of the Authority that issued the obligations.

(b) The Secretary pays a special allowance—

(1) For loans described in paragraph (a)(1) of this section, from the latest of—

(i) The date the Secretary approved the Plan for Doing Business of the Authority;

(ii) The date the Secretary approved the justification of need for the obligation, if issued after August 14, 1983; or

(iii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation.

(2) For a loan described in paragraph (a)(2) of this section, from the latest of—

(i) The date the Governor approved the Plan for Doing Business of the Authority;

(ii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation; or

(iii) November 16, 1986, if the loan was made or acquired with the proceeds of a tax-exempt obligation issued before that date by an Authority that did not receive before that date approval from the Secretary for its Plan for Doing Business, and, if applicable, its justification of need.

(c) The Authority shall submit a copy of the Plan for Doing Business to the Secretary under paragraph (a)(2) of this section within 60 days after receiving the Governor's approval.

(d) As used in this paragraph, the term "principal guarantee agency" means—

(1) The guarantee agency in the State with which the Secretary has signed a Basic Program Agreement under § 682.401; or

(2) If the Secretary has signed agreements with more than one agency in the State, the agency that has issued the majority of loan guarantees for students who are attending school in the State during the most recently ended Federal fiscal year.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

§ 682.801 Provisions required in Plan.

Each Plan submitted for the approval of the Governor must contain provisions necessary to ensure that—

(a) If an Authority acts as a secondary market for student loans, it shall exclude no eligible lender in the service area from participation in its program, and shall permit all eligible lenders to participate in its program on the same terms and conditions;

(b) No director, officer, or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation of any kind from, any agency or organization that contracts to service and collect the loans in which the Authority has a legal or equitable interest;

(c) The Authority shall not purchase student loans at a premium or discount amounting to more than one percent of the unpaid principal amount borrowed plus interest accrued to the date of acquisition;

(d) The Authority shall not pay transfer fees in excess of the costs of transferring a loan portfolio or a portion of it from the lender to the Authority;

(e) The Authority shall, within the limits of funds available and subject to applicable State and Federal law, make loans to, or purchase loans made to, all eligible borrowers who are residents of, or who seek loans for a student to attend a school within, the service area of the Authority;

(f) The Authority has a plan under which the Authority shall pursue both the recruitment of new lenders to participate in a continuing program of benefits to students under the GSL, SLS, and PLUS programs and the maintenance of existing lender commitments to the program;

(g) The Authority shall secure an annual audit of its loan program operations by a certified public

accounting firm which will include a review performed in accordance with the audit standards found in § 682.830; and

(h) The Authority shall not issue tax-exempt obligations for amounts in excess of the unmet need for student loan credit in its service area.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.802 Submission of Plan for approval—required documentation.

An Authority shall submit with, or include in, each Plan submitted for the approval of the Governor the following:

(a) If the Authority is a secondary market, a description of the procedures used to inform eligible lenders of the program of the Authority, samples of announcements to lenders regarding the program, and a listing of the types of lenders and numbers of each type so informed.

(b) If the Authority contracts with an agent to service or collect loans in which the Authority as a legal or equitable interest, a sample of the form signed by all directors, officers, and staff of the Authority who receive compensation from the Authority certifying that these persons do not own stock in or receive compensation of any kind from that agent and a list of the persons who have signed the form.

(c) If the Authority is a secondary market, a schedule of the amount of loan transfer fees paid or to be paid by the Authority to parties from whom it purchases loans and, if the amount of a loan transfer fee is based on an estimate, an explanation of how that estimated amount was determined.

(d) A copy of any Federal or State law that the Authority believes limits its ability to make or purchase loans made to any eligible borrowers who are residents of, or who obtained loans for a student to attend a school located within, its service area.

(e) A copy of the plan under which the Authority pursues both the recruitment of new lenders to participate in a continuing program of benefits to students under each of the GSL programs and the maintenance of existing lender commitments to the programs.

(f) A copy of the most recent independent audit of the Authority performed in accordance with the audit standards found in § 682.830.

(g) A copy of any survey instrument or written inquiry form to be used to solicit from schools, lenders, and secondary markets information by which the Authority measures unmet need for student loan credit.

(h) A certification that the Authority is in compliance with section 438(d)(2) of the Act (regarding patterns or practices resulting in denial of access to student loan credit for certain borrowers).

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.803 Amendments to Plan.

(a) After a Plan is approved, an Authority shall submit to the Governor or the Secretary amendments to the Plan or such documentation as may be needed to reflect accurately the policy and practice of the Authority within 30 days of the date that—

(1) An Authority amends any provision of a Plan which had previously been approved by that Governor or the Secretary; or

(2) Any documentation or representation previously submitted pursuant to § 682.802 has been revised or rendered inaccurate in any material aspect.

(b) An Authority shall promptly amend its Plan to comply with changes in applicable statutes and regulations.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.804 Failure to comply with Plan.

(a) If the Secretary finds that an Authority has failed to comply with any requirement of its Plan or of this subpart, the Secretary takes actions necessary to protect the interests of the United States. These actions may include the following:

(1) Withholding payment of special allowances.

(2) Suspending or revoking approval of the Plan.

(3) Determining that loans made or purchased with the proceeds of a tax-exempt obligation by the Authority or any entity acting for the Authority after the date of suspension or revocation are ineligible for payments of special allowances.

(4) Requiring reimbursement from the Authority of special allowances paid on loans made or purchased by the Authority or any entity acting for the Authority.

(b) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to suspend or revoke approval of a Plan does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(c) Once final, the Secretary's decision to require a repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.805 Sanctions for material misrepresentation.

(a) If at any time the Secretary determines that the submission for approval of a tax-exempt obligation or a Plan for Doing Business contains or contained a material misrepresentation, the Secretary may to the extent provided in paragraph (b) of this section—

(1) Require reimbursement from the Authority of special allowance payments to the Authority or to any other party on loans made or purchased with the proceeds of the issue with respect to which the misrepresentation was made; and

(2) Determine to be ineligible for special allowance payments any loans to be made or purchased by the Authority or any entity acting for the Authority with the unexpended proceeds of the issue with respect to which the misrepresentation was made.

(b) If an Authority uses funds from sources other than a tax-exempt obligation to retire an issue with respect to which the Secretary has determined that a material misrepresentation was made, the Secretary takes the adverse actions described in paragraph (a) of this section only with regard to those special allowance payments which accrued earlier than ninety days before that issue was retired.

(c) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to take any of the actions in § 682.804 does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

§§ 682.806-682.829 [Reserved]

§ 682.830 Audit standards.

(a) The Authority shall have an annual financial and compliance audit by an independent certified public

accounting firm of its loan and loan purchasing program or both. The audit must be conducted in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office (GAO) publication, *Standards for Audit of Governmental Organizations, Programs, Activities and Functions.* The Authority shall submit a copy of the audit report within 30 days after the completion of the report to its regional office of the Department of Education's Office of the Inspector General, to the Governor who approved the Plan for Doing Business, and to the principal guarantee agency consulted by that Governor in the approval of that Plan.

(b) The audit must examine the activities of the Authority for compliance with the provisions of the Plan, and must specifically articulate, with appropriate substantiation, its conclusions regarding compliance with each of the provisions of § 682.801 and with the Plan of the Authority.

(c) The audit must also examine the expenditures of the Authority using the cost principles in OMB Circular A–87 if the Authority is an agency or instrumentality of a State or local government, or, if the Authority is a non-profit corporation, in OMB Circular A–122, as follows:

(1) The GSL, SLS, and PLUS loan programs of the Authority are treated as the Federal grant or contract with regard to which costs are allocated.

(2) All costs incurred by the Authority are attributed to a cost category identified pursuant to the appropriate Circular.

(3) Each cost is examined to determine whether it is reasonable and allocable to the GSL, SLS, and PLUS loan programs of the Authority.

(4) Although costs must be attributed, where warranted, to categories of costs otherwise characterized as unallowable, no determination is to be made that a cost is disallowed merely because that cost was one for which the Circular requires advance approval by the Secretary or because the Circular classifies that cost as unallowable.

(Authority: 20 U.S.C. 1082, 1087–1)

§§ 682.831–682.839 [Reserved]

§ 682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

(a) In order for an Authority to receive special allowance payments on loans made or acquired with the proceeds of a tax-exempt obligation, the Authority or its agent may not engage in any pattern or practice that results in a denial of a borrower's access to loans under the GSL programs because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular institution within the area served by the Authority, length of the borrower's education program, or the borrower's academic year in school.

(b) The Secretary considers an Authority that makes or acquires loans guaranteed by an agency or organization that discriminates on one or more grounds listed in paragraph (a) of this section to have adopted a practice of denying access to loans on that ground unless the Authority makes provision for loan guarantees from other sources necessary to serve the borrowers excluded by that discriminatory policy.

(Authority: 20 U.S.C. 1082, 1087–1)

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

For purposes of § 682.606(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students. The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) Institutions should seek consumer views in the process of establishing and amending charge and refund structures. Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students. Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment to the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials. Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules. Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admissions fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (*e.g.,* tuition deposits). Others are refundable according to the terms of the deposit agreement (*e.g.,* deposits for breakage).

(VI) Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students. Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee. It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) The institutional tuition refund policy for an academic period should include the following minimum guidelines:

A. The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.

B. The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the

first 25 percent of the academic period. It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless State law imposes a more restrictive refund policy.

(IX) The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution has assessed charges in error. Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer. A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) Institutions should pay or credit refunds due on a timely basis. The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeal process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible. Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

Appendix B—Student Status Confirmation Report

This Appendix sets forth model format and data elements for guarantee agencies to use in implementing a Student Status Confirmation Report system as required by § 682.401(b)(17).

Student Status Confirmation Report

Date: MM/DD/YY Guarantor/Institution Code: (must accommodate eight numeric characters)
Guarantor/Institution Name:
Social Security Number ———————
Name ———————
*Status ———————
Effective Date ———————
*The valid enrollment status codes are as follows:
F=Full-time
H=Half-time or more but less than full time.
L=Less than half-time. This code is used to specify students enrolled less than half-time.
X=Never attended the institution. This code is to specify those individuals on whose behalf a Stafford, SLS, or PLUS loan was made who enrolled in school but never attended classes.
Z=No record found. A thorough search of the institution's enrolled records revealed no information for this individual.
D=Deceased
A=Approved leave of absence
G=Graduated
W=Withdrawn

Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L–77a]

Note: The following is a reprint of Bulletin L–77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since that date. All references to "the date of this bulletin" refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to GSLP and PLUS Program loans. Public Law 99–272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this Appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods.

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("due diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. See 34 CFR 682.507, 682.511.[1] These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979 regulations), whether or not the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually. However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a)(5),(6), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

Collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period, the loan entered repayment prior to September 4, 1985 (*See* 50 FR 35970), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. One exception to this rule is as follows: If the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, *prior* to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. *See* 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the

importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.511(e) (1) and (3). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). In other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default if such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procedures

A. Definitions

The following definitions apply to terms used throughout section I of this bulletin.

"Full payment" means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15 payments in accordance with original repayment schedule or agreement.)

"Reinstatement" with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "reinstatement" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's right to receive interest and special allowance payments is addressed in section I.B.1, below.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. Reservation of the Secretary's Right to Strict Enforcement. While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulations.

3. Applicability of the Cure Procedures to Particular Classes of Loans. The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations *only* of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

4. Excusal of Certain Due Diligence Violations. A lender whose claim was previously denied *solely* for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

5. Treatment of Accrued Interest on "Cured" Claims.—a. Due Diligence Violations. For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in column 15 on the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. Timely Filing Violations. For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for unpaid interest accruing after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim, on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan during the original 120/180 day default period. This deduction must be reflected in Column 15 of the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see section I.D.1.c.

6. Documents to be Submitted with "Cured" Claims. The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new ED Form 1207.

For all "cured" claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original ED Form 1207 and all documents showing the reason(s) for the original rejection;

• All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;
• A new ED Form 1207; and
• All documents showing that the lender has complied with the applicable cure procedures and requirements.

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.507)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. For example, a violation occurs if the lender fails to:

• Remind the borrower of the date a missed payment was due within 15 days of delinquency;
• Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;
• Request preclaims assistance from the Department of Education;
• Request skip-tracing assistance from the Secretary, if required, or
• Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. Reinstatement of Insurance Coverage. In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the loan. After the date of this bulletin, or after the date of the violation, whichever is later:

(a) The lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7); or

(b) The lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (*e.g.*, copies of the checks) with the claim.

2. Borrower's Deemed Current As of Date of Cure. On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)

1. Default Claims.—a. Reinstatement of Insurance Coverage. In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see section I.D.1.d. for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "48-Hour" collection letter, on the lender's letterhead. (See Attachment A.)

b. Borrower Deemed Current Under Certain Circumstances. If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps set out in 34 CFR 682.507 and the timely filing requirements set out in 34 CFR 682.511.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.1.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; *or*

(ii) A completed "Certification of Borrower Location" form (Attachment B).

2. Death, Disability, and Bankruptcy Claims. Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirements (see 34 CFR 685.511(e)(2)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements set out in section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements.

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender *knows* involves a due diligence or timely filing violation must cease doing so immediately. However, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. Due Diligence Violations. In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest and/or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender *knows* involves a due diligence violation must promptly repay those amounts.

2. Timely Filing Violations. In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest and/or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender knows involves a timely filing violation must repay those amounts.

3. Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured. Because most due diligence violations, and timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period. In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However, the lender need not repay that interest to the Secretary. See II.C.1. above.

b. Deferment Periods. A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. Loans Made Prior to December 15, 1968. A loan disbursed prior to December 15, 1968, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A lender must make the repayments of interest and/or special allowance discussed in II.C. above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported on the normal Lender's Interest and Special Allowance Request and Report (ED Form 799). Lenders are requested not to send a check with the adjustment; the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. For five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s), and the date it used for cessation of interest and/or special allowance eligibility in calculating the overbilled amount. *See* 34 CFR 682.515(a)(2).

Attachments

Note: All references to the program regulations are to part 682 of title 34 of the Code of Federal Regulations (34 CFR part 682).

Attachment A

NOTICE

Date

Social Security Number

TO:

You have previously been notified that you are severely delinquent in repaying your Guaranteed Student Loan. This notice is our final effort to remedy this delinquency. You must contact us at _____ within

48 HOURS

Failure to act upon this notice will result in transfer of your account to the Federal Government.

Official of Lender

Title

Attachment B

Certification of Borrower Location

As an employee or agent of

Name and Address of Lender

I hereby certify as follows:

1. On _____,
Date

I spoke with or received written communication from (copy attached):

(circle a or b)

(a) the borrower on the loan underlying the default claim, or

(b) a parent, spouse, or sibling of the borrower.

2. The borrower, parent, spouse, or sibling represented to me that the borrower's address and telephone number are—

Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new repayment agreement along with a collection letter of the type described in section I.D.1.a.ii of Bulletin L-77a, dated January 7, 1983, to the address set out in 2, above.

4. (Applicable only if 1(b), above, is used.) The letter and agreement referenced in 3, above, has not been returned undelivered.

Name of Borrower

Borrower's SSN

Signature of Employee or Agent

Typed Name of Employee or Agent

Title of Employee or Agent

Date

Lender Identification Number

Appendix D—Policy for Waiving the Secretary's Right to Recover or Refuse to Pay, Interest Benefits, Special Allowance, and Reinsurance on Guaranteed Student Loan, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Dear Guarantee Agency Director Letter 88-G-138]

Note: The following is a reprint of Bulletin 88-G-138, issued on March 11, 1988, with minor modifications made to reflect proposed changes in the program regulations.

Introduction

This letter sets forth the circumstances under which the Secretary, pursuant to sections 432(a) (5) and (6) of the Higher Education Act of 1965 and 34 CFR 682.406(b) and 682.413(f), will waive certain of his rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guarantee agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the GSL Programs.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guarantee agency.

The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the GSL Programs. As a part of this effort, the Secretary published final regulations on November 10, 1986 requiring lenders and guarantee agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guarantee agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, § 682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guarantee agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance

payments made by the Secretary on a loan. *See* 34 CFR 682.406 (a)(2), (a)(4), 682.413(b)(1). The regulations also specify that a lender must comply with § 682.411 and with the applicable filing deadline, as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. *See* 34 CFR 682.300(b)(2)(vi), 682.413(a)(1).

The Department has received inquiries regarding the procedures by which a lender may "cure" a violation of § 682.411 regarding diligent loan collection, or of the 45-day deadline for the filing of default claims found in § 682.406(a)(4), in order to reinstate the agency's right to reinsurance, and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guarantee agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under §§ 682.406(b) and 682.413(f), the Secretary—not the guarantee agency—decides whether to reinstate reinsurance coverage on a loan involving such a violation, or any other violation of Federal regulations. A lender's violation of a guarantee agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. *See* §§ 682.406(a)(5); 682.413(b). As §§ 682.406(a)(6) and 682.413(b) make clear, a guarantee agency's cure procedures are relevant to reinsurance coverage *only* insofar as they allow for cure of violations of requirements established by the *agency* affecting the loan insurance it provides to lenders. In addition, all such requirements must be submitted to the Secretary for review and approval, under 34 CFR 682.401(d).

References throughout this letter to "due diligence and timely filing" rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. Scope

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guarantee agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. Duty of a Guarantee Agency to Enforce Its Standards

As noted above, a lender's violation of a guarantee agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guarantee agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; or

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below.

In other words, for violations of a guarantee agency's due diligence and timely filing rules occurring before May 1, 1988, a guarantee agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1., below. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage, the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. Due Diligence

Under 34 CFR 682.200, default on a GSL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 180 days for loans payable in monthly installments, or for 240 days for loans payable in less frequent installments.

The 180/240-day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months date (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on September 29th, when the April payment becomes 180 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. *See* 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

D. Timely Filing

The 45-day filing period applicable to GSL Program default claims is set forth in 34 CFR 682.406(a)(4). The 45-day filing period begins at the end of the 180/240-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 225th day of delinquency (180-day default period plus 45-day filing period) if the borrower brings the account less than 180 days delinquent before such 225th day. Thus, in the above example, if the borrower makes the April 1st payment on September 30th, that payment makes the loan 151 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 180 days delinquent, the lender must file a default claim within 45 days thereafter (unless the loan is again brought to less than 180 days delinquent prior to the end of that 45-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if such payments are sufficient to make the loan less than 180 days delinquent.

Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan, and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter:

"Full payment" means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $25 per month for a specified time, and the borrower

defaulted in making the reduced payments, a "full payment" would be $50, or two $25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a "full payment" only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

"Reinstatement" with respect to reinsurance coverage means the reinstatement of the guarantee agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. "Reinstatement" with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

"Gap" in collection activity on a loan means:

(a) The period between the initial delinquency and the first collection activity;

(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);

(c) The period between the last collection activity and default; or

(d) The period between the date a lender discovers a borrower has "skipped" and the lender's first skip-tracing activity.

[Note: the concept of "gap" is used herein simply as one measure of collection activity. Not all gaps are violations of the due diligence rules.]

"Violation" with respect to the due diligence requirements in § 682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaim assistance), or the failure to timely engage in a required skip-tracing activity.

"Transfer" means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Violations

For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. Reservation of the Secretary's Right to Strict Enforcement

While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules, and in cases where the best interests of the United States otherwise require such strict enforcement. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority

The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

(1) The guarantee agency and lender shall ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below, by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guarantee agency's responsibility in this regard is satisfied by receipt of a certification from the lender that this repayment has been made in full.

(2) The guarantee agency, on or before October 1, 1988, shall repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below.

Pending completion of the repayment described above, a lender or guarantee agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier.

Of course, a lender or guarantee agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. Applicability of the Waiver Policy to Particular Classes of Loans

The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day default period that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence and/or timely filing requirements.

5. Excuse of Certain Due Diligence Violations

In examining due diligence, the Secretary looks only at the most recent 180 days prior to default on a loan, except as noted in Section II.

6. Excuse of Timely Filing Violations Due to Performance of a Guarantee Agency's Cure Procedures

If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guarantee agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guarantee agency, and files a default claim on the loan not more than 45 days after completing the additional activities.

7. Treatment of Accrued Interest on "Cured" Claims

For any loan involving any violation of the due diligence or timely filing rules for which a "cure" is required under section I.C. or I.E., below, for the agency to receive a reinsurance payment, the Secretary will not reimburse the guarantee agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on the loan from the date of the earliest unexcused violation occurring after the last payment received before the loan is accomplished, to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim.

Some cures will not reinstate coverage. For treatment of accrued interest in such cases, see section I.E.1.c., below.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411)

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made.

The special provisions for transfers set forth below apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A., above.

1. Retrospective Period

For one or more due diligence violations occurring during the period March 10, 1987–April 30, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guarantee agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46–60 days (61–75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the

Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (*See* section I.E.1.d., below, for a description of acceptable evidence of location.) In addition, if the loan is held by the lender on or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. Prospective Period

For due diligence violations occurring on or after May 1, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guarantee agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exist not more than 2 violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the data of default.

However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 215th day of delinquency. If the lender fails to make this request by the 215th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist 3 violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exists more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations

1. Cures

In the case of a loan involving violations described in section I.C.2.d., above, the lender may utilize either of the two procedures described below for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guarantee agency must obtain evidence of this payment (*e.g.*, a copy of the check) from the lender.

2. Borrower Deemed Current As of Date of Cure

On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., above, reinsurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender shall then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. Default Claims

a. Reinstatement of Insurance Coverage. Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (*See* section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, that complies with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5–10 days after completing these efforts, the lender shall again diligently attempt to contact the borrower by telephone. Finally, within 5–10 days after completing these efforts, the lender shall send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guarantee agency.

b. Borrower Deemed Current Under Certain Circumstances. If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default.

In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

c. Borrower Deemed in Default Under Certain Circumstances

If the borrower does not make a full payment, or sign and return the new repayment agreement, on or before the 30th day after the lender completes the additional collection efforts described in I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan, accompanied by acceptable evidence of location (see section I.E.1.d., below), within 30 days after the end of such 30-day period. Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, unless a statute of limitations bars suit on the loan by the guarantee agency at the time the reinsurance claim is filed by the agency, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, on unpaid interest as provided in section I.B.7., above, and for reimbursement of eligible supplemental preclaims assistance costs.

In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment

agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; *or*

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., above, had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. Death, Disability, and Bankruptcy Claims

The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (*see* 34 CFR 682.402(e)(2)(i)). However, the Secretary will not reimburse the guarantee agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (§ 682.402(e)(2)(ii)) causes irreparable harm to the guarantee agency's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy, or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender shall treat the loan as in default. The Secretary will not reimburse the guarantee agency for interest accruing beyond the 30-day filing deadline for the bankruptcy claim.

II. Due Date of First Payment

Section 682.411(b) refers to the "due date of the first missed payment not later made" as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on a GSLP loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment.

In cases where the lender learns that the borrower has entered the repayment period after the fact, current § 682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun ("the notice") as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercise forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice. In keeping with the 5-day tolerance permitted under section I.C.2.a., for the "prospective period", a lender that sends the above-described material on or before the 65th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by § 682.411(c) to be sent within the first 20 days of delinquency, and will thus have committed *two* violations of more than five days of that rule.

If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent, and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., above, that only violations occurring during the most recent 180 days of the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

III. Questions and Answers

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guarantee agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions are set forth below.

Q: Section 682.411 of the program regulations requires the lender to make "diligent efforts to contact the borrower by telephone" during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the "diligent efforts" requirement for any of the 30-day delinquency periods described in the rule. However, the "diligent efforts" requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, *etc.* For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

Q: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

Q: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender shall treat the payment as having never been made for purposes of determining the number of days delinquent that the borrower is at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with § 682.411, commencing with

the first 30-day delinquency period described in § 682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result obtains when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

[FR Doc. 90–26659 Filed 11–19–90; 8:45 am]
BILLING CODE 4000–01–M

federal register

Tuesday
November 20, 1990

Part III

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Asbestos NESHAP Revision; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3814-7]

RIN 2060-AC57

National Emission Standards for Hazardous Air Pollutants; Asbestos NESHAP Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This **Federal Register** notice promulgates rules under section 112 of the Clean Air Act (CAA) for asbestos emissions and is based on the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (*see* 36 FR 3031, March 31, 1971). The purpose of the revisions promulgated today is to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls. On January 10, 1989 the Environmental Protection Agency (EPA or the Agency) proposed amendments to the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) that would require control device and fugitive emission monitoring, recordkeeping, and reporting for asbestos milling, manufacturing, and fabricating operations. For planned demolitions and renovations, revisions to the notification requirements were proposed, and safety was added as a reason for exemption from the use of wet removal methods. Recordkeeping requirements were proposed for asbestos waste disposal. Clarifying revisions to several definitions and provisions were also proposed. Numerous comments were received on the proposed revisions, and today's notice responds to those comments, and incorporates changes as a result of those comments.

EFFECTIVE DATE: November 20, 1990. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 Days of today's publication of these rules. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background information document.* The background information document (BID) for the promulgated revisions may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina, 27711, telephone no. (919) 541-2777. Please refer to "Background Information for Promulgated Asbestos NESHAP Revisions," (Publication No. EPA 450/3-90/017). The BID contains a summary of all the public comments made on the proposed revisions and the Administrator's responses to the comments.

Dockets. Docket No. A-88-28 contains supporting information used in developing the final revisions to the asbestos NESHAP and is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket (LE-131), Room M-1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information and official interpretations of applicability, compliance requirements, and reporting aspects of the promulgated revisions, contact the appropriate Regional, State or local office contact as listed in 40 CFR 61.04. For further information on the background of the regulatory decisions in the promulated revisions, contact Mr. Sims Roy, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. (919) 541-5263. For further information on the technical aspects of the promulgated revisions, contact Mr. Ronald Myers, Industrial Studies Branch, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. (919) 541-5407.

SUPPLEMENTARY INFORMATION:

I. The Standards

The promulgated revisions implement section 112 of the Clean Air Act (CAA) and are based on the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (*see* 36 FR 3031 (March 31, 1971)). The revisions promulgated today amend the asbestos NESHAP to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls.

Milling, Manufacturing and Fabricating

The revisions to the standards require asbestos milling, manufacturing and fabricating sources to conduct daily monitoring for visible emissions. While the absence of visible emissions does not mean there are no asbestos fibers being emitted, the presence of visible emissions does indicate a serious control device malfunction. Because visible emissions monitoring is intended primarily to detect serious control device malfunctions, weekly inspections of air cleaning devices are also required. In addition, the revisions promulgated require these sources to maintain records of the results of visible emissions monitoring and control device inspections, and to submit quarterly a copy of visible emissions monitoring records of visible emissions occurred during the quarter. The revision requires owners or operators who install fabric filters after the effective date of this rule to provide for easy inspection of the bags.

Demolition and Renovation

The revisions require the owner or operator of a demolition or renovation activity to provide additional information in notifications, and to renotify EPA if the start date of a demolition or renovation changes from that given in the original notification. Another revision requires owners or operators to give a 10-day notice for renovations. A person trained in the provisions of this rule and the means of complying with them is required to be on site when asbestos-containing material (ACM) is stripped, removed or disturbed. When wetting is suspended due to freezing temperatures, owners or operators are required to measure air temperature in the work area three times during the workday and keep daily temperature records for at least 2 years. The revisions also clarify EPA's position regarding the handling and treatment of nonfriable asbestos materials such as resilient floor covering, including vinyl asbestos floor tile, and roofing material.

Waste Disposal

The revisions require vehicles used to transport asbestos-containing waste material to be marked with the sign prescribed by the Occupational Safety and Health Administration during loading and unloading to warn people of the presence of asbestos. For all asbestos-containing waste material transported offsite, the revisions require that a waste shipment record (WSR) be provided to the waste site owner or operator at the time that the waste is

delivered to the waste disposal site. If a copy of the WSR signed by the waste site owner or operator is not received within 35 days of the date the waste was accepted by the initial transporter, the revisions direct the waste generator to contact the transporter and/or disposal site owner or operator to determine the status of the waste shipment. The revisions further direct the waste generator to submit an exception report to EPA if a signed copy of the WSR is not received within 45 days of the date the waste was accepted by the initial transporter. Labels are required on containers of asbestos-containing waste material from manufacturing, fabricating, demolition and renovation activities indicating the name of the waste generator and the location where the waste was generated.

Inactive Waste Disposal Sites

The revisions require the owner or operator of an inactive waste disposal site for a milling, manufacturing or fabricating operation to notify the Administrator in writing prior to excavating or otherwise disturbing asbestos-containing waste material that has been deposited at the disposal site and to record on the deed to the property a notation that will inform future purchasers of the property that it has been used for the disposal of asbestos-containing waste material and that the survey plot and record of the location and quantity of such waste material are on file with the Administrator.

Active Waste Disposal Sites

The revisions require the owner or operator of an active waste disposal site to maintain WSRs and report in writing the receipt of a significant amount of improperly enclosed or uncovered waste to EPA by the following working day. The owner or operator of an active waste disposal site is required by the revisions promulgated today to send a signed copy of the WSR back to the waste generator no more than 30 days after receipt of the waste, to attempt to reconcile any discrepancy between the quantity given on the WSR and the quantity actually received and, failing to do so within 15 days after receiving the waste, to report the discrepancy and any attempts to reconcile it to the Administrator. The revisions promulgated today also require the owner or operator of an active disposal site to maintain records of the location, depth and area, and volume of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area. Upon closure, the owner or operator must comply with all the rules promulgated for inactive waste disposal sites. A revision requires the owner or operator of an active waste disposal site to notify the Administrator in writing prior to excavating or otherwise disturbing asbestos-containing waste material that has been deposited at the disposal site and covered.

Asbestos Conversion Processes

A section is promulgated to clarify that operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material are covered by the NESHAP. The provisions promulgated require the owner or operator of such an operation to obtain prior written approval of the Administrator to construct the facility, and conduct a start-up performance test using specified analytical methods and procedures. Requirements for continuous monitoring during and after the initial 90 days of operation, emissions control, maintenance of records of test results on site, and reports to the Administrator are also promulgated today.

II. Environmental, Energy and Economic Impacts

The environmental, energy, and economic impacts of the revisions for demolition and renovation, including waste disposal, were estimated from two baselines. One is full compliance with the NESHAP, and the other is current use of engineering controls and work practices. Enforcement experience indicates that many asbestos removal operations related to demolition and the subsequent waste disposal operations are performed out of compliance with the NESHAP. The lack of compliance with the NESHAP removal provisions leads to the improper disposal of some waste, especially demolition waste, with the result that emissions from the disposal of demolition waste greatly exceed other emissions, including process emissions from milling, manufacturing, and fabricating. Liability and other considerations generally lead the owners of buildings being renovated to follow or even exceed the requirements of the NESHAP. Thus, the appropriate baseline for demolition is current use of work practices rather than full compliance. At asbestos milling, manufacturing, and fabricating facilities, the required air pollution control devices are generally in place. Thus, for milling, manufacturing, and fabricating, full compliance with the NESHAP, including the waste disposal requirements, is assumed for the baseline.

Few emission measurement data exit for asbestos sources. Thus, emissions were estimated using engineering methods and assumptions, which resulted in substantial uncertainty. A detailed description of the approaches used to estimate emissions is found in "Asbestos Emission Estimates for Milling, Manufacturing, Fabricating, Demolition, Renovation, and Waste Disposal," which is contained in Docket A-88-28. Estimated process emissions under the current NESHAP at full compliance for milling, manufacturing, and fabricating are approximately 7,400 kg/yr. Based on current practices, estimated emissions from the removal activities associated with demolition and renovation are approximately 1,300 kg/yr and estimated waste disposal emissions from all sources are 227,000 kg/yr. If demolition and renovation were in full compliance, estimated emissions from asbestos removal activities associated with demolition and renovation would be about 700 kg/yr. Estimated emissions from waste disposal, assuming full compliance with the NESHAP by all sources, would be about 600 kg/yr.

The costs of the revisions are expected to be small relative to normal operating costs for these industries. The revisions are intended to promote compliance and enhance enforceability. Small additional costs are associated with the recordkeeping and reporting requirements of the revisions. Economic impacts of the promulgated alternatives are expected to be minimal. Adverse impacts of the promulgated revisions on water, noise, and energy were considered. Due to the nature of the revisions, no significant adverse impacts on water, noise, or energy are anticipated.

III. Public Participation

The revisions were proposed and published in the Federal Register on January 10, 1989 (54 FR 912). The preamble to the proposed standards revisions noted the availability in the docket of the supporting information used in developing the proposed revisions. Public comments were solicited at the time of proposal.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed revisions, a public hearing was held on February 8, 1989, at Research Triangle Park, North Carolina. The hearing was open to the public, and 6 persons presented comments.

The public comment period specified in the Federal Register notice was from January 10, 1989 to March 7, 1989. One

hundred comment letters were received in response to the Federal Register proposal. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made to the proposed revisions.

IV. Significant Comments and Changes to the Proposed Revisions

Comments on the proposed revisions were received from industry, trade associations and regulatory agencies. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The comments and responses summarized in the BID serve as the basis for the changes that have been made to the revisions between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. Significant comments have been divided into the following areas: demolition and renovation, and waste disposal.

Demolition and Renovation

Nonfriable ACM

Comment: Several commenters argued that the rule should be modified to clarify that certain products are nonfriable and, therefore, not regulated. Asbestos cement (A/C) products, including transite and exterior shingles, should be included among nonfriable products according to commenters IV-D-49, IV-D-72, and IV-D-93. Asbestos-containing flooring products, such as tile and sheet vinyl flooring, were considered by several commenters (IV-D-15, IV-D-47, IV-D-48, IV-D-55, IV-D-84, and IV-D-95) to always be nonfriable and exempt from the rule, with the exception of flooring that was being sanded (IV-D-47, IV-D-48). Another commenter, IV-D-48, in reference to asbestos roofing products, argued that there is no basis in the record for saying that severely weathered asphaltic material could become brittle. Commenters IV-D-21, IV-D-31, IV-D-48, IV-D-49, and IV-D-93 recommended that the rule be clarified to exempt all nonfriable materials as the rule is currently understood. Commenter IV-D-93 argued that in present day ACM, the asbestos fibers are locked in cement or bituminous or resinous binders and that the materials can be removed and disposed of without any significant release to the environment.

Response: In 1973 when the asbestos NESHAP rules were first promulgated for the demolition of buildings, EPA's intention was to distinguish between materials that would readily release asbestos fibers when damaged or disturbed and those materials that were unlikely to result in the release of significant amounts of asbestos fibers. To accomplish this, EPA labeled as "friable" those materials that were likely to readily release fibers. Friable materials, when dry, could easily be crumbled, pulverized, or reduced to powder using hand pressure. The term "reduced to powder" is readily understood to mean that the affected material is changed to a dust or powder that can become airborne. "Pulverized" indicates that the resulting material will include dust as well as a large number of small pieces of the original material. The term "crumbled" indicates that the affected material is easily (i.e., using hand pressure) broken into a large number of small pieces. Although dust is likely to be produced as a result of crumbling, it is possible that there are some types of materials that can be crumbled without producing dust. It is also understood that crumbling refers to an action that occurs essentially in one effort and not to repeated attempts to crumble the material. For example, floor tile in good condition can be broken by hand into a few large pieces, but it is not easily broken in one effort into many small pieces. On the other hand, floor tile that has lost its structural matrix is in poor condition and can be broken into many small pieces in one effort.

Later, EPA realized that, in some instances, nonfriable materials that were subjected to intense forces, such as the intense mechanical forces encountered during demolition, could be crumbled, pulverized, or reduced to powder. In these instances, certain materials which had been considered nonfriable appeared capable of releasing significant amounts of asbestos fibers to the atmosphere. Examples of practices that were observed by EPA to reduce otherwise nonfriable asbestos material to dust capable of becoming airborne included the breaking of nonfriable insulation from steel beams by repeatedly running over the beams with a crawler tractor. In view of the damage done to these otherwise nonfriable materials and the resulting increased potential for fiber release, these and other similar practices involving nonfriable asbestos material were considered to render nonfriable ACM into dust capable of becoming airborne.

As a result, EPA issued a policy determination in 1985 regarding the removal of nonfriable asbestos material that was consistent with EPA's intent to distinguish between material that could release significant amounts of asbestos fibers during demolition and renovation operations and those that would not. This policy determination stated in essence that any ACM, whether originally friable or nonfriable that become (or are likely to become) crumbled, pulverized, or reduced to powder are covered by the NESHAP. Specifically, the determination stated that

> * * * even though the regulations address only material that is presently friable, it does not limit itself to material that is friable at the time of notification. Rather, if at any point during the renovation or demolition, additional friable asbestos material is * * * created from nonfriable forms, then this additional friable material becomes subject to the regulations from the time of creation * * *

The issuance of this determination did not alter the intent of the NESHAP, but was consistent with the intent of the standard that was written to prevent significant emissions of asbestos fibers. The intent of the policy determination was that it apply narrowly to specific instances where otherwise nonfriable materials would be damaged during demolition or renovation to the extent that significant amounts of asbestos fibers would be released to the atmosphere. A statement in the determination to the effect that some nonfriable materials may remain nonfriable throughout demolition and renovation is evidence that this determination was intended to be narrowly interpreted and not used to require removal of all nonfriable materials. For example, materials such as resilient floor covering, asphalt roofing products, packings, and gaskets would rarely, if ever, need to be removed because, even when broken or damaged, they would not release significant amounts of asbestos fibers. But, just as it is important to recognize that some nonfriable materials do not have to be removed prior to demolition, it is also important to recognize that some nonfriable materials should be removed prior to demolition if, as a result of the forces of demolition, nonfriable material is likely to become crumbled, pulverized, or otherwise reduced to powder. For example, the A/C siding on a building that is to be demolished using a wrecking ball is very likely to be crumbled or pulverized with increased potential for the release of significant levels of asbestos fibers. Such material in this instance should be removed prior to demolition.

Since this policy determination was made, there has been some confusion in

its application. As a result, contractors operating in more than one enforcement jurisdiction have encountered different interpretations for similar demolition operations. For example, there have been instances in which contractors are required, prior to demolition, to remove floor tile in one enforcement jurisdiction but not in another. Contractors and/or building owners and operators are unsure as to what materials must be removed and what materials can be left in place and are often hesitant to proceed without a ruling from EPA, which can involve significant delays.

As a consequence, EPA received a number of requests from State and regional enforcement agencies to clarify what is required under the NESHAP in dealing with nonfriable materials since the 1985 policy determination was issued. In response to these requests, a clarification of the nonfriable issue was included in the revisions proposed on January 10, 1989. These revisions were intended to clarify the intent of the original rule. Basically, EPA stated in the January 10, 1989, **Federal Register** notice that certain nonfriable materials, such as floor tile, roofing products, and packings and gaskets that are in good condition, can be left in buildings being demolished because fiber release from these materials, even if the materials are damaged, is relatively small compared to the fiber release from friable materials. Other nonfriable products such as A/C products have a greater potential to release asbestos fibers when heavily damaged and may have to be removed prior to demolition.

In response to the revisions proposed on January 10, 1989, numerous comments were submitted to EPA. Many of the commenters argued that EPA was attempting to regulate nonfriable materials, which were explicitly exempted in previous asbestos NESHAP rulemakings. Many comments stated that the proposed revisions did not help to clarify EPA's position on nonfriable material and may have made matters more confusing.

In responding to the comments, a literature survey was conducted to determine if it was possible to quantify the fiber release potential of nonfriable materials when they are damaged during demolition. All of the available data on fiber release from floor tile, roofing products, gaskets, packings, and A/C products was reviewed. In some instances, the fiber release data were measured during actual removal operations, while other data were from simulated removal activities in laboratory settings. For the materials evaluated, the potential for fiber release appeared minimal and substantially lower than for friable materials. These findings, while uncertain, support EPA's original argument that there is a basis for making a distinction between materials that readily release fibers and those that do not.

As a result of the comments received on this issue and the additional information gathered in response to comments, EPA has been able to compile a list of nonfriable ACM that, under normal conditions, do not have to be removed prior to demolition operations. These ACM are not expected to release significant amounts of asbestos fibers to the outside air during demolition and, consistent with the intent of the existing standards, are not being regulated. A definition of "category I nonfriable ACM" is added to the final rule, which lists resilient floor covering, roofing products, gaskets, and packings. However, if these materials are in poor condition and are friable or they are subjected to sanding, grinding, cutting, or abrading, they are to be treated as friable asbestos material. Category I nonfriable ACM that is in poor condition, but is not friable and will not be subjected to sanding, grinding, cutting, or abrading, is not subject to the NESHAP. "In poor condition" has been defined to mean that the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material. Other nonfriable materials are identified as Category II nonfriable ACM and have to be evaluated on a case-by-case basis. Category II materials that become crumbled, pulverized, or reduced to powder during removal or during demolition are covered by the NESHAP.

Broken ACM

Comment: Commenters IV-D-47, IV-D-89, IV-D-93, and IV-D-95 explained that use of the term "broken" to describe materials that are subject to the rule is inconsistent with the current NESHAP and expands coverage of the NESHAP. These commenters stated that merely breaking nonfriable material does not equate to fiber release. One commenter, IV-D-89, noted that noncompliance may increase where nonfriable material is broken during demolition or renovation, but is not controlled or reported according to the NESHAP.

Response: After considering this issue, EPA agrees with commenters that retaining the word "broken" could be interpreted as substantially increasing the scope of the standard and, therefore, has removed it from the definition. Most nonfriable materials can be broken without releasing significant quantities of airborne asbestos fibers. It is only when the material is extensively damaged, *i.e.*, crumbled, pulverized, or reduced to powder, that the potential for significant fiber release is greatly increased. Also, in the definitions of "asbestos-containing waste material," "friable asbestos material," and elsewhere, the word "broken" is deleted. The EPA is planning to issue additional information in the future on this and other aspects of the NESHAP to help enforcement officials and the regulated community interpret and apply the NESHAP provisions.

Inspections

Comment. Three commenters argued that EPA should include mandatory asbestos surveys in the rule. Commenter IV-D-4 stated that EPA should require surveys for all buildings prior to and separate from any demolition or renovation activity. Commenter IV-D-4 stated that such building surveys could become part of a public record, making the absence of a survey a violation. Commenter IV-D-4 noted that, if the survey indicated that a structure was asbestos free, all notification and enforcement costs would be eliminated. Also, commenter IV-D-4 explained that a demolition without proper notification could be easily established later.

Commenters IV-D-57 and IV-D-84 stated that EPA's requirement to survey buildings prior to demolition and renovation is implicit and should be made explicit and require that surveys be performed by an accredited asbestos inspector. Commenter IV-D-57 also noted that OSHA requires a building survey by a competent person and stated that EPA should similarly require a site-specific survey before demolition, with details on how the building will be demolished and how the asbestos will be controlled.

Response: The EPA currently requires that a facility be inspected for asbestos prior to demolition or renovation. As a result of the survey, information on the asbestos material present, the nature of the demolition or renovation, and measures that will be taken to control emissions of asbestos must be reported to EPA. Commenters IV-D-57 and IV-D-84 are correct in saying that it is an implicit requirement and that it is not stated explicitly in the rule. The final rule expressly requires a facility survey for asbestos prior to demolition or renovation. Although previously implied, this revision clarifies EPA's position on the requirement to perform building surveys.

The EPA also considered the suggestion to require that surveys be

performed by an "accredited" inspector or by a "competent" person as required by OSHA. OSHA's requirement to have a competent person perform an engineering survey prior to demolition (29 CFR 1926.850) is to ensure that the structural integrity of a structure is sufficient to prevent worker injury caused by the unplanned collapse of any portion of the structure; a search for asbestos is not required. An accredited inspector or competent person can perform the survey although using such individuals is not required. Using an accredited inspector and following the AHERA requirements for building inspections would help ensure a thorough inspection of the facility as required by the NESHAP. However, EPA has not had this requirement before and did not propose such a requirement. The EPA will consider a requirement to use accredited inspectors in future amendments to the rule.

Commenter IV-D-4's suggestion to require the survey of all buildings in advance of demolition or renovation would increase the stringency of the regulation by requiring all owners and operators to survey their facilities for asbestos even when no demolition or renovation operations were planned. The revisions proposed on January 10, 1989, are intended to clarify the rule and promote compliance. The need for a revision that would affect stringency may be considered at a later date. However, such a requirement would require a substantial commitment of resources to perform surveys of all existing buildings. In addition, it is not clear that it would always negate the need for pre-demolition inspections in the future.

Friable Asbestos Material—Analytical Method

Comment: Commenters IV-D-17, IV-D-35, and IV-D-70 supported the proposed changes to the definition of "friable asbestos material," specifically the change to percent by area. Commenter IV-D-69 argued that to go from percent weight to percent area may have a major impact on coverage because there may be wide discrepancies in the results reported by the two methods. Commenter IV-D-69 provided an example of this, stating that a cement-based fireproofing that contained 30 percent asbestos by area contained less than 1 percent by weight. Commenter IV-D-70 felt that the definition of "friable asbestos material" was appropriate; however, the method referenced should not be limited to point counting in view of 47 FR 1982, p. 38535, which clarifies the acceptability of "an equivalent estimation method." Commenter IV-D-78 stated that the definition would require asbestos content to be determined by transmission electron microscopy (TEM) analysis, and that the high cost of TEM should be considered. Commenter IV-D-78 recommended that the current method continue to be accepted with TEM specified over other methods.

Response: The revisions to the asbestos NESHAP proposed on January 10, 1989 would have changed the definition of "friable asbestos material" from "greater than 1 percent weight" to "greater than 1 percent area" and referenced a method for the analysis. Because the method referenced actually contains two analytical methods—polarized light microscopy (PLM) which currently measures area, and x-ray diffraction (XRD) which measures weight—EPA has modified the definition to specify the PLM method to avoid possible confusion as to which method is referenced. Because the PLM point counting method measures percent area, the phrase "by area" is not necessary and has been taken out of the definition. The difference between percent area and percent weight depends on the density and volume of materials in the sample. These relationships are described in Asbestos Content in Bulk Insulation Samples: Visual Estimates and Weight Composition (EPA-560/5-88-011, September 1988). However, the fact remains that the PLM procedure used to determine the amount of asbestos in building materials (Interim Method for the Determination of Asbestos in Bulk Insulation Samples (EPA-600/M4-82-020, December 1982) measures percent area and not percent weight. PLM laboratories polled at meetings of the National Asbestos Council admitted that percent area is what they measure and report. Accordingly, there should be no impact on the standard from the proposed change.

Point counting is not required for the PLM procedure. An equivalent visual estimation technique may be used. Visual estimation may be made during macroscopic examination with a stereobinocular microscope, resulting in a volumetric estimation of components. For most samples, quantitation by macroscopic examination is preferred. Visual estimation may also be made during polarized light microscopy (PLM) examination, resulting in a projected area estimation of components. However, if the asbestos content is estimated to be less than 10 percent by a method other than point counting, such as visual estimation, EPA has revised the definition to require that the determination be repeated using the point counting technique with PLM. Point counting, a systematic technique for estimating concentration, may also be useful in quality assurance activities, especially in establishing a relationship between point counts and visual estimation procedures.

The accuracy of quantitative data from either technique of estimation is dependent upon several factors, including: sample homogeneity, asbestos content, asbestos fiber size, the presence of interfering matrix/binder material, and the skill of the microscopist. It is suggested that the quantitation skill of the microscopist may be improved and concurrently verified through the use of calibration standards. These standards may include well-characterized bulk materials or in-house calibration standards formulated by mixing known weights of commonly available fibrous (asbestos, cellulose, glass, *etc.*) and nonfibrous (plaster, clay, vermiculite, calcium carbonate, *etc.*) materials.

For some materials, experience has shown that gravimetry (gravimetric sample reduction) is a viable technique to aid in the determination of asbestos content. The technique involves the systematic removal (and determination of the resulting weight loss) of interfering components, and the concentration of asbestos in a residue, the components of which are identified by PLM. EPA is currently conducting research to develop procedures that will help determine the appropriate analytical procedure to use based on the type of material, the level of asbestos present in the material, as well as other factors.

TEM is not recommended for routine analysis of bulk samples. TEM may be useful in the analysis of special materials containing finely divided asbestos particles. The EPA is currently reviewing procedures for analyzing bulk samples for asbestos. Under investigation are procedures that would determine what analytical techniques are appropriate for bulk samples of different materials and different asbestos contents. For example, a simple visual estimation technique may be appropriate for the initial screening of bulk samples of friable material. If the visual estimation technique indicates that the asbestos content is less than 10 percent, additional quantitation by point counting would be required. If the material to be analyzed contains asbestos fibers below the limit of resolution for PLM, which is often true of floor tile, then analysis by TEM is appropriate.

Method of Notification

Comment: Several comments were received on the requirement to use certified mail for notifying EPA. Most of the commenters objected to the use of certified mail to the exclusion of other methods.

Commenters IV-D-23, IV-D-24, IV-D-25, IV-D-42, IV-D-78, IV-D-59, and IV-D-65 considered the certified mail requirement to be unnecessary for EPA to achieve the intended purpose of the notification process. It was stated that certified mail would require a trip to a post office, which is a deterrent to timely notification. Commenters IV-D-23, IV-D-24, IV-D-41, and IV-D-78 argued that notification by telefax machine may be more practical than certified mail. Commenters IV-D-25, IV-D-65, and IV-D-83 suggested that notification by telephone or telefax be allowed, followed by a written notification. Commenters IV-D-24, IV-D-25, IV-D-42, and IV-D-65 observed that regular mailing of notices works satisfactorily and should be allowed. Commenters IV-D-28 and IV-D-66 favored allowing the use of overnight mail.

Commenter IV-D-59 argued that, if a State agency has jurisdiction, the method of notification should be left up to the State agency.

Commenter IV-D-32 argued that all notifications should be in writing because telephone notification does not result in a legally enforceable written record. Also, commenter IV-D-32 stated that allowing the use of telephones would promote schedule changes for minor reasons that would not otherwise be considered.

Response: Several of the commenters objected to the required use of certified mail even though EPA proposed the use of certified mail as a way of ensuring that owners/operators had proof of notification. In view of the negative comments and after reconsidering the issue, the EPA has decided not to require certified mail although its use would be allowed. The use of the regular mail system, *i.e.,* U.S. Postal Service, has worked satisfactorily in the past and will continue to be allowed. Also, because the rule specifies postmark "* * * or deliver * * *," private overnight mail delivery is permitted.

Regarding the use of telephone facsimile (fax) machines to transmit notices, EPA does not consider these systems to be sufficiently reliable, at this time, to allow their use. Often, it is difficult to know whether a transmission was successful. Disadvantages associated with their use include occasional incomplete transmissions and transmissions of poor quality requiring faxed messages to be followed by telephone contact to confirm proper transmission. More than one transmission may be required. In some instances, quality cannot be improved. Also, because of competing messages, it often requires a long time before a fax can be properly transmitted and verified. The EPA may consider the use of facsimile machines in the future when their reliability has been improved.

The EPA does not consider it necessary to allow the use of the telephone for the original notification of a demolition or renovation activity covered by this standard. The notification must be in writing.

Where States or local authorities enforce their own asbestos regulations, they may choose the notification procedures. But if a State is delegated authority for enforcing the NESHAP, then they must adhere to the NESHAP's requirements.

The EPA is in agreement with the commenter who favors written notifications over telephone notifications and the final rule continues to require the former.

It should be noted that OSHA has recently proposed notification requirements (55 FR 29712, July 20, 1990) similar to those in the NESHAP. The EPA is coordinating with OSHA during their rulemaking to determine the most efficient mechanism to avoid duplication and ensure that both EPA and OSHA receive adequate notice without unduly burdening industry.

Renotification

Comment: Numerous comments were received on the proposed renotification requirements. Although a few favored the requirements as proposed and a few thought the requirements should be more stringent, most of the commenters favored the use of telephone renotification. The comments were as follows:

Commenter IV-D-28 disagreed with the NADC comment in the proposal preamble that renotification by telephone should be allowed; commenter IV-D-28 recommended a 10-day written notice for all projects.

Commenter IV-D-21 suggested that the renotification provisions be made more flexible by allowing the actual start date to vary by a couple of days for projects lasting longer than 5 days before requiring the owner/operator to renotify.

Commenters IV-D-21, IV-D-25, IV-D-26, IV-D-36, IV-D-37, IV-D-41, IV-D-42, IV-D-45, IV-D-46, IV-D-49, IV-D-50, IV-D-58, IV-D-59, IV-D-60, IV-D-61, IV-D-62, IV-D-65, IV-D-69, IV-D-71, IV-D-73, IV-D-74, IV-D-76, IV-D-87, IV-D-88, and IV-D-94 suggested that EPA allow the use of some other means besides certified mail for renotification, such as same day telephone or telefax messages, when a 5-day written notice would further delay the project. This would be simpler and less time-consuming. Commenter IV-D-41 also suggested that, when it is feasible to provide a 5-day written notice, i.e., delays are known at least 5 days in advance, then such notice would be provided. Also, as commenters IV-D-46, IV-D-49, IV-D-50, IV-D-58, IV-D-60, IV-D-62, IV-D-69, and IV-D-73 suggested, a telephone notice could be followed by a written notice.

According to commenters IV-D-23, IV-D-24, IV-D-36, IV-D-37, IV-D-41, IV-D-42, IV-D-43, IV-D-45, IV-D-46, IV-D-49, IV-D-50, IV-D-51, IV-D-58, IV-D-59, IV-D-63, IV-D-64, IV-D-73, IV-D-75, IV-D-76, IV-D-78, IV-D-87, IV-D-88, and IV-D-94, there are numerous unforeseen factors, such as equipment mobilization problems, personnel availability, weather, or other project difficulties, that can cause a removal project to start on a date other than the one submitted in the original notification. These commenters explained that the proposed renotification requirements, with their additional waiting requirements, could result in unreasonable project delays and significantly increased project costs. Several of these commenters and commenter IV-D-84 suggested that EPA allow a project to start within some reasonable period of time, such as a couple of days, of the original start date without having to renotify EPA in writing. The EPA should provide for some flexibility in predicting the exact start date. In the experience of one of the commenters, jobs usually start within a day or two of the scheduled date.

Response: The EPA agrees that a 10-day advance notice is appropriate for demolitions and renovations that can be planned for and scheduled. In some situations, however, such as emergency renovations or government-ordered demolition of buildings that are in danger of imminent collapse, EPA considers shorter notification periods appropriate. For renotification, a 10-day additional waiting period would be excessively burdensome.

The EPA has considered the suggestion that telephone renotification be permitted and has determined that providing for the use of the telephone, followed by a written notice, would provide the necessary flexibility and would be in the best interests of both

the regulated community and EPA. The EPA does not want to interfere with commerce by requiring a 5-day waiting period for a written renotification when a telephone call followed by a written renotification would suffice. Nor does EPA wish to make useless visits to jobs that have been rescheduled because a written renotification of a change in start date was not received in time.

Emergency Renovation

Comment: Commenters IV-D-9, IV-D-14, IV-D-41, IV-D-42, and IV-D-49 stated that the scope of the term "emergency renovation operation" should not be limited to events resulting in "unsafe conditions," but should include events such as fires, ruptured pipes, boiler failures, and other situations that could present potential public health or safety hazards if not immediately attended to. Commenter IV-D-18 asked if the definition would include the release of asbestos into the air. Commenter IV-D-63 recommended that the definition include operations necessary to protect equipment from significant damage.

Response: Events that would necessitate an emergency renovation include those that may produce immediately unsafe conditions as well as those that, if not quickly remedied, could reasonably be foreseen to result in an unsafe or detrimental effect on health. For example, a boiler in an apartment building that suddenly malfunctions during the winter would need to be repaired immediately. To protect equipment from significant damage and to avoid imposing an unreasonable financial burden by requiring sources that experience a sudden unexpected equipment failure to wait 10 days, the final rule includes equipment damage and financial burden as additional reasons for emergency renovations, and the definition of emergency renovation is revised accordingly.

Definition of Facility

Comment: Several commenters argued that the exclusion of residential facilities having four or fewer dwelling units should be eliminated. Commenter IV-D-89 asserted that residential demolition and renovation and associated waste disposal involve significant quantities of asbestos and should be regulated. Commenter IV-D-54 argued that residential buildings having four or fewer units should not be exempt from the work practices provisions even if they are exempt from the notification requirements. Commenter IV-D-94 recommended that only facilities with one dwelling unit be excluded because renters of apartments are frequently exposed as a result of asbestos work performed by untrained workers.

Response: The recommendation to remove the exemption for residential facilities having four or fewer dwelling units would expand the scope of the rule. Revisions that alter stringency may be considered during a later rulemaking. However, EPA does not consider residential structures that are demolished or renovated as part of a commercial or public project to be exempt from this rule. For example, the demolition of one or more houses as part of an urban renewal project, a highway construction project, or a project to develop a shopping mall, industrial facility, or other private development, would be subject to the NESHAP. Nor would the conversion of a hotel or large apartment building to a condominium, a cooperative, or a loft exempt the structure from the NESHAP. To clarify that condominiums, cooperatives, and lofts which exceed four dwelling units are subject to the NESHAP, the definition of facility has been modified accordingly. The owner of a home that renovates his house or demolishes it to construct another house is not to be subject to the NESHAP.

Definition of Installation

Comment: Commenter IV-D-83 argued that the definition of "installation" needs clarification and asks whether a group of residential buildings would be excluded. The commenter argued that a group of residential buildings at one location being demolished or renovated by one developer should be covered.

Response: A group of residential buildings under the control of the same owner or operator is considered an installation according to the definition of "installation" and is, therefore, covered by the rule. As an example, several houses located on highway right-of-way that are all demolished as part of the same highway project would be considered an "installation," even when the houses are not proximate to each other. In this example, the houses are under the control of the same owner or operator, i.e., the highway agency responsible for the highway project.

Training

Comment: Commenters IV-D-18 and IV-D-66 recommended that a refresher course be attended every 2 years.

Response: Regarding the commenters who recommended that refresher courses be taken every 2 years, EPA agrees and has modified the rule to require refresher courses. The EPA considers such additional training important to maintain familiarity with the NESHAP as well as to keep abreast of any changes in the standards.

Sanding, Grinding, or Abrading Nonfriable ACM

Comment: Commenters IV-D-15, IV-D-47, IV-D-48, IV-D-55, IV-D-84, and IV-D-95 considered asbestos-containing flooring products, such as tile and sheet vinyl flooring, to always be nonfriable and exempt from the rule, with the exception of flooring that was being sanded (Commenters IV-D-47 and IV-D-48.)

Response: The EPA considers the deliberate sanding, grinding, or abrading (including drilling, cutting, and chipping) of all nonfriable materials, including resilient floor covering, asphalt roofing material, packings, and gaskets to be sources of asbestos emissions and the revisions require otherwise nonfriable ACM to be treated as if it were friable when it is sanded, ground or abraded.

Also, a definition of "grinding" is added to clarify the types of activities, especially those involving nonfriable asbestos materials, that are subject to the regulation. For example, typical floor tile removal methods, such as mechanical chipping, result in the floor tile being broken up into numerous small fragments. This removal method is subject to the NESHAP provisions. Other floor tile removal methods are available that do not result in the material being so severely damaged. Such methods include the use of heat from heat guns or electric heat machines, the use of infrared machines, flooding with water or amended water, and the use of dry ice or liquid nitrogen. These methods when properly utilized allow the tiles to be removed with a minimum of damage to the tiles and would not be subject to the NESHAP.

Definition of Nonfriable Asbestos Material

Comment: Commenters IV-D-15 and IV-D-69 asserted that the meaning of "nonfriable" is unclear because it was not defined in the revisions proposed on January 10, 1989. A problem may result if it is considered the opposite of friable. Commenter IV-D-39 also argued for a definition of "nonfriable" and asserted that, like "friable," the threshold of at least 1 percent by area should apply.

Response: The EPA agrees that the meaning of "nonfriable" needs to be clarified. A definition of "nonfriable asbestos material" has been added to the final rule. The EPA considers nonfriable asbestos material to be material containing more than 1 percent

asbestos by area that cannot be crumbled, pulverized, or reduced to power by hand pressure. However, some nonfriable asbestos materials can be crumbled, pulverized, etc., in the course of demolition/renovation operations leading to asbestos emissions and are, therefore, subject to control under the NESHAP.

Waste Disposal

Marking

Comment: Commenters IV-D-61 and IV-D-98 asserted that the term "placard" is inappropriate because it has a specific application under DOT regulations for hazardous waste transport, and that the proposal should be revised to maintain the distinction between "marking" and "placarding" as was done in RCRA and TSCA rulemakings.

Response: The EPA has modified the final rule to replace the term "placard," a term used by the DOT in its regulation of the transportation of hazardous materials, with the term "mark" as suggested by the commenters. This should help avoid confusing DOT requirements with requirements under the NESHAP.

Labeling

Comment: Commenters IV-D-18, IV-D-28, IV-D-41, and IV-D-84 recommended that EPA in Section 61.150, and perhaps elsewhere, cite only OSHA labels and delete references to other labels because OSHA requires the use of their labels in all cases.

Response: The EPA agrees with the commenters who suggest that only OSHA labels be required on containers and has revised the final rule accordingly.

Offsite Disposal

Comment: Two commenters were concerned with placarding and other requirements of § 61.149(d). Commenter IV-D-22 stated that his company moves tailings from the mill by dump truck or earth-moving equipment to a disposal site on company property and would like the requirements for placards, etc., in § 61.149(d) changed so that they would apply only to transport to an offsite disposal facility.

Commenter IV-D-93 also suggested that the requirements of § 61.149(d) should apply only to vehicles transferring waste offsite.

Response: Although company personnel may not require a warning that asbestos waste is being transported, others who are on site and who are not company employees, e.g., vendor and construction personnel, clearly do. Further, OSHA requires that workers be informed of hazards to which they are exposed. Accordingly, EPA believes the provisions of § 61.149(d) are appropriate as proposed and should not be changed as suggested.

EPA Identification Number

Comment: Several comments addressed the proposal to assign identification numbers to generators of asbestos waste. Most of the commenters found the requirement confusing. Commenters IV-D-9 and IV-D-49 stated that the system of using EPA identification numbers is confusing and misleading and should be subject to public comment rather than tacked onto the final version of the amendments. Commenter IV-D-25 wondered how the system is to operate and whether they would use the number they already have for hazardous waste. Commenter IV-D-26 was unclear as to who the generator would be and suggested that the abatement contractor be considered the generator. Commenter IV-D-28 thought that this requirement would generate a list of one-time generators, and that it should be deferred for further study. Commenter IV-D-41 asked if RCRA hazardous waste identification numbers were going to be assigned to asbestos waste generators. As explained by commenter IV-D-61, not all generators will have an EPA identification number as required in § 61.150(d) (1)(i) and (4)(i). Commenters IV-D-62 and IV-D-63 expressed confusion over the proposed identification number and urged that a single number be assigned to an entire company, rather than to each building or facility. Commenter IV-D-18 asked how the identification numbers are to be determined and assigned; is it to be done now; and, if the program is delegated to a State or local program, would this require a State identification number?

Response: Because of the confusion expressed by all the commenters over how a system of assigning identification numbers to asbestos waste generators would work, EPA has reconsidered this revision and has decided to delete the requirement for an identification number. The EPA is confident that, even without such a unique numbering system, it will be possible to track waste shipments for the purpose of pursuing enforcement actions.

Semiannual Reports

Comment: Commenter IV-D-4 opposed semiannual reporting by generators or disposal sites but recommended exception reporting by both. Commenter IV-D-9 noted that semiannual reporting is also redundant in view of the Superfund Amendments and Reauthorization Act (SARA) Title III regulations. Commenters IV-D-28, IV-D-39, IV-D-41, IV-D-75, and IV-D-83 asserted that EPA should delete the semiannual reporting requirement in § 61.150(d)(4) because it is redundant since the information is also provided on the waste tracking form and will just add more paperwork. Commenter IV-D-94 was concerned that small, rural landfills will use the proposed recordkeeping requirements as an excuse to refuse to accept asbestos waste, which could increase illegal dumping. Commenter IV-D-94 stated that the regulation in effect prior to the January 10, 1989, proposal should be retained.

Commenters IV-D-24, IV-D-61, and IV-D-62 noted that most waste shipment reporting now occurs on an annual basis and that they preferred annual to semiannual reporting. Commenter IV-D-41 recommended that EPA adopt the biennial reporting used by EPA's Office of Solid Waste (OSW). Commenter IV-D-65 stated that, if necessary, EPA should supplement the existing biennial RCRA report.

Commenter IV-D-63 asserted that it is unnecessary for the generator to submit semiannual waste disposal reports. Commenter IV-D-81 stated that the proposal imposes redundant reporting requirements on owners/operators due to § 61.150(c)(4).

Commenter IV-D-51 argued that industrial landfills on site that are subject to RCRA and State statutes should be exempt from the reporting and recordkeeping requirements of § 61.150(d). Commenter IV-D-55 stated that § 61.150(d) does not define adequately who keeps disposal records and who submits semiannual reports. Commenter IV-D-55 felt that building owners are unfamiliar with the report called for in § 61.150(d)(4).

Response: Upon additional consideration of this provision, EPA has decided to omit the requirement for semiannual reporting from today's rule. This decision is based in part on several comments opposing semiannual reporting as unnecessary. In addition, because of the large commitment of enforcement resources that would be required for such a system to properly function, EPA believes that the proposal is overly ambitious at this time. The EPA believes, however, that enforcement can use the available information and adequately identify violators by comparing the waste records that are required to be kept by waste generators and waste disposal sites. At this time, a more workable

solution will be to require disposal sites to report to EPA whenever there is a discrepancy between the amount of waste received and the amount reported on the waste shipment papers. The discrepancy report should be submitted to the same agency that was notified of the demolition or renovation and, if different, to the agency responsible for administering the NESHAP program for the disposal site. In addition, new and existing disposal sites will be required to comply with the general reporting provisions of 40 CFR part 61. Specifically, new disposal sites will be required to comply with the requirement to apply for approval to construct (§ 61.07), and the requirements to notify EPA of startup dates (§ 61.09). Existing disposal sites that will accept asbestos waste after the effective date of the rule will be required to supply EPA with certain information concerning their operations (§ 61.10). This information will assist enforcement in tracking asbestos waste.

Excepted Waste Shipment Report

The proposed revisions included a requirement for waste generators to indicate, as part of a semiannual report to the Administrator, waste shipments for which 35 days or more have elapsed since the waste was shipped without the waste generator having received a copy of the WSR signed and dated by the disposal site owner or operator. While EPA has determined that semiannual reports are not necessary, it considers this requirement a vital part of the asbestos waste tracking system and a provisions for excepted waste shipment reports is included in the final rule.

Waste Conversion Processes

Comment: Commenter IV-D-21 asked that procedures for sample preparation for TEM be clarified; that comminution size of particle reduction be specified; that the standard or interim method of analysis that is acceptable be identified; and that laboratory qualifications meeting requirements of the National Institute of Standards and Technology (NIST) and AHERA be identified.

Response: Currently EPA has no protocol for TEM analysis of output materials. The final rule requires the owner or operator of waste conversion processes to submit a protocol for sampling and analysis by TEM for approval by EPA.

V. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

The effective date of this regulation is November 20, 1990. Section 112 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation except that in the case of an existing source, the standard shall not apply until 90 days after its effective date.

As prescribed by section 112, the promulgation of these standards was preceded by the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (36 FR 3031, dated March 31, 1971). In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new standard promulgated under section 112 of the Act. Since the costs of the revision will be small, an economic impact assessment was not considered necessary for this regulation.

Information collection requirements associated with this regulation (those included in 40 CFR part 60, subpart A and subpart XXX) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2060-0101).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Asbestos, Beryllium, Benzene, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride, Blast furnaces, Steel mills.

Dated: October 29, 1990.

William K. Reilly,

Administrator.

40 CFR part 61 is amended as follows:

PART 61—[AMENDED]

1. The authority citation for 40 CFR part 61, subpart M, is revised to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2.–3. Section 61.140 is revised to read as follows:

§ 61.140 Applicability.

The provisions of this subpart are applicable to those sources specified in § 61.142 through 61.151, 61.154, and 61.155.

4. In § 61.141, the following definitions are revised: "Asbestos-containing waste materials," "Commercial asbestos," "Demolition," "Emergency renovation operation," "Fabricating," "Facility," "Facility component," "Friable asbestos materials," "Inactive waste disposal site," "Manufacturing," "Outside air," "Particulate asbestos material," "Planned renovation operation," "Remove," "Renovation," "Roadways," "Strip," and "Visible emissions."

The following definitions are added: "Adequately wet," "Category I nonfriable ACM," "Cutting," "Category II nonfriable ACM," "Fugitive sources," "Glove bag," "Grinding," "In poor condition," "Installation," "Leak-tight," "Malfunction," "Natural barrier," "Nonfriable asbestos-containing material," "Nonscheduled renovation operation," "Owner or operator of a demolition or a renovation activity," "Regulated asbestos-containing material," "Resilient floor covering," "Waste generator," "Waste shipment record," and "Working day."

The definitions, "Adequately wetted" and "Asbestos material," are removed.

§ 61.141 Definitions.

* * * * *

Adequately wet means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

* * * * *

Asbestos-containing waste materials means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovations operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

* * * * *

Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy.

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Commercial asbestos means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

Cutting means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Emergency renovation operation means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.

Fabricating means any processing (*e.g.*, cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

Facility component means any part of a facility including equipment.

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763 section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

Fugitive source means any source of emissions not controlled by an air pollution control device.

Glove bag means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration's (OSHA's) final rule on occupational exposure to asbestos (appendix G to 29 CFR 1926.58).

Grinding means to reduce to powder or small fragments and includes mechanical chipping or drilling.

In poor condition means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

Inactive waste disposal site means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.

Installation means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

Leak-tight means that solids or liquids cannot escape or spill out. It also means dust-tight.

Malfunction means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operation, or any other preventable upset conditions, equipment breakdown, or process failure.

Manufacturing means the combining of commercial asbestos—or, in the case of woven friction products, the combining of textiles containing commercial asbestos—with any other material(s), including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

Natural barrier means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

Nonfriable asbestos-containing material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Nonscheduled renovation operation means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

Outside air means the air outside buildings and structures, including, but

not limited to, the air under a bridge or in an open air ferry dock.

Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Particulate asbestos material means finely divided particles of asbestos or material containing asbestos.

Planned renovation operations means a renovation operation, or a number of such operations, in which some RACM will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Renovation means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

Resilient floor covering means asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than 1 percent asbestos as determined using polarized light microscopy according to the method specified in appendix A, subpart F, 40 CFR part 763, Section 1, Polarized Light Microscopy.

Roadways means surfaces on which vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

Strip means to take off RACM from any part of a facility or facility components.

* * * * *

Visible emissions means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor.

Waste generator means any owner or operator of a source covered by this subpart whose act or process produces asbestos-containing waste material.

Waste shipment record means the shipping document, required to be originated and signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material.

Working day means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

5. Section 61.142 is revised to read as follows:

§ 61.142 Standard for asbestos mills.

(a) Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill, including fugitive sources, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(b) Each owner or operator of an asbestos mill shall meet the following requirements:

(1) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.

(2) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(3) Maintain records of the results of visible emissions monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of each inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of fabric filters.

(v) Brief description of corrective actions taken, including date and time.

(vi) Daily hours of operation for each air cleaning device.

(4) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.

(5) Retain a copy of all monitoring and inspection records for at least 2 years.

(6) Submit quarterly a copy of visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

BILLING CODE 6560-50-M

Date of inspection (mo/day/yr)	Time of inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emissions observed (yes/no), corrective action taken	Daily operating hours	Inspector's initials

Figure 1. Record of Visible Emission Monitoring

1. Air cleaning device designation or number _____

2. Date of inspection _____ _____ _____ _____

3. Time of inspection _____ _____ _____ _____

4. Is air cleaning device operating properly (yes/no) _____ _____ _____ _____

5. Tears, holes, or abrasions in fabric filter (yes/no) _____ _____ _____ _____

6. Dust on clean side of fabric filters (yes/no) _____ _____ _____ _____

7. Other signs of malfunctions or potential malfunctions (yes/no) _____ _____ _____ _____

8. Describe other malfunctions or signs of potential malfunctions. _____

_____

_____

9. Describe corrective action(s) taken. _____

_____

_____

10. Date and time corrective action taken _____ _____ _____ _____

11. Inspected by

_____ _____ _____ _____
(Print/Type Name) (Title) (Signature) (Date)

_____ _____ _____ _____
(Print/Type Name) (Title) (Signature) (Date)

Figure 2. Air Cleaning Device Inspection Checklist

BILLING CODE 6560-50-C

6. Section 61.143 is revised to read as follows:

§ 61.143 Standard for roadways.

No person may construct or maintain a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless, for asbestos tailings.

(a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine); or

(b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at a minimum frequency of one per year to prevent dust emissions; or

(c) It is encapsulated in asphalt concrete meeting the specifications contained in section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP–85, 1985, or their equivalent.

7. In § 61.144, paragraph (a)(9) and paragraphs (b) (1) and (2) are revised, and paragraphs (b)(3) through (b)(8) are added to read as follows:

§ 61.144 Standards for manufacturing.

(a) * * *

(9) The manufacture of chlorine utilizing asbestos diaphragm technology.

* * * * *

(b) * * *

(1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by § 61.152 to clean emissions from these operations containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be visual observation of at least 15 seconds duration per source of emissions.

(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following.

(i) Date and time of each inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of fabric filters, including presence of any tears, holes and abrasions.

(iv) Presence of dust deposits on clean side of fabric filters.

(v) Brief description of corrective actions taken, including date and time.

(vi) Daily hours of operation for each air cleaning device.

(6) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least 2 years.

(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

8. Sections 61.146 and 61.147 are removed, and § 61.145 is revised to read as follows:

§ 61.145 Standard for demolition and renovation.

(a) *Applicability.* To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

(1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(2) In a facility being demolished, only the notification requirements of paragraphs (b)(1), (2), (3)(i) and (iv), and (4)(i) through (vii) and (4)(ix) and (xvi) of this section apply, if the combined amount of RACM is

(i) Less than 80 linear meters (260 linear feet) on pipes less than 15 square meters (160 square feet) on other facility components, and

(ii) Less than one cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

(3) If the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of paragraphs (b)(1), (b)(2), (b)(3)(iii), (b)(4) (except (b)(4)(viii)), (b)(5), and (c)(4) through (c)(9) of this section apply.

(4) In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of paragraphs (b) and (c) of this section apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(iii) To determine whether paragraph (a)(4) of this section applies to planned renovation operations involving individual nonscheduled operations, predict the combined additive amount of RACM to be removed or stripped during a calendar year of January 1 through December 31.

(iv) To determine whether paragraph (a)(4) of this section applies to emergency renovation operations, estimate the combined amount of RACM to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(5) Owners or operators of demolition and renovation operations are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

(b) *Notification requirements.* Each owner or operator of a demolition or

renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

(3) Postmark or deliver the notice as follows:

(i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section. If the operation is as described in paragraph (a)(2) of this section, notification is required 10 working days before demolition begins.

(ii) At least 10 working days before the end of the calendar year preceding the year for which notice is being given for renovations described in paragraph (a)(4)(iii) of this section.

(iii) As early as possible before, but not later than, the following working day if the operation is a demolition ordered according to paragraph (a)(3) of this section or, if the operation is a renovation described in paragraph (a)(4)(iv) of this section.

(iv) For asbestos stripping or removal work in a demolition or renovation operation, described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section, and for a demolition described in paragraph (a)(2) of this section, that will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator as follows:

(A) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin after the date contained in the notice,

(*1*) Notify the Administrator of the new start date by telephone as soon as possible before the original start date, and

(*2*) Provide the Administrator with a written notice of the new start date as soon as possible before, and no later than, the original start date. Delivery of the updated notice by the U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(B) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin on a date earlier than the original start date,

(*1*) Provide the Administrator with a written notice of the new start date at least 10 working days before asbestos stripping or removal work begins.

(*2*) For demolitions covered by paragraph (a)(2) of this section, provide the Administrator written notice of a new start date at least 10 working days before commencement of demolition. Delivery of updated notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(C) In no event shall an operation covered by this paragraph begin on a date other than the date contained in the written notice of the new start date.

(4) Include the following in the notice:

(i) An indication of whether the notice is the original or a revised notification.

(ii) Name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.

(iii) Type of operation: demolition or renovation.

(iv) Description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility.

(v) Procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

(vi) Estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, or volume in cubic meters (cubic feet) if off the facility components. Also, estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition.

(vii) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state, of the facility being demolished or renovated.

(viii) Scheduled starting and completion dates of asbestos removal work (or any other activity, such as site preparation that would break up, dislodge, or similarly disturb asbestos material) in a demolition or renovation; planned renovation operations involving individual nonscheduled operations shall only include the beginning and ending dates of the report period as described in paragraph (a)(4)(iii) of this section.

(ix) Scheduled starting and completion dates of demolition or renovation.

(x) Description of planned demolition or renovation work to be performed and method(s) to be employed, including demolition or renovation techniques to be used and description of affected facility components.

(xi) Description of work practices and engineering controls to be used to comply with the requirements of this subpart, including asbestos removal and waste-handling emission control procedures.

(xii) Name and location of the waste disposal site where the asbestos-containing waste material will be deposited.

(xiii) A certification that at least one person trained as required by paragraph (c)(8) of this section will supervise the stripping and removal described by this notification. This requirement shall become effective 1 year after promulgation of this regulation.

(xiv) For facilities described in paragraph (a)(3) of this section, the name, title, and authority of the State or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order shall be attached to the notification.

(xv) For emergency renovations described in paragraph (a)(4)(iv) of this section, the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden.

(xvi) Description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized, or reduced to powder.

(xvii) Name, address, and telephone number of the waste transporter.

(5) The information required in paragraph (b)(4) of this section must be reported using a form similiar to that shown in Figure 3.

(c) *Procedures for asbestos emission control.* Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

(1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:

(i) It is Category I nonfriable ACM that is not in poor condition and is not friable.

(ii) It is on a facility component that is encased in concrete or other similarly

hard material and is adequately wet whenever exposed during demolition; or

(iii) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

(2) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

(i) Adequately wet all RACM exposed during cutting or disjoining operations; and

(ii) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

(3) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

(i) In renovation operations, wetting is not required if:

(A) The owner or operator has obtained prior written approval from the Administrator based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and

(B) The owner or operator uses of the following emission control methods:

(*1*) A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(*2*) A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

(*3*) Leak-tight wrapping to contain all RACM prior to dismantlement.

(ii) In renovation operations where wetting would result in equipment damage or a safety hazard, and the methods allowed in paragraph (c)(3)(i) of this section cannot be used, another method may be used after obtaining written approval from the Administrator based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in paragraph (c)(3)(i) of this section.

(iii) A copy of the Administrator's written approval shall be kept at the worksite and made available for inspection.

(4) After a facility component covered with, coated with, or containing RACM has been taken out of the facility as a unit or in sections pursuant to paragraph (c)(2) of this section, it shall be stripped or contained in leak-tight wrapping, except as described in paragraph (c)(5) of this section. If stripped, either:

(i) Adequately wet the RACM during stripping; or

(ii) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with paragraphs (c)(2), (3), and (4) of this section), the RACM is not required to be stripped if the following requirements are met:

(i) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the RACM.

(ii) The component is encased in a leak-tight wrapping.

(iii) The leak-tight wrapping is labeled according to § 61.149(d)(1)(i), (ii), and (iii) during all loading and unloading operations and during storage.

(6) For all RACM, including material that has been removed or stripped:

(i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with § 61.150; and

(ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

(iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(*3*) of this section need not be wetted.

(7) When the temperature at the point of wetting is below 0 °C (32 °F):

(i) The owner or operator need not comply with paragraph (c)(2)(i) and the wetting provisions of paragraph (c)(3) of this section.

(ii) The owner or operator shall remove facility components containing, coated with, or covered with RACM as units or in sections to the maximum extent possible.

(iii) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records available for inspection by the Administrator during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least 2 years.

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. Every 2 years, the trained on-site individual shall receive refresher training in the provisions of this regulation. The required training shall include as a minimum: applicability; notifications; material identification; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site.

(9) For facilities described in paragraph (a)(3) of this section, adequately wet the portion of the facility that contains RACM during the wrecking operation.

(10) If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning.

BILLING CODE 6560-50-M

NOTIFICATION OF DEMOLITION AND RENOVATION

Operator Project #	Postmark	Date Received	Notification #

I. TYPE OF NOTIFICATION (O=Original R=Revised C=Cancelled):

II. FACILITY INFORMATION (Identify owner, removal contractor, and other operator)

OWNER NAME:

Address:

City: | State: | Zip:

Contact: | Tel:

REMOVAL CONTRACTOR:

Address:

City: | State: | Zip:

Contact: | Tel:

OTHER OPERATOR:

Address:

City: | State: | Zip:

Contact: | Tel:

III. TYPE OF OPERATION (D=Demo O=Ordered Demo R=Renovation E=Emer.Renovation):

IV. IS ASBESTOS PRESENT? (Yes/No)

V. FACILITY DESCRIPTION (Include building name, number and floor or room number)

Bldg Name:

Address:

City: | State: | County:

Site Location:

Building Size: | # of Floors: | Age in Years:

Present Use: | Prior Use:

VI. PROCEDURE, INCLUDING ANALYTICAL METHOD, IF APPROPRIATE, USED TO DETECT THE PRESENCE OF ASBESTOS MATERIAL:

VII. APPROXIMATE AMOUNT OF ASBESTOS, INCLUDING: 1. Regulated ACM to be removed 2. Category I ACM Not Removed 3. Category II ACM Not Removed	RACM To Be Removed	Nonfriable Asbestos Material Not To Be Removed		Indicate Unit of Measurement Below	
		Cat I	Cat II	UNIT	
Pipes				LnFt:	Ln m:
Surface Area				SqFt:	Sq m:
Vol RACM Off Facility Component				CuFt:	Cu m:

VIII. SCHEDULED DATES ASBESTOS REMOVAL (MM/DD/YY) Start: Complete:

IX. SCHEDULED DATES DEMO/RENOVATION (MM/DD/YY) Start: Complete:

Continued on page two

Figure 3. Notification of Demolition and Renovation

NOTIFICATION OF DEMOLITION AND RENOVATION (continued)

X. DESCRIPTION OF PLANNED DEMOLITION OR RENOVATION WORK, AND METHOD(S) TO BE USED:		
XI. DESCRIPTION OF WORK PRACTICES AND ENGINEERING CONTROLS TO BE USED TO PREVENT EMISSIONS OF ASBESTOS AT THE DEMOLITION AND RENOVATION SITE:		
XII. WASTE TRANSPORTER #1		
Name:		
Address		
City:	State:	Zip:
Contact Person:		Telephone:
WASTE TRANSPORTER #2		
Name:		
Address:		
City:	State:	Zip:
Contact Person:		Telephone:
XIII. WASTE DISPOSAL SITE		
Name:		
Location:		
City:	State:	Zip:
Telephone:		
XIV. IF DEMOLITION ORDERED BY A GOVERNMENT AGENCY, PLEASE IDENTIFY THE AGENCY BELOW:		
Name:	Title:	
Authority:		
Date of Order (MM/DD/YY):	Date Ordered to Begin (MM/DD/YY):	
XV. FOR EMERGENCY RENOVATIONS		
Date and Hour of Emergency (MM/DD/YY):		
Description of the Sudden, Unexpected Event:		
Explanation of how the event caused unsafe conditions or would cause equipment damage or an unreasonable financial burden:		
XVI. DESCRIPTION OF PROCEDURES TO BE FOLLOWED IN THE EVENT THAT UNEXPECTED ASBESTOS IS FOUND OR PREVIOUSLY NONFRIABLE ASBESTOS MATERIAL BECOMES CRUMBLED, PULVERIZED, OR REDUCED TO POWDER.		
XVI. I CERTIFY THAT AN INDIVIDUAL TRAINED IN THE PROVISIONS OF THIS REGULATION (40 CFR PART 61, SUBPART M) WILL BE ON-SITE DURING THE DEMOLITION OR RENOVATION AND EVIDENC THAT THE REQUIRED TRAINING HAS BEEN ACCOMPLISHED BY THIS PERSON WILL BE AVAILABLE FOR INSPECTION DURING NORMAL BUSINESS HOURS. (Required 1 year after promulgation) _____ (Signature of Owner/Operator) _____ (Date)		
XVII. I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT. _____ (Signature of Owner/Operator) _____ (Date)		

Figure 3. Notification of Demolition and Renovation

BILLING CODE 6560-50-C

9. Section 61.148 is redesignated as § 61.146 and is amended by revising paragraphs (a), the introductory text of (b), paragraph (b)(2), and paragraph (d) to read as follows:

§ 61.146 Standard for spraying.

* * * * *

(a) For spray-on application on buildings, structures, pipes, and conduits, do not use material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, except as provided in paragraph (c) of this section.

(b) For spray-on application of materials that contain more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, on equipment and machinery, except as provided in paragraph (c) of this section:

* * * * *

(2) Discharge no visible emissions to the outside air from spray-on application of the asbestos-containing material or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

* * * * *

(d) Owners or operators of sources subject to this paragraph are exempt from the requirements of §§ 61.05(a), 61.07 and 61.09.

10. Section 61.149 is redesignated as § 61.147, paragraphs (b) (1) and (2) are revised, and paragraphs (b)(3) through (b)(8) are added to read as follows:

§ 61.147 Standard for fabricating.

* * * * *

(b) * * *

(1) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.

(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of each inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of fabric filters.

(v) Brief description of corrective actions taken, including date and time.

(vi) Daily hours of operation for each air cleaning device.

(6) Furnish upon request and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least 2 years.

(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

11. Section 61.150 is redesignated as § 61.148 and revised to read as follows:

§ 61.148 Standard for insulating materials.

No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this section do not apply to spray-applied insulating materials regulated under § 61.146.

12. Section 61.151 is redesignated as § 61.149 and is amended by revising paragraphs (a), (b), introductory text of (c), (c)(1) (ii) and (iii), and (c)(2), and adding new paragraphs (d) through (f) to read as follows:

§ 61.149 Standard for waste disposal for asbestos mills.

* * * * *

(a) Deposit all asbestos-containing waste material at a waste disposal site operated in accordance with the provisions of § 61.154; and

(b) Discharge no visible emissions to the outside air from the transfer of control device asbestos waste to the tailings conveyor, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with § 61.150(a) or paragraph (c) of this section; and

(c) Discharge no visible emissions to the outside air during the collection, processing, packaging, or on-site transporting of any asbestos-containing waste material, or use one of the disposal methods specified in paragraphs (c) (1) or (2) of this section, as follows:

(1) * * *

(ii) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

* * * * *

(iii) Wetting may be suspended when the ambient temperature at the waste disposal site is less than −9.5 °C (15 °F), as determined by an appropriate measurement method with an accuracy of ± 1°C (± 2 °F). During periods when wetting operations are suspended, the temperature must be recorded at least at hourly intervals, and records must be retained for at least 2 years in a form suitable for inspection.

(2) Use an alternative emission control and waste treatment method that has received prior written approval by the Administrator. To obtain approval for an alternative method, a written application must be submitted to the Administrator demonstrating that the following criteria are met:

(i) The alternative method will control asbestos emissions equivalent to currently required methods.

(ii) The suitability of the alternative method for the intended application.

(iii) The alternative method will not violate other regulations.

(iv) The alternative method will not result in increased water pollution, land pollution, or occupational hazards.

(d) When waste is transported by vehicle to a disposal site:

(1) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of the waste so that the signs are visible. The markings must:

(i) Be displayed in such a manner and location that a person can easily read the legend.

(ii) Conform to the requirements for 51 cm × 36 cm (20 in × 14 in) upright format signs specified in 29 CFR 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend
DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
Authorized Personnel Only
Notation
2.5 cm (1 inch) Sans Serif, Gothic or Block
2.5 cm (1 inch) Sans Serif, Gothic or Block
1.9 cm (¾ inch) Sans Serif, Gothic or Block
14 Point Gothic

Spacing between any two lines must be a least equal to the height of the upper of the two lines.

(2) For off-site disposal, provide a copy of the waste shipment record, described in paragraph (e)(1) of this section, to the disposal site owner or operator at the same time as the asbestos-containing waste material is delivered to the disposal site.

(e) For all asbestos-containing waste material transported off the facility site:

(1) Maintain asbestos waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name and address of the local, State, or EPA Regional agency responsible for administering the asbestos NESHAP program.

(iii) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iv) The name and telephone number of the disposal site operator.

(v) The name and physical site location of the disposal site.

(vi) The date transported.

(vii) The name, address, and telephone number of the transporter(s).

(viii) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(3) Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(i) A copy of the waste shipment record for which a confirmation of delivery was not received, and

(ii) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(4) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(f) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

BILLING CODE 6560-50-M

Generator	1. Work site name and mailing address	Owner's name	Owner's telephone no.
	2. Operator's name and address		Operator's telephone no.
	3. Waste disposal site (WDS) name, mailing address, and physical site location		WDS phone no.
	4. Name, and address of responsible agency		
	5. Description of materials	6. Containers No. Type	7. Total quantity m^3 (yd^3)
	8. Special handling instructions and additional information		
	9. OPERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.		
	Printed/typed name & title	Signature	Month Day Year
Transporter	10. Transporter 1 (Acknowledgment of receipt of materials)		
	Printed/typed name & title Address and telephone no.	Signature	Month Day Year
	11. Transporter 2 (Acknowledgment of receipt of materials)		
	Printed/typed name & title Address and telephone no.	Signature	Month Day Year
Disposal Site	12. Discrepancy indication space		
	13. Waste disposal site owner or operator: Certification of receipt of asbestos materials covered by this manifest except as noted in item 12.		
	Printed/typed name & title	Signature	Month Day Year

(Continued)

Figure 4. Waste Shipment Record

INSTRUCTIONS

Waste Generator Section (Items 1-9)

1. Enter the name of the facility at which asbestos waste is generated and the address where the facility is located. In the appropriate spaces, also enter the name of the owner of the facility and the owner's phone number.

2. If a demolition or renovation, enter the name and address of the company and authorized agent responsible for performing the asbestos removal. In the appropriate spaces, also enter the phone number of the operator.

3. Enter the name, address, and physical site location of the waste disposal site (WDS) that will be receiving the asbestos materials. In the appropriate spaces, also enter the phone number of the WDS. Enter "on-site" if the waste will be disposed of on the generator's property.

4. Provide the name and address of the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program.

5. Indicate the types of asbestos waste materials generated. If from a demolition or renovation, indicate the amount of asbestos that is

   - Friable asbestos material
   - Nonfriable asbestos material

6. Enter the number of containers used to transport the asbestos materials listed in item 5. Also enter one of the following container codes used in transporting each type of asbestos material (specify any other type of container used if not listed below):

   DM - Metal drums, barrels
   DP - Plastic drums, barrels
   BA - 6 mil plastic bags or wrapping

7. Enter the quantities of each type of asbestos material removed in units of cubic meters (cubic yards).

8. Use this space to indicate special transportation, treatment, storage or disposal or Bill of Lading information. If an alternate waste disposal site is designated, note it here. Emergency response telephone numbers or similar information may be included here.

9. The authorized agent of the waste generator must read and then sign and date this certification. The date is the date of receipt by transporter.

NOTE: The waste generator must retain a copy of this form.

(continued)

Figure 4. Waste Shipment Record

Transporter Section (Items 10 & 11)

10. & 11. Enter name, address, and telephone number of each transporter used, if applicable. Print or type the full name and title of person accepting responsibility and acknowledging receipt of materials as listed on this waste shipment record for transport. Enter date of receipt and signature.

NOTE: The transporter must retain a copy of this form.

Disposal Site Section (Items 12 & 13)

12. The authorized representative of the WDS must note in this space any discrepancy between waste described on this manifest and waste actually received as well as any improperly enclosed or contained waste. Any rejected materials should be listed and destination of those materials provided. A site that converts asbestos-containing waste material to nonasbestos material is considered a WDS.

13. The signature (by hand) of the authorized WDS agent indicates acceptance and agreement with statements on this manifest except as noted in item 12. The date is the date of signature and receipt of shipment.

NOTE: The WDS must retain a completed copy of this form. The WDS must also send a completed copy to the operator listed in item 2.

Figure 4. Waste Shipment Record

BILLING CODE 6560-50-C

13. Section 61.152 is redesignated as § 61.150 and is revised to read as follows:

§ 61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a) (1) through (4) of this section.

(1) Adequately wet asbestos-containing waste material as follows:

(i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(2) or 1926.58(k)(2)(iii). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

(v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms as follows:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes;

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) For facilities demolished where the RACM is not removed prior to demolition according to §§ 61.145(c)(1)(i), (ii), (iii), and (iv) or for facilities demolished according to § 61.145(c)(9), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(4) Use an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in § 61.149(c)(2).

(5) As applied to demolition and renovation, the requirements of paragraph (a) of this section do not apply to Category I nonfriable ACM waste and Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(b) All asbestos-containing waste material shall be desposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of § 61.154, or

(2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of § 61.155.

(3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

(c) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must conform to the requirements of §§ 61.149(d)(1)(i), (ii), and (iii).

(d) For all asbestos-containing waste material transported off the facility site:

(1) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name and address of the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program.

(iii) The approximate quantity in cubic meters (cubic yards).

(iv) The name and telephone number of the disposal site operator.

(v) The name and physical site location of the disposal site.

(vi) The date transported.

(vii) The name, address, and telephone number of the transporter(s).

(viii) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record, described in paragraph (d)(1) of this section, to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site.

(3) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(4) Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(i) A copy of the waste shipment record for which a confirmation of delivery was not received, and

(ii) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(e) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

14. Section 61.153 is redesignated as § 61.151 and is amended by revising the introductory text, paragraphs (a)(2), (a)(4), and (b)(3), and adding paragraphs (d) and (e) to read as follows:

§ 61.151 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

Each owner or operator of any inactive waste disposal site that was operated by sources covered under

§§ 61.142, 61.144, or 61.147 and received deposits of asbestos-containing waste material generated by the sources, shall:

(a) * * *

(2) Cover the asbestos-containing waste material with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material. In desert areas where vegetation would be difficult to maintain, at least 8 additional centimeters (3 inches) of well-graded, nonasbestos crushed rock may be placed on top of the final cover instead of vegetation and maintained to prevent emissions; or

* * * * *

(4) For inactive waste disposal sites for asbestos tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used instead of the methods in paragraphs (a)(1), (2), and (3) of this section. Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent to achieve and maintain dust control. Obtain prior written approval of the Administrator to use other equally effective dust suppression agents. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(b) * * *

(3) When requesting a determination on whether a natural barrier adequately deters public access, supply information enabling the Administrator to determine whether a fence or a natural barrier adequately deters access by the general public.

* * * * *

(d) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section, and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(1) Scheduled starting and completion dates.

(2) Reason for disturbing the waste.

(3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(4) Location of any temporary storage site and the final disposal site.

(e) Within 60 days of a site becoming inactive and after the effective date of this subpart, record, in accordance with State law, a notation on the deed to the facility property and on any other instrument that would normally be examined during a title search; this notation will in perpetuity notify any potential purchaser of the property that:

(1) The land has been used for the disposal of asbestos-containing waste material;

(2) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in § 61.154(f) have been filed with the Administrator; and

(3) The site is subject to 40 CFR part 61, subpart M.

15. Section 61.154 is redesignated as § 61.152 and amended by removing paragraph (a)(1)(i), redesignating paragraphs (a)(1)(ii)–(iv) as paragraphs (a)(1)(i)–(iii), redesignating paragraph (b)(2) as paragraph (b)(3), revising the introductory text of paragraph (a) and paragraphs (b)(1) and (b)(3), and adding paragraphs (a)(3) and (b)(2) to read as follows:

§ 61.152 Air cleaning.

(a) The owner or operator who uses air cleaning, as specified in §§ 61.142(a), 61.144(b)(2), 61.145(c)(3)(i)(B)(*1*), 61.145(c)(4)(ii), 61.145(c)(11)(i), 61.146(b)(2), 61.147(b)(2), 61.149(b), 61.149(c)(1)(ii), 61.150(a)(1)(ii), 61.150(a)(2)(ii), and 61.155(e) shall:

* * * * *

(3) For fabric filter collection devices installed after January 10, 1989, provide for easy inspection for faulty bags.

(b) * * *

(1) After January 10, 1989, if the use of fabric creates a fire or explosion hazard, or the Administrator determines that a fabric filter is not feasible, the Administrator may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (40 inches water gage pressure).

(2) Use a HEPA filter that is certified to be at least 99.97 percent efficient for 0.3 micron particles.

(3) The Administrator may authorize the use of filtering equipment other than described in paragraphs (a)(1) and (b)(1) and (2) of this section if the owner or operator demonstrates to the Administrator's satisfaction that it is equivalent to the described equipment in filtering particulate asbestos material.

16. Section 61.155 is redesignated as § 61.153 and amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, revising the introductory text of paragraphs (a), (a)(4), and (a)(5) and revising paragraphs (a)(2), (a)(4)(ii) and (iii), and (b), and adding paragraph (a)(3) to read as follows:

§ 61.153 Reporting.

(a) Any new source to which this subpart applies (with the exception of sources subject to §§ 61.143, 61.146, and 61.148), which has an initial startup date preceding the effective date of this revision, shall provide the following information to the Administrator postmarked or delivered within 90 days of the effective date. In the case of a new source that does not have an initial startup date preceding the effective date, the information shall be provided, postmarked or delivered, within 90 days of the initial startup date. Any owner or operator of an existing source shall provide the following information to the Administrator within 90 days of the effective date of this subpart unless the owner or operator of the existing source has previously provided this information to the Administrator. Any changes in the information provided by any existing source shall be provided to the Administrator, postmarked or delivered, within 30 days after the change.

* * * * *

(2) If a fabric filter device is used to control emissions,

(i) The airflow permeability in $m^3/min/m^2$ ($ft^3/min/ft^2$) if the fabric filter device uses a woven fabric, and, if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(ii) If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $m^3/min/m^2$ ($ft^3/min/ft^2$).

(3) If a HEPA filter is used to control emissions, the certified efficiency.

(4) For sources subject to §§ 61.149 and 61.150:

* * * * *

(ii) The average volume of asbestos-containing waste material disposed of, measured in m^3/day (yd^3/day); and

(iii) The emission control methods used in all stages of waste disposal; and

* * * * *

(5) For sources subject to §§ 61.151 and 61.154:

* * * * *

(b) The information required by paragraph (a) of this section must accompany the information required by § 61.10. Active waste disposal sites subject to § 61.154 shall also comply with this provision. Roadways, demolition and renovation, spraying, and insulating materials are exempted from the requirements of § 61.10(a). The information described in this section must be reported using the format of Appendix A of this part as a guide.

17. Section 61.156 is redesignated as § 61.154 and amended by revising the introductory text of § 61.154, paragraphs (c) and (d), and adding paragraphs (e) through (j) to read as follows:

§ 61.154 Standard for active waste disposal sites.

Each owner or operator of an active waste disposal site that receives asbestos-containing waste material from a source covered under §§ 61.149, 61.150, or 61.155 shall meet the requirements of this section:

* * * * *

(c) Rather than meet the no visible emission requirement of paragraph (a) of this section, at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material that has been deposited at the site during the operating day or previous 24-hour period shall:

(1) Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, or

(2) Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Administrator. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(d) Rather than meet the no visible emission requirement of paragraph (a) of this section, use an alternative emissions control method that has received prior written approval by the Administrator according to the procedures described in § 61.149(c)(2).

(e) For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:

(1) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name, address, and telephone number of the transporter(s).

(iii) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iv) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in lead-tight containers. Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if different, the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the disposal site, by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.

(v) The date of the receipt.

(2) As soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed waste shipment record to the waste generator.

(3) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if different, the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the disposal site. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

(4) Retain a copy of all records and reports required by this paragraph for at least 2 years.

(f) Maintain, until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(g) Upon closure, comply with all the provisions of § 61.151.

(h) Submit to the Administrator, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

(i) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

(j) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(1) Scheduled starting and completion dates.

(2) Reason for disturbing the waste.

(3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(4) Location of any temporary storage site and the final disposal site.

18. Section 61.155 is added to subpart M to read as follows:

§ 61.155 Standard for operations that convert asbesto-containing waste material into nonasbestos (asbestos-free) material.

Each owner or operator of an operation that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material shall:

(a) Obtain the prior written approval of the Administrator to construct the facility. To obtain approval, the owner or operator shall provide the Administrator with the following information:

(1) Application to construct pursuant to § 61.07.

(2) In addition to the information requirements of § 61.07(b)(3), a

(i) Description of waste feed handling and temporary storage.

(ii) Description of process operating conditions.

(iii) Description of the handling and temporary storage of the end product.

(iv) Description of the protocol to be followed when analyzing output materials by transmission electron microscopy.

(3) Performance test protocol, including provisions for obtaining information required under paragraph (b) of this section.

(4) The Administrator may require that a demonstration of the process be performed prior to approval of the application to construct.

(b) Conduct a start-up performance test. Test results shall include:

(1) A detailed description of the types and quantities of nonasbestos material, RACM, and asbestos-containing waste material processed, *e.g.*, asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc. Test feed is to include the full range of materials that will be encountered in actual operation of the process.

(2) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.

(3) Results of analyses, using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as 8-hour composite samples (one 200-gram (7-ounce) sample per hour), beginning with the initial introduction of RACM or asbestos-containing waste material and continuing until the end of the performance test.

(4) A description of operating parameters, such as temperature and residence time, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.

(5) The length of the test.

(c) During the initial 90 days of operation,

(1) Continuously monitor and log the operating parameters identified during start-up performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(2) Monitor input materials to ensure that they are consistent with the test feed materials described during start-up performance tests in paragraph (b)(1) of this section.

(3) Collect and analyze samples, taken as 10-day composite samples (one 200-gram (7-ounce) sample collected every 8 hours of operation) of all output material for the presence of asbestos. Composite samples may be for fewer than 10 days. Transmission electron microscopy (TEM) shall be used to analyze the output material for the presence of asbestos. During the initial 90-day period, all output materials must be stored on-site until analysis shows the material to be asbestos-free or disposed of as asbestos-containing waste material according to § 61.150.

(d) After the initial 90 days of operation,

(1) Continuously monitor and record the operating parameters identified during start-up performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output materials shall be:

(i) Disposed of as asbestos-containing waste material according to § 61.150, or

(ii) Recycled as waste feed during process operation within the established range of operating conditions, or

(iii) Stored temporarily on-site in a leak-tight container until analyzed for asbestos content. Any product material that is not asbestos-free shall be either disposed of as asbestos-containing waste material or recycled as waste feed to the process.

(2) Collect and analyze monthly composite samples (one 200-gram (7-ounce) sample collected every 8 hours of operation) of the output material. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos.

(e) Discharge no visible emissions to the outside air from any part of the operation, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(f) Maintain records on-site and include the following information:

(1) Results of start-up performance testing and all subsequent performance testing, including operating parameters, feed characteristic, and analyses of output materials.

(2) Results of the composite analyses required during the initial 90 days of operation under § 61.155(c).

(3) Results of the monthly composite analyses required under § 61.155(d).

(4) Results of continuous monitoring and logs of process operating parameters required under § 61.155 (c) and (d).

(5) The information on waste shipments received as required in § 61.154(e).

(6) For output materials where no analyses were performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which the output materials were sold or deposited, and the date of sale or disposal.

(7) Retain records required by paragraph (f) of this section for at least 2 years.

(g) Submit the following reports to the Administrator:

(1) A report for each analysis of product composite samples performed during the initial 90 days of operation.

(2) A quarterly report, including the following information concerning activities during each consecutive 3-month period:

(i) Results of analyses of monthly product composite samples.

(ii) A description of any deviation from the operating parameters established during performance testing the duration of the deviation, and steps taken to correct the deviation.

(iii) Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily on-site until analyzed for asbestos content.

(iv) The information on waste disposal activities as required in § 61.154(f).

(h) Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this subpart. Output materials in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the start-up performance testing, unless shown by TEM analysis to be asbestos-free, shall be considered to be asbestos-containing waste and shall be handled and disposed of according to §§ 61.150 and 61.154 or reprocessed while all of the established operating parameters are being met.

19. Section 61.156 is added to subpart M to read as follows:

§ 61.156 Cross-reference to other asbestos regulations.

In addition to this subpart, the regulations referenced in Table 1 also apply to asbestos and may be applicable to those sources specified in §§ 61.142 through 61.151, 61.154, and 61.155 of this subpart. These cross-references are presented for the reader's information and to promote compliance with the cited regulations.

20. Section 61.157 is added to subpart M to read as follows:

§ 61.157 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States:

(1) Section 61.149(c)(2)

(2) Section 61.150(a)(4)

(3) Section 61.151(c)

(4) Section 61.152(b)(3)

(5) Section 61.154(d)

(6) Section 61.155(a).

[FR Doc. 90-26835 Filed 11-19-90; 8:45 am]

BILLING CODE 6560-50-M

TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS

Agency	CFR citation	Comment
EPA	40 CFR 763, Subpart E, F	Requires schools to inspect for asbestos and implement response actions and submit asbestos management plans to States. Specifies use of accredited inspectors, air sampling methods, and waste disposal procedures.
	40 CFR 427	Effluent standards for asbestos manufacturing source categories.
	40 CFR 763, Subpart G	Protects public employees performing asbestos abatement work in States not covered by OSHA asbestos standard.
OSHA	29 CFR 1910.1001	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, 0.2 f/cc permissible exposure level.
	29 CFR 1926.58	Worker protection measures for all construction work involving asbestos, including demolition and renovation—work practices, worker training, bagging of waste, 0.2 f/cc permissible exposure level.
MSHA	30 CFR 56, Subpart D	Specifies exposures limits, engineering controls, and respiratory protection measures for workers in surface mines.
	30 CFR 57, Subpart D	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in underground mines.
DOT	49 CFR 171 and 172	Regulates the transportation of asbestos-containing waste material. Requires waste containment and shipping papers.

federal register

Tuesday
November 20, 1990

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 872 et al.

Medical Devices; Classification of 70 Electromedical Devices; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 872, 874, 878, 884, 886, 888, and 892

[Docket No. 78N-2847 et al.]

Medical Devices; Classification of 70 Electromedical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying 70 electromedical devices of a type on the market before enactment of the Medical Device Amendments (the amendments) of 1976. In the preamble, FDA is responding to comments on the proposed regulations classifying these devices.

EFFECTIVE DATE: December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

I. Background

Classification of medical devices in commercial distribution is required by section 513 of the Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c). The effect of classifying a device into class I is to require that the device continues to meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device.

Pursuant to section 513, FDA has published a series of proposed and final rules classifying devices of a type which were in commercial distribution when the amendments were enacted (i.e., classifying preamendments devices and devices determined by FDA to be substantially equivalent to such devices). For purposes of classification, FDA categorized such devices into 16 medical specialty groups. See 21 CFR parts 862 through 892.

On November 15, 1988 (53 FR 46040), FDA published a reproposed rule to classify 70 electromedical devices into class I. The devices subject to the reproposal represented 6 of the 16 medical specialty groups. When FDA published this reproposed rule, the agency believed that essentially the only risk to health presented by these devices was the risk from electrical leakage current that the agency believed could be controlled through the general controls of class I, without any exemptions authorized under section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)).

In the preamble to the reproposed rule, FDA provided a thorough discussion of the background of the action. Some of the regulations included both the AC-powered generic type of device and its already-classified non-AC-powered counterpart.

II. Comments

Letters of comment were received from two manufacturers, a trade association, and a professional society. All of the comments generally supported classifying the 70 devices into class I but the comments also submitted two requests. A summary of the requests and FDA's responses follow:

1. A comment requested that FDA exempt all of the dental devices subject to the proposed rule from the requirements of sections 510 (registration and premarket notification procedures), 519 (records and reports), and 520(f) (current good manufacturing practice (CGMP)) of the act (21 U.S.C. 360, 360i, and 360j(f)). The comment said that all of these dental devices had a long, established record of safe usage for specific purposes, that the characteristics necessary for safe and effective performance are well established, and that any changes whatsoever would undoubtedly have an insignificant effect on the safety and effectiveness of the devices.

FDA has determined that protection of the public health requires that all manufacturers of medical devices, other than those already exempt under 21 CFR 807.65, register and list their products with FDA to ensure that the agency can identify these manufacturers and their products to conduct necessary inspections. FDA has already described this policy in its classification regulations several times, as in the preamble to the proposed rule classifying general and plastic surgery devices (January 19, 1982; 47 FR 2810 at 2813).

The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions for certain devices. The agency has published a series of proposed and final rules granting certain class I devices exemptions from the premarket notification procedures. The preambles to these regulations clearly describe the agency's exemption policy regarding premarket notification. For an example, see the **Federal Register** of April 5, 1989 (54 FR 13828), where FDA provided 22 class I dental devices exemptions from the premarket notification requirements and promulgated new section 21 CFR 872.9 regarding limitations on such exemptions.

Based on these established exemption criteria, FDA believes that manufacturers of all of the dental devices and all of the other devices subjects of this rulemaking should comply with the premarket notification procedures to protect the public health. Exemptions from premarket notification procedures granted to certain devices in earlier rulemakings continue in effect and are shown in the codified portion of this rule for the convenience of the reader.

Section 519 of the act authorizes FDA to issue regulations requiring device manufacturers, importers, and distributors to establish and maintain records that the agency may reasonably require to assure the safety and effectiveness of devices. Section 520(f) of the act authorizes FDA to issue CGMP regulations. As explained in the preambles to the series of proposed and final regulations classifying devices, the only type of exemption from records and reports requirements that the agency has granted is an exemption of certain manufacturers from most of the CGMP requirements at 21 CFR part 820, in accordance with specified criteria. See, for example, the proposed rule classifying general and plastic surgery devices, published in the **Federal Register** of January 19, 1982 (47 FR 2810, 2813).

As stated in the preamble to the proposed rule of November 15, 1988 (53 FR 46040), in accordance with the recommendations of the device Panels (the device advisory committees listed at 21 CFR 14.100(d)), FDA did not propose any exemptions from the CGMP requirements for any of these 70 electromedical devices. The agency continues to believe that all of the requirements of 21 CFR Part 820 are necessary to provide reasonable assurance of the safety and effectiveness of these AC-powered devices. Thus, no exemptions from CGMP requirements are provided in this final rule. However, CGMP exemptions

granted to certain devices in earlier rulemakings continue in effect and are shown in the codified portion of this rule for the convenience of the reader.

2. A comment requested that FDA exempt from the premarket notification procedures the manufacturers of the radiographic film marking system and the automatic radiographic film processor. The comment said that these devices and their manufacturers had no history of problems or noncompliance and that the operators of these devices would be able to detect and resolve any performance problems with the devices.

In accordance with the agency's criteria for granting exemptions from the premarket notification procedures (discussed above) and in partial agreement with the comment's suggestion, in the near future the agency will publish a proposed rule to grant an exemption from the premarket notification procedures for the radiographic film marking system (§ 892.1640).

Regarding the automatic radiographic film processor (§ 892.1900), FDA agrees that the device presents minimal electrical hazards. However, FDA studies indicate that poor radiograph processing can result in two adverse effects. First, if the radiograph image is sufficiently degraded, patients will need to repeat the radiographic examination, thereby increasing their radiation exposure and potential radiation risk. Second, a poor radiograph could result in a missed or incorrect diagnosis, with potential adverse results for the patient. The agency believes that this device should be subject to the premarket notification procedures to assure the safety and effectiveness of the device. Further, FDA now believes that the radiographic film processor should be classified into class II instead of class I as proposed, as explained below.

III. Classification of Eight Devices into Class II Instead of Class I as Proposed on November 15, 1988

When the agency proposed to classify the 70 electromedical devices into class I, FDA believed that essentially the only risk to health presented by these devices was the minimal risk from electrical leakage current that could be controlled by the general controls of class I. Now FDA has determined that six of the AC-powered ophthalmic devices intended to examine the eyes of patients emit a level of light intensity that could harm the patients' eyes if used for extended periods. Light sources currently available, such as incandescent tungsten filaments as used in conventional hand held ophthalmoscopes, as well as other light sources, such as halogen lamps, may expose patients to hazardous levels of optical radiation emission (Ref. 1). Thus for the following six devices FDA believes that performance standards are necessary to control the risk of damage to the eyes of patients from the intensity of the light source and that the general controls of class I alone are insufficient to provide reasonable assurance of their safety and effectiveness: ophthalmic camera (§ 886.1120), euthyscope (§ 886.1250), afterimage flasher (§ 886.1300), retinoscope (§ 886.1780), transilluminator (§ 886.1945), and the operating headlamp (§ 886.4335). Accordingly, in this final rule, FDA is classifying these six devices into class II.

FDA is also concerned that a lower than class II classification for ophthalmic electrolysis unit (§ 886.4250) will not be consistent with the electrolysis units (Epilators are currently classified in class III as well as class II.) classified for dermatologic use which have similar design in some respects, and which are identical in intended use. Thus, FDA believes that a performance standard is necessary for the ophthalmic electrolysis unit to assure regulatory consistency and to control performance characteristics to assure that it is safe and effective. FDA believes that the controls of class I alone are insufficient to provide reasonable assurance of the safety and effectiveness of this device.

FDA now believes that the automatic radiographic film processor (§ 892.1900) should be classified into class II instead of class I as proposed. Data from FDA's Nationwide Evaluation of X-Ray Trends (NEXT) program from 1984 to 1987 show that radiograph processing quality varies greatly and that significant numbers of users of the device are underprocessing film (Refs. 2 to 6). For example, for chest examinations, 20 percent of all hospitals underprocessed film in 1986. These data suggest that processor performance, operator performance, and/or processor design need to be improved to minimize radiation exposure of patients. Thus, FDA is classifying the automatic radiographic film processor into class II. FDA believes that a performance standard is necessary for this device to control its accuracy, reliability, and other performance characteristics. FDA also believes that the general controls of class I alone are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

FDA believes that it is unnecessary to issue new proposed regulations concerning these decisions. The purpose of publishing a proposed regulation and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposal or upon reconsideration, the agency may determine that its proposed classification is incorrect. Persons interested in the classification process should anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. Persons who disagree with a final classification for a device may petition for reclassification of the device under subpart C of 21 CFR part 860.

IV. List of Classifications

Section	Device	Docket No.	Class
	Part 872—Dental Devices		
872.3100	Dental amalgamator	78N-2847	I
872.3530	Mechanical denture cleaner	78N-2879	I
872.4200	Dental handpiece and accessories	78N-2918	I
872.4620	Fiber optic dental light	78N-2934	I
872.6250	Dental chair and accessories	78N-2980	I
872.6475	Heat source for bleaching teeth	78N-2994	I
872.6510	Oral irrigation unit	78N-2996	I
872.6640	Dental operative unit and accessories	78N-3002	I
872.6710	Boiling water sterilizer	78N-3009	I
872.6865	Powered toothbrush	78N-3020	I
	Part 874—Ear, Nose, and Throat Devices		
874.1070	Short increment sensitivity index (SISI) adapter	78N-1552	I

IV. LIST OF CLASSIFICATIONS—Continued

Section	Device	Docket No.	Class
874.1800	Air or water caloric stimulator	78N-1565	I
874.4750	Laryngostroboscope	78N-1622	I
874.4770	Otoscope	78N-1624	I
874.5300	Ear, nose, and throat examination and treatment unit	78N-1630	I
874.5550	Powered nasal irrigator	78N-1631	I
	Part 878—General and Plastic Surgery Devices		
878.4635	Ultraviolet lamp for tanning	78N-2687	I
878.4700	Surgical microscope and accessories	78N-2691	I
878.4820	Surgical instrument motors and accessories/attachments	78N-2698	I
878.4960	Operating tables and accessories and operating chairs and accessories	78N-2705	I
	Part 884—Obstetrical and Gynecological Devices		
884.2980	Telethermographic system	78N-2762	I
884.2982	Liquid crystal thermographic system	78N-2763	I
	Part 886—Ophthalmic Devices		
886.1050	Adaptometer (biophotometer)	78N-3130	I
886.1070	Anomaloscope	78N-3132	I
886.1090	Haidlinger brush	78N-3133	I
886.1120	Ophthalmic camera	78N-3135	II
886.1140	Ophthalmic chair	78N-3137	I
886.1160	Color vision plate illuminator	78N-3140	I
886.1250	Euthyscope	78N-3145	II
886.1290	Fixation device	78N-3148	I
886.1300	Afterimage flasher	78N-3149	II
886.1340	Haploscope	78N-3295	I
886.1350	Keratoscope	78N-3153	I
886.1425	Lens measuring instrument	78N-3166	I
886.1430	Ophthalmic contact lens radius measuring device	78N-3167	I
886.1435	Maxwell spot	78N-3168	I
886.1450	Corneal radius measuring device	78N-3169	I
886.1605	Perimeter	78N-3178	I
886.1680	Ophthalmic projector	78N-3189	I
886.1690	Pupillograph	78N-3190	I
886.1700	Pupillometer	78N-3191	I
886.1780	Retinoscope	78N-3196	II
886.1810	Tangent screen (campimeter)	78N-3200	I
886.1860	Ophthalmic instrument stand	78N-3208	I
886.1870	Stereoscope	78N-3210	I
886.1910	Spectacle dissociation test system	78N-3214	I
886.1940	Tonometer sterilizer	78N-3220	I
886.1945	Transilluminator	78N-3221	II
886.4070	Powered corneal burr	78N-3233	I
886.4250	Ophthalmic electrolysis unit	78N-3244	II
886.4335	Operating headlamp	78N-3252	II
886.4370	Keratome	78N-3255	I
886.4855	Ophthalmic instrument table	78N-3272	I
886.5820	Closed-circuit television reading system	78N-3285	I
886.5900	Electronic vision aid	78N-3290	I
886.5915	Optical vision aid	78N-3293	I
	Part 888—Orthopedic Devices		
888.1500	Goniometer	78N-3043	I
888.5960	Cast removal instrument	78N-3124	I
	Part 892—Radiology Devices		
892.1100	Scintillation (gamma) camera	78N-2743	I
892.1110	Positron camera	78N-2744	I
892.1130	Nuclear whole body counter	78N-2745	I
892.1300	Nuclear rectilinear scanner	78N-2750	I
892.1320	Nuclear uptake probe	78N-2752	I
892.1330	Nuclear whole body scanner	78N-2753	I
892.1350	Nuclear scanning bed	78N-2754	I
892.1410	Nuclear electrocardiograph synchronizer	78N-2760	I
892.1640	Radiographic film marking system	78N-2773	I
892.1890	Radiographic film illuminator	78N-2795	I
892.1900	Automatic radiographic film processor	78N-2796	II
892.1970	Radiographic ECG/respirator synchronizer	78N-2803	I

V. References

The following information has been placed on file in the Dockets Management Branch (HFA-305), Food and Drugs Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. James, R.H., Bostrom, R.G., Remark, D., and D.H. Sliney, "Handheld Ophthalmoscopes for Hazard Analysis: an Evaluation," *Applied Optics*, December 15, 1988, pp. 5072-5076.

2. FDA, "Sensitometric Technique for the Evaluation of Processing (STEP)."

3. Goldman, L., Vuchich, J.J., Beech, S., and W.L. Murphy, "Automatic Processing Quality Assurance Program: Impact on a Radiology Department," *Radiology*, December 1977, pp. 591-595.

4. FDA, "A Sensitometric Evaluation of Film Chemistry-Processor Systems in the State of New Jersey."

5. Hall, C.L., "Economic Analysis of a Quality Control Program," "SPIE, Application of Optical Instrumentation in Medicine VI," 1977.

6. FDA, "A Study of Retakes in Radiology Departments of Two Large Hospitals," July 1975.

VI. Environmental Impact

FDA has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and FDA has determined that the rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules classifying devices into class I generally maintain the status quo. These devices are now subject only to the general control provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j). Devices classified into class II also remain subject only to the general control provisions unless and until an applicable performance standard is established. In sum, device classification rules do not have a significant impact on a substantial number of small entities and are not major rules.

List of Subjects 21 CFR

Part 872

Medical devices.

Part 874

Medical devices.

Part 878

Medical devices.

Part 884

Medical devices.

Part 886

Medical devices, Ophthalmic goods and services.

Part 888

Medical devices.

Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, chapter I of title 21 of the Code of Federal Regulations, 21 CFR parts 872, 874, 878, 884, 886, 888, and 892 are amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New § 872.3100 is added to subpart D to read as follows:

§ 872.3100 Dental amalgamator.

(a) *Identification.* A dental amalgamator is a device, usually AC-powered, intended to mix, by shaking, amalgam capsules containing mercury and dental alloy particles, such as silver, tin, zinc, and copper. The mixed dental amalgam material is intended for filling dental caries.

(b) *Classification.* Class I.

3. New § 872.3530 is added to subpart D to read as follows:

§ 872.3530 Mechanical denture cleaner.

(a) *Identification.* A mechanical denture cleaner is a device, usually AC-powered, that consists of a container for mechanically agitating a denture cleansing solution. The device is intended to clean a denture by submersion in the agitating cleansing solution in the container.

(b) *Classification.* Class I.

4. New § 872.4200 is added to subpart E to read as follows:

§ 872.4200 Dental handpiece and accessories.

(a) *Identification.* A dental handpiece and accessories is an AC-powered, water-powered, air-powered, or belt-driven, hand-held device that may include a foot controller for regulation of speed and direction of rotation or a contra-angle attachment for difficult to reach areas intended to prepare dental cavities for restorations, such as fillings, and for cleaning teeth.

(b) *Classification.* Class I.

5. New § 872.4620 is added to subpart E to read as follows:

§ 872.4620 Fiber optic dental light.

(a) *Identification.* A fiber optic dental light is a device that is a light, usually AC-powered, that consists of glass or plastic fibers which have special optical properties. The device is usually attached to a dental handpiece and is intended to illuminate a patient's oral structures.

(b) *Classification.* Class I.

6. New § 872.6250 is added to subpart G to read as follows:

§ 872.6250 Dental chair and accessories.

(a) *Identification.* A dental chair and accessories is a device, usually AC-powered, in which a patient sits. The device is intended to properly position a patient to perform dental procedures. A dental operative unit may be attached.

(b) *Classification.* Class I.

7. New § 872.6475 is added to subpart G to read as follows:

§ 872.6475 Heat source for bleaching teeth.

(a) *Identification.* A heat source for bleaching teeth is an AC-powered device that consists of a light or an electric heater intended to apply heat to a tooth after it is treated with a bleaching agent.

(b) *Classification.* Class I.

8. New § 872.6510 is added to subpart G to read as follows:

§ 872.6510 Oral irrigation unit.

(a) *Identification.* An oral irrigation unit is an AC-powered device intended to provide a pressurized stream of water to remove food particles from between the teeth and promote good periodontal (gum) condition.

(b) *Classification.* Class I.

9. New § 872.6640 is added to subpart G to read as follows:

§ 872.6640 Dental operative unit and accessories.

(a) *Identification.* A dental operative unit and accessories is an AC-powered device that is intended to supply power to and serve as a base for other dental devices, such as a dental handpiece, a dental operating light, an air or water syringe unit, and oral cavity evacuator, a suction operative unit, and other dental devices and accessories. The device may be attached to a dental chair.

(b) *Classification.* Class I.

10. New § 872.6710 is added to subpart G to read as follows:

§ 872.6710 Boiling water sterilizer.

(a) *Identification.* A boiling water sterilizer is an AC-powered device that consists of a container for boiling water. The device is intended to sterilize dental and surgical instruments by submersion in the boiling water in the container.

(b) *Classification.* Class I.

11. New § 872.6865 is added to subpart G to read as follows:

§ 872.6865 Powered toothbrush.

(a) *Identification.* A powered toothbrush is an AC-powered or battery-powered device that consists of a handle containing a motor that provides mechanical movement to a brush intended to be applied to the teeth. The device is intended to remove adherent plaque and food debris from the teeth to reduce tooth decay.

(b) *Classification.* Class I.

PART 874—EAR, NOSE, AND THROAT DEVICES

12. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

13. Section 874.1070 is added to subpart B to read as follows:

§ 874.1070 Short increment sensitivity index (SISI) adapter.

(a) *Identification.* A short increment sensitivity index (SISI) adapter is a device used with an audiometer in diagnostic hearing evaluations. A SISI adapter provides short periodic sound pulses in specific small decibel increments that are intended to be superimposed on the audiometer's output tone frequency.

(b) *Classification.* Class I.

14. New § 874.1800 is added to subpart B to read as follows:

§ 874.1800 Air or water caloric stimulator.

(a) *Identification.* An air or water caloric stimulator is a device that delivers a stream of air or water to the ear canal at controlled rates of flow and temperature and that is intended for vestibular function testing of a patient's body balance system. The vestibular stimulation of the semicircular canals produce involuntary eye movements that are measured and recorded by a nystagmograph.

(b) *Classification.* Class I.

15. New § 874.4750 is added to subpart E to read as follows:

§ 874.4750 Laryngostroboscope.

(a) *Identification.* A laryngostroboscope is a device that is intended to allow observation of glottic action during phonation. The device operates by focusing a stroboscopic light through a lens for direct or mirror reflected viewing of glottic action. The light and microphone that amplifies acoustic signals from the glottic area may or may not contact the patient.

(b) *Classification.* Class I.

16. New § 874.4770 is added to subpart E to read as follows:

§ 874.4770 Otoscope.

(a) *Identification.* An otoscope is a device intended to allow inspection of the external ear canal and tympanic membrane under magnification. The device provides illumination of the ear canal for observation by using an AC- or battery-powered light source and an optical magnifying system.

(b) *Classification.* Class I.

17. New § 874.5300 is added to subpart F to read as follows:

§ 874.5300 Ear, nose, and throat examination and treatment unit.

(a) *Identification.* An ear, nose, and throat examination and treatment unit is an AC-powered device intended to support a patient during an otologic examination while providing specialized features for examination and treatment. The unit consists of a patient chair and table, drawers for equipment, suction and blowing apparatus, and receptacles for connection of specialized lights and examining instruments.

(b) *Classification.* Class I.

18. New § 874.5550 is added to subpart F to read as follows:

§ 874.5550 Powered nasal irrigator.

(a) *Identification.* A powered nasal irrigator is an AC-powered device intended to wash the nasal cavity by means of a pressure-controlled pulsating stream of water. The device consists of a control unit and pump connected to a spray tube and nozzle.

(b) *Classification.* Class I.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

19. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

20. New § 878.4635 is added to subpart E to read as follows:

§ 878.4635 Ultraviolet lamp for tanning.

(a) *Identification.* An ultraviolet lamp for tanning is a device that is a lamp (including a fixture) intended to provide ultraviolet radiation to tan the skin. See § 1040.20 of this chapter.

(b) *Classification.* Class I.

21. New § 878.4700 is added to subpart E to read as follows:

§ 878.4700 Surgical microscope and accessories.

(a) *Identification.* A surgical microscope and accessories is an AC-powered device intended for use during surgery to provide a magnified view of the surgical field.

(b) *Classification.* Class I.

22. New § 878.4820 is added to subpart E to read as follows:

§ 878.4820 Surgical instrument motors and accessories/attachments.

(a) *Identification.* Surgical instrument motors and accessories are AC-powered, battery-powered, or air-powered devices intended for use during surgical procedures to provide power to operate various accessories or attachments to cut hard tissue or bone and soft tissue. Accessories or attachments may include a bur, chisel (osteotome), dermabrasion brush, dermatome, drill bit, hammerhead, pin driver, and saw blade.

(b) *Classification.* Class I.

23. New § 878.4960 is added to subpart E to read to follows:

§ 878.4960 Operating tables and accessories and operating chairs and accessories.

(a) *Identification.* Operating tables and accessories and operating chairs and accessories are AC-powered or air-powered devices, usually with movable components, intended for use during diagnostic examinations or surgical procedures to support and position a patient.

(b) *Classification.* Class I.

PART 884—OBSTETRICAL GYNECOLOGICAL DEVICES

24. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

25. Section 884.2980 is amended by adding new paragaph (a) to read as follows:

§ 884.2980 Telethermographic system.

(a) *Telethermographic system intended for adjunctive diagnostic screening for detection of breast cancer or other uses—*

(1) *Identification.* A telethermographic system for adjunctive diagnostic screening for detection of breast cancer or other uses is an electrically powered device with a detector that is intended to measure, without touching the patient's skin, the self-emanating infrared radiation that reveals the temperature variations of the surface of the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(2) *Classification.* Class I.

* * * * *

26. Section 884.2982 is amended by revising paragraph (a) to read as follows:

§ 884.2982 Liquid crystal thermographic system.

(a) *A nonelectrically powered or an AC-powered liquid crystal thermographic system intended for adjunctive use in diagnostic screening for detection of breast cancer or other uses*—(1) *Identification.* A nonelectrically powered or an AC-powered liquid crystal thermographic system intended for use as an adjunct to physical palpation or mammography in diagnostic screening for detection of breast cancer or other uses is a nonelectrically powered or an AC-powered device applied to the skin that displays the color patterns of heat sensitive cholesteric liquid crystals that respond to temperature variations of the surface of the body. This generic type of device may include patient and equipment supports, a means to ensure thermal contact between the patient's skin and the liquid crystals, component parts, and accessories.

(2) *Classification.* Class I.

* * * * *

PART 886—OPHTHALMIC DEVICES

27. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

28. New § 886.1050 is added to subpart B to read as follows:

§ 886.1050 Adaptometer (biophotometer).

(a) *Identification.* An adaptometer (biophotometer) is an AC-powered device that provides a stimulating light source which has various controlled intensities intended to measure the time required for retinal adaptation (regeneration of the visual purple) and the minimum light threshold.

(b) *Classification.* Class I.

29. New § 886.1070 is added to subpart B to read as follows:

§ 886.1070 Anomaloscope.

(a) *Identification.* An anomaloscope is an AC-powered device intended to test for anomalies of color vision by displaying mixed spectral lines to be matched by the patient.

(b) *Classification.* Class I.

30. New § 886.1090 is added to subpart B to read as follows:

§ 886.1090 Haidlinger brush.

(a) *Identification.* A Haidlinger brush is an AC-powered device that provides two conical brushlike images with apexes touching which are viewed by the patient through a Nicol prism and intended to evaluate visual function. It may include a component for measuring macular integrity.

(b) *Classification.* Class I.

31. New § 886.1120 is added to subpart B to read as follows:

§ 886.1120 Opthalmic camera.

(a) *Identification.* An ophthalmic camera is an AC-powered device intended to take photographs of the eye and the surrounding area.

(b) *Classification.* Class II.

32. Section 886.1140 is revised to read as follows:

§ 886.1140 Ophthalmic chair.

(a) *Identification.* An ophthalmic chair is an AC-powered or manual device with adjustable positioning in which a patient is to sit or recline during ophthalmological examination or treatment.

(b) *Classification.* Class I. The manual device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

33. New § 886.1160 is added to Subpart B to read as follows:

§ 886.1160 Color vision plate illuminator.

(a) *Identification.* A color vision plate illuminator is an AC-powered device that is a lamp intended to properly illuminate color vision testing plates. It may include a filter.

(b) *Classification.* Class I.

34. Section 86.1250 is revised to read as follows:

§ 886.1250 Euthyscope.

(a) *Identification.* A euthyscope is a device that is a modified AC-powered or battery-powered ophthalmoscope (a perforated mirror device intended to inspect the interior of the eye) that projects a bright light encompassing an arc of about 30 degrees onto the fundus of the eye. The center of the light bundle is blocked by a black disk covering the fovea (the central depression of the macular retinae where only cones are present and blood vessels are lacking). The device is intended for use in the treatment of amblyopia (dimness of vision without apparent disease of the eye).

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device.

35. New § 886.1290 is added to subpart B to read as follows:

§ 886.1290 Fixation device.

(a) *Identification.* A fixation device is an AC-powered device intended for use as a fixation target for the patient during ophthalmological examination. The patient directs his or her gaze so that the visual image of the object falls on the fovea centralis (the center of the macular retina of the eye.)

(b) *Classification.* Class I.

36. New § 886.1300 is added to subpart B to read as follows:

§ 886.1300 Afterimage flasher.

(a) *Identification.* An afterimage flasher is an AC-powered light that automatically switches on and off to allow performance of an afterimage test in which the patient indicates the positions of afterimages after the light is off. The device is intended to determine harmonious/anomalous retinal correspondence (the condition in which corresponding points on the retina have the same directional value).

(b) *Classification.* Class II.

37. New § 886.1340 is added to subpart B to read as follows:

§ 886.1340 Haploscope.

(a) *Identification.* A haploscope is an AC-powered device that consists of two movable viewing tubes, each containing a slide carrier, a low-intensity light source for the illumination of the slides, and a high-intensity light source for creating afterimages. The device is intended to measure strabismus (eye muscle imbalance), to assess binocular vision (use of both eyes to see), and to treat suppression and amblyopia (dimness of vision without any apparent disease of the eye).

(b) *Classification.* Class I.

38. Section 886.1350 is revised to read as follows:

§ 886.1350 Keratoscope.

(a) *Identification.* A keratoscope is an AC-powered or battery-powered device intended to measure and evaluate the corneal curvature of the eye. Lines and circles within the keratoscope are used to observe the corneal reflex. This generic type of device includes the photokeratoscope which records corneal curvature by taking photographs of the cornea.

(b) *Classification.* Class I. The battery-powered device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements

concerning records, and § 820.198, with respect to complaint files.

39. New § 886.1425 is added to subpart B to read as follows:

§ 886.1425 Lens measuring instrument.

(a) *Identification.* A lens measuring instrument is an AC-powered device intended to measure the power of lenses, prisms, and their centers (e.g., lensometer).

(b) *Classification.* Class I.

40. New § 886.1430 is added to subpart B to read as follows:

§ 886.1430 Ophthalmic contact lens radius measuring device.

(a) *Identification.* An ophthalmic contact lens radius measuring device is an AC-powered device that is a microscope and dial gauge intended to measure the radius of a contact lens.

(b) *Classification.* Class I.

41. New § 886.1435 is added to subpart B to read as follows:

§ 886.1435 Maxwell spot.

(a) *Identification.* A Maxwell spot is an AC-powered device that is a light source with a red and blue filter intended to test macular function.

(b) *Classification.* Class I.

42. New § 886.1450 is added to subpart B to read as follows:

§ 886.1450 Corneal radius measuring device.

(a) *Identification.* A corneal radius measuring device is an AC-powered device intended to measure corneal size by superimposing the image of the cornea on a scale at the focal length of the lens of a small, hand held, single tube penscope or eye gauge magnifier.

(b) *Classification.* Class I.

43. Section 886.1605 is revised to read as follows:

§ 886.1605 Perimeter.

(a) *Identification.* A perimeter is an AC-powered or manual device intended to determine the extent of the peripheral visual field of a patient. The device projects light on various points of a curved surface, and the patient indicates whether he or she sees the light.

(b) *Classification.* Class I. The manual device is exempt from the premarket notification procedures in part 807, subpart E of this chapter, and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198 with respect to the complaint files.

44. New § 886.1680 is added to subpart B to read as follows:

§ 886.1680 Ophthalmic projector.

(a) *Identification.* An ophthalmic projector is an AC-powered device intended to project an image on a screen for vision testing.

(b) *Classification.* Class I.

45. New § 886.1690 is added to subpart B to read as follows:

§ 886.1690 Pupillograph.

(a) *Identification.* A pupillograph is an AC-powered device intended to measure the pupil of the eye by reflected light and record the responses of the pupil.

(b) *Classification.* Class I.

46. Section 886.1700 is revised to read as follows:

§ 886.1700 Pupillometer.

(a) *Identification.* A pupillometer is an AC-powered or manual device intended to measure by reflected light the width or diameter of the pupil of the eye.

(b) *Classification.* Class I. The manual device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

47. Section 886.1780 is revised to read as follows:

§ 886.1780 Retinoscope.

(a) *Identification.* A retinoscope is an AC-powered or battery-powered device intended to measure the refraction of the eye by illuminating the retina and noting the direction of movement of the light on the retinal surface and of the refraction by the eye of the emergency rays.

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device. The battery-powered device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

48. Section 886.1810 is revised to read as follows:

§ 886.1810 Tangent screen (campimeter).

(a) *Identification.* A tangent screen (campimeter) is an AC-powered or battery-powered device that is a large square cloth chart with a central mark of fixation intended to map on a flat surface the central 30 degrees of a patient's visual field. This generic type of device includes projection tangent screens, target tangent screens and targets, felt tangent screens, and stereo campimeters.

(b) *Classification.* Class I. The battery-powered device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

49. Section 886.1860 is revised to read as follows:

§ 886.1860 Ophthalmic instrument stand.

(a) *Identification.* An ophthalmic instrument stand is an AC-powered or nonpowered device intended to store ophthalmic instruments in a readily accessible position.

(b) *Classification.* Class I. The nonpowered device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

50. Section 886.1870 is revised to read as follows:

§ 886.1870 Stereoscope.

(a) *Identification.* A stereoscope is an AC-powered or battery-powered device that combines the images of two similar objects to produce a three-dimensional appearance of solidity and relief. It is intended to measure the angle of strabismus (eye muscle deviation), evaluate binocular vision (usage of both eyes to see), and guide a patient's corrective exercises of eye muscles.

(b) *Classification.* Class I. The battery-powered device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

51. Section 886.1910 is revised to read as follows:

§ 886.1910 Spectacle dissociation test system.

(a) *Identification.* A spectable dissociation test system is an AC-powered or battery-powered device, such as a Lancaster test system, that consists of a light source and various

filters, usually red or green filters, intended to subjectively measure imbalance of ocular muscles.

(b) *Classification.* Class I. The battery-powered device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

52. New § 886.1940 is added to subpart B to read as follows:

§ 886.1940 Tonometer sterilizer.

(a) *Identification.* A tonometer sterilizer is an AC-powered device intended to heat sterilize a tonometer (a device used to measure intraocular pressure).

(b) *Classification.* Class I.

53. Section 886.1945 is revised to read as follows:

§ 886.1945 Transilluminator.

(a) *Identification.* A transilluminator is an AC-powered or battery-powered device that is a light source intended to transmit light through tissues to aid examination of patients.

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device.

54. Section 886.4070 is revised to read as follows:

§ 886.4070 Powered corneal burr.

(a) *Identification.* A powered corneal burr is an AC-powered or battery-powered device that is a motor drilling tool intended to remove rust rings from the cornea of the eye.

(b) *Classification.* Class I.

55. Section 886.4250 is revised to read as follows:

§ 886.4250 Ophthalmic electrolysis unit.

(a) *Identification.* An ophthalmic electrolysis unit is an AC-powered or battery-powered device intended to destroy ocular hair follicles by applying a galvanic electrical current.

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device.

56. Section 886.4335 is revised to read as follows:

§ 886.4335 Operating headlamp.

(a) *Identification.* An operating headlamp is an AC-powered or battery-powered device intended to be worn on the user's head to provide a light source to aid visualization during surgical, diagnostic, or therapeutic procedures.

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device. The battery powered-device is exempt from the premarket notification procedures in part 807, subpart E of this chapter.

57. Section 886.4370 is revised to read as follows:

§ 886.4370 Keratome.

(a) *Identification.* A keratome is an AC-powered or battery-powered device intended to shave tissue from sections of the cornea for a lamellar (partial thickness) transplant.

(b) *Classification.* Class I.

58. Section 886.4855 is revised to read as follows:

§ 886.4855 Ophthalmic instrument table.

(a) *Identification.* An ophthalmic instrument table is an AC-powered or manual device on which ophthalmic instruments are intended to be placed.

(b) *Classification.* Class I. The manual device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

59. New § 886.5820 is added to subpart F to read as follows:

§ 886.5820 Closed-circuit television reading system.

(a) *Identification.* A closed-circuit television reading system is a device that consists of a lens, video camera, and video monitor that is intended for use by a patient who has subnormal vision to magnify reading material.

(b) *Classification.* Class I.

60. Section 886.5900 is revised to read as follows:

§ 886.5900 Electronic vision aid.

(a) *Identification.* An electronic vision aid is an AC-powered or battery-powered device that consists of an electronic sensor/transducer intended for use by a patient who has impaired vision or blindness to translate visual images of objects into tactile or auditory signals.

(b) *Classification.* Class I.

61. Section 886.5915 is revised to read as follows:

§ 886.5915 Optical vision aid.

(a) *Identification.* An optical vision aid is a device that consists of a magnifying lens with an accompanying AC-powered or battery-powered light source intended for use by a patient who has impaired vision to increase the apparent size of object detail.

(b) *Classification.* Class I. The battery-powered device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 888—ORTHOPEDIC DEVICES

62. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

63. New § 888.1500 is added to subpart B to read as follows:

§ 888.1500 Goniometer.

(a) *Identification.* A goniometer is an AC-powered device intended to evaluate joint function by measuring and recording ranges of motion, acceleration, or forces exerted by a joint.

(b) *Classification.* Class I.

64. New § 888.5960 is added to subpart E to read as follows:

§ 888.5960 Cast removal instrument.

(a) *Identification.* A cast removal instrument is an AC-powered, hand-held device intended to remove a cast from a patient. This generic type of device includes the electric cast cutter and cast vacuum.

(b) *Classification.* Class I.

PART 892 —RADIOLOGY DEVICES

65. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: Sections 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

66. New § 892.1100 is added to subpart B to read as follows:

§ 892.1100 Scintillation (gamma) camera.

(a) *Identification.* A scintillation (gamma) camera is a device intended to image the distribution of radionuclides in the body by means of a photon radiation detector. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

67. New § 892.1110 is added to subpart B to read as follows:

§ 892.1110 Positron camera.

(a) *Identification.* A positron camera is a device intended to image the distribution of positron-emitting radionuclides in the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

68. New § 892.1130 is added to subpart B to read as follows:

§ 892.1130 Nuclear whole body counter.

(a) *Identification.* A nuclear whole body counter is a device intended to measure the amount of radionuclides in the entire body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class I.

69. New § 892.1300 is added to subpart B to read as follows:

§ 892.1300 Nuclear rectilinear scanner.

(a) *Identification.* A nuclear rectilinear scanner is a device intended to image the distribution of radionuclides in the body by means of a detector (or detectors) whose position moves in two directions with respect to the patient. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

70. New § 892.1320 is added to subpart B to read as follows:

§ 892.1320 Nuclear uptake probe.

(a) *Identification.* A nuclear uptake probe is a device intended to measure the amount of radionuclide taken up by a particular organ or body region. This generic type of device may include a single or multiple detector probe, signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class I.

71. New § 892.1330 is added to subpart B to read as follows:

§ 892.1330 Nuclear whole body scanner.

(a) *Identification.* A nuclear whole body scanner is a device intended to measure and image the distribution of radionuclides in the body by means of a wide-aperture detector whose position moves in one direction with respect to the patient. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

72. New § 892.1350 is added to subpart B to read as follows:

§ 892.1350 Nuclear scanning bed.

(a) *Identification.* A nuclear scanning bed is an adjustable bed intended to support a patient during a nuclear medicine procedure.

(b) *Classification.* Class I.

73. New § 892.1410 is added to subpart B to read as follows:

§ 892.1410 Nuclear electrocardiograph synchronizer.

(a) *Identification.* A nuclear electrocardiograph synchronizer is a device intended for use in nuclear radiology to relate the time of image formation to the cardiac cycle during the production of dynamic cardiac images.

(b) *Classification.* Class I.

74. New § 892.1640 is added to subpart B to read as follows:

§ 892.1640 Radiographic film marking system.

(a) *Identification.* A radiographic film marking system is a device intended for medical purposes to add identification and other information onto radiographic film by means of exposure to visible light.

(b) *Classification.* Class I.

75. New § 892.1890 is added to subpart B to read as follows:

§ 892.1890 Radiographic film illuminator.

(a) *Identification.* A radiographic film illuminator is a device containing a visible light source covered with a translucent front that is intended to be used to view medical radiographs.

(b) *Classification.* Class I.

76. New § 892.1900 is added to subpart B to read as follows:

§ 892.1900 Automatic radiographic film processor.

(a) *Identification.* An automatic radiographic film processor is a device intended to be used to develop, fix, wash, and dry automatically and continuously film exposed for medical purposes.

(b) *Classification.* Class II.

77. New § 892.1970 is added to subpart B to read as follows:

§ 892.1970 Radiographic ECG/respirator synchronizer.

(a) *Identification.* A radiographic ECG/respirator synchronizer is a device intended to be used to coordinate an X-ray film exposure with the signal from an electrocardiograph (ECG) or respirator at a predetermined phase of the cardiac or respiratory cycle.

(b) *Classification.* Class I.

Dated: October 12, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-27219 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-01-M

federal register

Tuesday
November 20, 1990

Part V

Department of Commerce

Foreign-Trade Zones Board

15 CFR Part 400
Foreign-Trade Zones in the United States; Proposed Rule

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Docket No. 21222-0262]

RIN 0625-AA04

Foreign-Trade Zones in the United States

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Commerce.

ACTION: Notice of proposed rulemaking; further amendments.

SUMMARY: The Foreign-Trade Zones Board (the Board) invites public comment on amending the notice of proposed rulemaking published in the **Federal Register** on January 26, 1990 (55 FR 2760–2770). It is proposed that 15 CFR part 400 be further amended by revising certain sections of the January 26 proposed rule and by adding certain new provisions, including a new section providing for the collection of user fees to cover the costs of processing zone applications. The Board is asking for additional public comments on these proposed amendments to the proposed rule because the changes cover the sections that received most of the comments or that are of primary interest to the public.

DATES: Comments must be received on or before January 9, 1991.

ADDRESSES: Comments (original and 6 copies) are to be addressed to John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., room 4213, Washington, DC 20230. (202) 377–2862.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, room 3622, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. (202) 377–8916.

SUPPLEMENTARY INFORMATION:

Background

The following discussion includes a brief summary of the comments received pursuant to the January 26, 1990, notice of proposed rulemaking and an explanatory note regarding the sections proposed to be added or further revised:

1. *Section 400.1(c).* Several comments were received. Commenters objected to the requirement that domestic goods would have to be placed in "zone restricted" status and be in a zone for *"bona fide"* Customs reasons in order to obtain the statutory exemption from state and local *ad valorem* taxes.

Revised § 400.1(c). It is proposed that reference to the foregoing requirements be eliminated. In the case of domestic merchandise, the statute authorizing the exemption (Pub. L. 98–573, 10/30/84) limits the *ad valorem* tax exemption to such items placed in zones for export. The requirement that "zone restricted" status be elected in such cases would have facilitated enforcement, but it is not necessary. The legislative history makes it clear that the use of zones must be for *bona fide* Customs reasons both with regard to foreign or domestic merchandise, so it is not necessary to restate this requirement in the regulations.

Also, it is proposed that the first two sentences of this paragraph be rewritten to further clarify the interrelationship of zone sites and Customs territory.

2. *Section 400.21(b).* Numerous comments were received in opposition to the proposed restriction that would limit subzones to 35 statute miles from the outer limits of a Customs port of entry or one hour's driving time from the nearest Customs office. The opposition was strongest from parties in states with many communities long distances from ports of entry.

Revised § 400.21(b). It is proposed that the subzone locational restriction be eliminated in terms of geographic distances from ports of entry. The revised provision takes into account the fact that subzones are single-user facilities for which Customs supervisory procedures can be tailored to provide reasonable Customs access (thus, "adjacency") irrespective of distance from ports of entry.

3. [New] *Section 400.26(d).* It is proposed that a new paragraph (d) be added to § 400.26 to extend its coverage of applications to formal requests made to the Board for revisions to grants of authority. Because many grants now contain special restrictions, the Board has been receiving more requests for revisions based on changed circumstances.

4. *Section 400.27.* A few comments were received calling for time tables for processing cases. Many additional comments generally expressed concern about the length of the processing time for applications.

Revised § 400.27. It is proposed that this section be revised extensively to provide a time schedule based on the time allocated to various stages of the application process. The objective is to complete all cases within one year of formal filing, and to reach decisions on those cases not involving manufacturing within 10 months. The guidelines are not based on statutory requirements and therefore are directive, not mandatory, insofar as they apply to the Board.

The revision also provides more detail as to procedures at the various stages of processing. The period for public comment will normally close followed by a 15-day period limited to rebuttal comments. Unfavorable examiners reports would be considered "preliminary" reports, and applicants would be given an opportunity to submit further evidence similar to practice under the current regulations. If new material is submitted, the record would be reopened for further public comment.

5. [New] *Section 400.30.* It is proposed to add a new section which adopts a uniform system of fees to cover the Department of Commerce's Foreign-Trade Zones staff costs for processing applications pursuant to 31 U.S.C. 9701, which provides that federal agencies should recover, to the extent possible, direct and indirect costs for activities which convey special benefits to recipients above and beyond those accruing to the public at large. Concurrence for such user fees was received by the Department of Commerce from OMB in connection with the FY 1991 budget package of the Department of Commerce.

The fees are based on the average staff cost attributable to the types of applications listed. Applications account for some 80 percent of FTZ staff time. It is anticipated that applicants will pass on the costs of these fees to the parties involved in using zones and subzones. The question of collecting user fees to cover expenses incurred in regard to ongoing zone activity remains under consideration.

Checks for payment of the fees must be included with applications. Refunds will be made on those applications which do not pass the prefiling review and are not formally filed. The outcome of the case does not affect the requirement for payment.

6. *Section 400.31.* Numerous comments were received expressing concern that this section creates stricter standards for approval of manufacturing activity than are statutorily required. Most commenters supported the delineation of criteria, but many considered the provision on policy too vague. The provision's threshold test was opposed by many, who contended that all manufacturing proposals should have the benefit of an economic evaluation, even where there are policy issues. Some commenters argued that the provisions referring to inverted tariff situations do not allow for consideration of the positive net economic effect that

stems from production moves from overseas to the United States and import shifts from finished products to components that are encouraged under zone procedures.

Concern was also expressed that provisions relating to transplant operations and inverted tariffs might be inconsistent with U.S. GATT obligations and with U.S. policy relating to foreign direct investment.

The provision on burden of proof was opposed by many as creating too great a burden by requiring applicants to establish both the positive side of their cases and the absence of negative factors.

Concern was expressed about the effect of monitoring existing operations without cause.

Revised § 400.31. It is proposed that the threshold provision (§ 400.31(b)) be revised to clarify the provisions on policy considerations, and to expand the scope of paragraph (iii) to include items subject to quantitative controls, and clarify the latter subsection to indicate that import displacement of components for finished products would be considered in evaluating whether the use of zone procedures will create imports, the purpose of paragraph (iii) as a threshold provision being to cover only situations where zone procedures are or would likely be the direct cause of new imports that would not otherwise occur.

Under § 400.31(c) on methodology and evidence, it is proposed that paragraph (c) be revised to delete the separate headings (c)(2) "inverted tariffs" and (c)(3) "transplant manufacturing" because the paragraphs are subject to a construction that conflicts with the section's substantive coverage of inverted tariff situations and activity involving foreign investment. The clarification of the substantive provisions makes the two paragraphs unnecessary.

The provision on burden of proof (§ 400.31(c)(5)) is proposed to be revised to acknowledge that an applicant's evidentiary burden of proof should be to prove its side of the case, *i.e.*, the public benefits that would result from approval. A distinction is made that reflects the current practice that subzone applicants must present evidence of a significant public benefit. All applicants are expected to submit evidence in response to evidence of possible adverse effects.

The provision on monitoring and post-approval reviews is proposed to be revised to eliminate the indication that the review would occur as a public interest determination under § 400.31. Reviews of ongoing operations are conducted under the Board's broad "public interest" mandate, though the factors enumerated in § 400.31 would still apply.

7. *Section 400.33.* Several commenters expressed opposition because the section precludes Board consideration of special circumstances where items subject to AD/CVD duties could otherwise escape such duties because they were transformed in third countries. There were also expressions of support for the provision, and a question was raised as to whether the provision covers items subject to affirmative preliminary determinations.

Revised § 400.33. Paragraphs (b)(2) and (b)(3) have been consolidated into a revised paragraph (b)(2) to clarify the fact that the new requirement applies to items that would be subject both to AD/CVD orders and affirmative preliminary determinations if entered for consumption.

8. *Section 400.51.* There were a few comments on this section on the need for more public hearings, particularly when U.S. industries might be affected by zone proposals.

Revised § 400.51. A new paragraph (b) has been proposed to provide for requests from interested parties for hearings.

Comments

The period for the submission of comments will close January 9, 1991. All comments received during this period will be considered by the Board together with the comments submitted in response to the January 26, 1990, notice in developing the final regulations. Submissions (original and six copies) shall be in writing and shall not contain information of a proprietary nature, as they will be made available for public inspection and copying, with the exception of those submitted by other Federal agencies.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, room 4104, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Written public comments on file at the facility may be inspected and copied in accordance with 15 CFR part 4.

Information about the inspection and copying of records at the facility may be obtained from Patricia L. Sears, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that an initial regulatory flexibility analysis is not required and has not been prepared because these regulations will not have a significant economic impact on a substantial number of small entities pursuant to sections 603 and 604 of title 5, United States Code, added by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are some 160 zone grantees and some 60 firms operating all or parts of zone facilities for grantees. Of some 2,100 firms using zones, about 600 use them on a full time basis. It is estimated that fewer than 100 small entities are included among the total firms using zones. The overall impact of the proposed rules should, in any case, be favorable because they will reduce the present regulatory burden on these parties by clarifying and simplifying procedures.

Executive Order 12291

This proposed rulemaking is not a major rule as defined in section 1(b) of E.O. 12291, because it involves changes to existing regulations that are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or, (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

This rule contains information collection activities subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). It will impose no additional reporting or recordkeeping burden on the public. Existing requirements for zone applicants, grantees, operators, and users are simplified and there is an overall reduction of the burden on these parties, which are the ones mainly affected (OMB Control Nos. 0625-0139 and 0625-0109).

List of Subjects in 15 CFR Part 400

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Foreign-trade zones, Harbors, Imports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed that the notice of proposed rulemaking revising 15 CFR part 400 that appeared on January 26, 1990 (55 FR 2760–2770) be amended as follows:

PART 400—REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD

1. The authority citation continues to read as follows:

Authority: Foreign-Trade Zones Act of June 18, 1934, (Pub. L. 397, 73rd Congress; 48 Stat. 998–1003; 19 U.S.C. 81a–81u), as amended by Pub. L. 566, 81st Congress, approved June 17, 1950, (64 Stat. 246); Pub. L. 791, 85th Congress, approved August 28, 1958 (72 Stat. 945); Pub. L. 98–573, 98th Cong., Sec. 231, approved October 30, 1984 (98 Stat. 2991); and, Pub. L. 99–386, 99th Congress, approved August 22, 1986.

2. Section 400.1, as proposed January 26, 1990 (55 FR 2763) is further amended by revising paragraph (c) to read as follows:

§ 400.1 Scope.

* * * * *

(c) To the extent "activated" under Customs procedures in 19 CFR part 146, and only for the limited purposes specified in the Act (19 U.S.C. 81(c)), zones are treated for purposes of the tariff laws and Customs entry procedures as being outside the Customs territory of the United States. Articles admitted into zones for purposes not specified in the Act, including articles consumed within zones, shall be subject to the tariff laws and regular entry procedures, including the payment of applicable duties, taxes, and fees (see, *Nissan Motor Mfg. Corp.* v. *United States*, 884 F. 2d. 1375 (CAFC 1989). Under zone procedures, foreign and domestic merchandise may be admitted into zones for operations such as storage, exhibition, assembly, manufacture and processing, without being subject to formal Customs entry procedures and payment of duties, unless and until the foreign merchandise enters Customs territory for domestic consumption. At that time, the importer ordinarily has a choice of paying duties either at the rate applicable to the foreign material in its condition as admitted into a zone, or if used in manufacturing or processing, to the emerging product. Quota restrictions do not normally apply to foreign goods in zones, but the Board can limit or deny zone use in specific cases on public interest grounds. Merchandise moved into zones for export (zone-restricted status) may be considered exported for purposes such as federal excise tax rebates and Customs drawback. Foreign merchandise (tangible personal property) admitted to a zone and domestic merchandise held in a zone for exportation are exempt from state and local *ad valorem* taxes (19 U.S.C. 810(e).

3. Section 400.21, as proposed January 26, 1990 (55 FR 2764), is further amended by revising paragraphs (b) to read as follows:

§ 400.21 Number and location of zones and subzones.

* * * * *

(b) *Location of zones and subzones—port of entry adjacency requirements.* (1) The Act provides that the Board may approve "zones in or adjacent to ports of entry" (19 U.S.C. 81b).

(2) The "adjacency" requirement is satisfied if:

(i) A general-purpose zone is located within 35 statute miles from the outer limits of a port of entry.

(ii) A subzone meets the following requirements relating to Customs supervision:

(A) Proper Customs oversight can be accomplished with physical and electronic means; and,

(B) All electronically produced records are maintained in a machine-sensible format for the duration of the record period; and,

(C) The grantee/operator agrees to present merchandise for examination at a Customs site selected by Customs when requested, and further agrees to present all necessary documents directly to the Customs oversight office.

4. Section 400.26, as proposed January 26, 1990 (55 FR 2766), is further amended by adding a new paragraph (d) to read as follows:

§ 400.26 Application for expansion or other modification to zone project.

* * * * *

(d) *Applications for other revisions to grants of authority.* Applications or requests for revisions to grants of authority, such as restriction modifications, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary. If the change involves removal or significant modification of a restriction included by the Board in a grant of authority, the review procedures of § 400.32 shall apply. If not, the procedure set forth in § 400.27(f) shall apply.

5. Section 400.27, as proposed January 26, 1990 (55 FR 2766), is revised to read as follows:

§ 400.27 Procedure for reviewing and processing applications.

(a) *In general.* This section outlines the procedure followed in processing applications submitted under §§ 400.24–400.26. In addition, it sets forth the time schedules which will normally be applied in processing applications. The schedules will provide guidance to applicants with respect to the time frames for each of the procedural steps involved in the Board's review. Under these schedules, applications involving manufacturing would be processed within 1 year, and those not involving manufacturing, within 10 months. While the schedules will normally be adhered to, the Board may determine that special circumstances may warrant additional time, such as when the public comment period must be reopened pursuant to paragraphs (d)(2)(v)(B) and (d)(3)(vi)(B) of this section.

(b) *Prefiling review.* Applications shall be accompanied with a check in accordance with § 400.30, and will be dated upon receipt at the headquarters of the Board. The Executive Secretary will determine whether the application satisfies the requirements of §§ 400.24, 400.25, or 400.26 and other applicable provisions of this part.

(1) If the application is deficient, the Executive Secretary will notify the applicant within 20 days of receipt of the application, specifying the deficiencies. The applicant shall correct the deficiencies and submit the corrected application within 30 days of notification. Otherwise the application (original) will be returned.

(2) If the application is sufficient, the Executive Secretary will within 45 days of receipt of the application:

(i) Formally file the application, thereby initiating the proceeding or review;

(ii) Assign a case docket number in cases requiring a Board order; and

(iii) Notify the applicant.

(c) *Procedure—Executive Secretary responsibilities.* After initiating a proceeding based on an application under §§ 400.24, 400.25, or 400.26(b), the Executive Secretary within 15 days will:

(1) Designate an examiner to conduct a review and prepare a report with recommendations for the Board;

(2) Publish in the **Federal Register** a notice of the formal filing of the application and initiation of the review which includes the name of the

applicant, a description of the zone project, information as to any hearing scheduled at the outset, and an invitation for public comment, including a time period during which the public may submit evidence, factual information, and written arguments. Normally, the comment period will close 60 days after the date the notice appears, except that if a hearing is held (*see*, § 400.51) the period shall not close prior to 15 days after the date of the hearing. The closing date for general comment will ordinarily be followed by an additional 15-day period for rebuttal comments;

(3) Send copies of the filing and initiation notice and the application to:

(i) The Commissioner of Customs and the Regional Commissioner, or a designee; and

(ii) The Resident Member, Board of Engineers for Rivers and Harbors, Department of the Army, and the District Engineer;

(4) Arrange for hearings, as appropriate;

(5) Transmit the reports and recommendations of the examiner and of the officials identified in paragraph (c)(3) of this section to the Board for appropriate action; and

(6) Notify the applicant in writing and publish notice in the **Federal Register** of the Board's determination.

(d) *Case reviews—procedure and time schedule*—(1) *Customs and army engineer review.* The Regional Commissioner (Customs), or a designee, and the District Engineer (Army), in accordance with the regulations and directives of their respective agencies, will submit their technical reports to the Executive Secretary within 45 days of the conclusion of the public comment period described in paragraph (c)(2) of this section.

(2) *Examiners reviews—non-manufacturing.* Examiners assigned to cases not involving manufacturing activity shall conduct a review taking into account the factors enumerated in § 400.23 and other appropriate sections of this part, which shall include:

(i) Conducting or participating in necessary hearings scheduled by the Executive Secretary;

(ii) Reviewing case records, including public comments;

(iii) Requesting information and evidence from parties of record;

(iv) Developing information and evidence necessary for evaluation and analysis of the application in accordance with the criteria of the Act and regulations;

(v) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 120 days of the close of the period for public comment (*see*, paragraph (c)(2) of this section).

(A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified within 5 days (in writing or by phone) and given 30 days from the date of notification in which to respond to the report and submit additional evidence.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the **Federal Register** within 10 days after completion of the review of the response. The new material will be made available for public inspection and the **Federal Register** notice will invite further public comment for 30 days, with an additional 15-day period for rebuttal comments.

(C) The Customs and District Engineer (Army) advisers shall be notified when necessary for their further comments, which shall be submitted within 45 days after their notification.

(D) The examiners report in situations under paragraph (d)(2)(v)(A) of this section shall be completed and submitted to the Executive Secretary within 30 days after receipt of additional evidence or notice from the applicant that there will be none; except that, if paragraph (d)(2)(v)(B) of this section applies, the report will be submitted within 30 days of the close of the period for public comment.

(3) *Examiners reviews—cases involving manufacturing.* Examiners shall conduct a review taking into account the factors enumerated in § 400.23, § 400.31, and other appropriate sections of this part, which shall include:

(i) Conducting or participating in hearings scheduled by the Executive Secretary;

(ii) Reviewing case records, including public comments;

(iii) Requesting information and evidence from parties of record;

(iv) Developing information and evidence necessary for analysis of the threshold factors and the economic factors enumerated in § 400.31;

(v) Conducting an analysis to include:

(A) An evaluation of policy considerations pursuant to §§ 400.31(b)(1)(i) and 400.31(b)(1)(ii);

(B) An evaluation of the economic factors enumerated in §§ 400.31(b)(1)(iii) and 400.31(b)(2), which shall include: An evaluation of the economic impact on domestic industry, which includes both producers of like products and producers of components/materials used in the manufacture and assembly of the products. The evaluation will take into account such factors as market conditions, price sensitivity, degree and nature of foreign competition, effect on exports and imports, and the net effect on U.S. employment;

(vi) Conducting appropriate industry surveys, using questionnaires when necessary; and

(vii) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 150 days of the close of the period for public comment:

(A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified within 5 days (in writing or by phone) and given 45 days from the date of notification in which to respond to the report and submit additional evidence.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the **Federal Register** within 10 days after completion of the review of the response. The new material will be made available for public inspection and the **Federal Register** notice will invite further public comment for 30 days, with an additional 15-day period for rebuttal comments.

(e) *Procedure—Completion of review.* (1) After the examiners report with recommendations is completed and submitted to the Executive Secretary, within 15 days, the latter will circulate the report to Board members for their review and votes (by resolution).

(2) The Treasury and Army Board members will return their votes to the Executive Secretary within 30 days, unless a formal meeting is requested (*see*, § 400.11(d)).

(3) The Commerce Department will complete the decision process within 15 days of receiving the votes of both other Board members, and the Executive Secretary will publish the Board decision.

(f) *Procedure—Application for minor modification of zone project.* (1) The Executive Secretary will make a determination in cases under § 400.26(c) involving minor changes to zone projects that do not require a Board order, such as boundary modifications, including certain relocations, and will notify the applicant in writing of the decision within 30 days of the determination that the application or request can be processed under § 400.26(c).

(2) The concurrence of the District Director is required for approvals under paragraph (d)(1) of this section, and the District Director shall provide his

decision within 20 days after being notified of the request or application.

6. Subpart C, as proposed January 26, 1990 (55 FR 2764), is further amended by adding a new § 400.30 to read as follows:

Subpart C—Establishment and Modification of Zone Projects

§ 400.30 Application fees.

(a) *In general.* This section sets forth a uniform system of charges in the form of fees to cover the direct and indirect costs incurred by the Foreign-Trade Zones staff of the Department of Commerce for processing applications under this part. The legal authority for the fees is 31 U.S.C. 9701, which provides for the collection of user fees by agencies of the Federal Government.

(b) *Uniform system of user fee charges.* The following graduated fee schedule establishes fees for various types of applications and requests for authority based on their average processing time. Applications combining requests for more than one type of approval are subject to the fee for each category.

(1) New general-purpose zones:	
(i) First zone in POE area (§ 400.24; § 400.21(a)(1)(i))	$2,850
(ii) Additional zones (§ 400.24; § 400.21(a)(2))	$3,240
(2) Special-purpose subzones (§ 400.25)	$6,510
(3) Expansions (§ 400.26(b))	$1,630
(4) Manufacturing reviews:	
(i) Formal (§ 400.32)	$4,670
(ii) Administrative (§ 400.32(b)(1))	$1,230
(5) Boundary modifications (§ 400.26(c))	$330

(c) Applications submitted to the Board shall include a check drawn on a national or state bank or trust company of the United States or Puerto Rico in the amount called for in paragraph (b) of this section. Uncertified checks must be acceptable for deposit by a Federal Reserve bank or branch.

(d) Applicants shall make their checks payable to the U.S. Department of Commerce ITA. The checks will be deposited by ITA into the Treasury receipts account. If applications are found deficient under § 400.27(b)(1), or withdrawn by applicants prior to formal filing, refunds will be made.

7. Section 400.31, as proposed January 26, 1990 (55 FR 2767), is revised to read as follows:

§ 400.31 Manufacturing operations; criteria.

(a) *In general.* Pursuant to section 15(c) of the Act (19 U.S.C. 81o(c)), the Board has authority to restrict or prohibit zone activity "that in its judgment is detrimental to the public interest." In evaluating zone and subzone manufacturing activity, either as proposed in an application or as part of a review of an ongoing operation, the Board shall determine whether the activity in question is in the public interest by reviewing the evaluation criteria contained in paragraph (b) of this section. Such a review involves consideration of whether the activity is consistent with trade policy and programs, and whether its net economic effect is positive.

(b) *Evaluation criteria*—(1) *Threshold factors.* It is the policy of the Board to authorize zone activity only when it is consistent with public policy and does not encourage net imports. Thus, before authorizing proposed manufacturing activity or in its review of ongoing manufacturing, the Board shall determine that:

(i) The activity is not inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the Executive branch;

(ii) The use of zone procedures would not likely diminish the effectiveness of a U.S. international trade policy initiative or program; and

(iii) If the activity involves items subject to quantitative import controls or inverted tariffs, that the use of zone procedures would not or has not directly resulted in imports that, but for the use of zone procedures, would not likely otherwise have occurred, taking into account imports both as individual items and as components of imported products.

(2) *Economic factors.* After its review of threshold factors, if there is a basis for further consideration, the Board shall consider the following factors in determining the net economic effect of the activity or proposed activity:

(i) Overall employment impact;

(ii) Exports and reexports;

(iii) Retention or creation of manufacturing activity;

(iv) Extent of value-added activity;

(v) Overall effect on import levels of relevant products;

(vi) Extent and nature of foreign competition in relevant products;

(vii) Impact on related domestic industry, taking into account market conditions; and

(viii) Other relevant information relating to net economic impact and public interest considerations.

(c) *Methodology and evidence*—(1) The first phase (§ 400.31(b)(1)) involves consideration of threshold factors. If an examiner makes a negative finding on any of the factors in § 400.31(b)(1) in the course of a review, the applicant shall be informed and have an opportunity to amend its application within 30 days. If the Board determines any of the § 400.31(b)(1) factors in the negative, it shall deny or restrict authority for the proposed or ongoing activity.

(2) *Contributory effect.* In assessing the significance of zone operations as part of the consideration of economic factors, the Board may consider the contributory effect zone savings have as an incremental part of cost effectiveness programs adopted by companies to improve their international competitiveness.

(3) *Burden of proof.* Applicants for subzones shall have the burden of proof of establishing that the activity does or would result in a significant public benefit. Applicants for approval of manufacturing in general-purpose zones shall submit evidence regarding the positive economic effects that would result from activity within the zone. Both types of applicants are expected to submit evidence in response to evidence of adverse economic effects during the public comment period.

(d) *Monitoring and post-approval reviews*—(1) Approved manufacturing activity remains subject to review under this section at any time.

(2) Reviews may be initiated by the Board, or they may be undertaken in response to requests from interested parties showing good cause.

(3) Upon review, if the Board finds that zone activity is no longer in the public interest, it may suspend subzone status or restrict the activity in question.

8. Section 400.33, as proposed January 26, 1990 (55 FR 2768), is further amended by revising paragraph (b) to read as follows:

§ 400.33 Restrictions on manufacturing activity.

(a) * * *

(b) *Restriction on items subject to antidumping and countervailing duty actions*—(1) *Board policy.* Zone procedures shall not be used to circumvent antidumping (AD) and countervailing duty (CVD) actions under 19 CFR parts 353 and 355.

(2) *Admission of items subject to AD/CVD actions.* Items subject to AD/CVD orders or items which would be subject to suspension of liquidation under AD/CVD procedures, if they entered U.S. Customs territory, shall be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR parts 353 and 355.

9. Section 400.51, as proposed January 26, 1990 (55 FR 2770), is revised to read as follows:

§ 400.51 Hearings.

(a) *In general.* The Board, the Secretary, or the Executive Secretary, as appropriate, may schedule and/or hold hearings during any proceedings or reviews conducted under this part whenever necessary or appropriate.

(b) *Requests for hearings*—(1) An interested party may request a hearing during a proceeding or review.

(2) The request must be made within 30 days of the beginning of the period for public comment (*see* § 400.27) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.

(3) A determination as to the need for the hearing will be made by the Assistant Secretary within 15 days after the receipt of such a request.

(c) *Procedure for public hearings.* The Board will publish notice in the **Federal Register** of the date, time and location of a hearing. All participants shall have the opportunity to make a presentation. Applicants and their witnesses shall ordinarily appear first. The presiding officer may adopt time limits for individual presentations.

Dated: October 9, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 90-27210 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-DS-M

federal register

Tuesday
November 20, 1990

Part VI

Department of Health and Human Services

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following request has been submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Expedited review by OMB has been requested as described below.

Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant Reporting Requirements—0930–0080—Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981, established the ADMS Block Grant funding mechanism and requires that the States make application for, and submit reports on the actual uses of, block grant funds. Previously no format was prescribed by the Department of Health and Human Services for these reporting requirements. However, the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988 (Pub. L. 100–690), as amended by the Drug Abuse Treatment Technical Corrections Act of 1989 (Pub. L. 101–93), extended and added new data collection requirements to be included in these reports. To respond to the higher degree of Federal and State accountability for the monies provided under the ADMS Block Grant being demanded by the Congress, additional information is needed from the application and annual report.

The ADMS Block Grant application is used by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) to provide a standardized approach for States to use in applying for their Block Grant monies. For FY 1991 States have the option to submit an application in the format similar to previous years, providing baseline information as required within the legislation. Beginning with the FY 1992 application, States will be required to utilize the more extensive format. The more detailed information will be used to inform the Congress, the Department, the Office of National Drug Control Policy, the public health community, and the general public of the impact of the block grant on the Nation's treatment and prevention delivery system, in fulfillment of the legislative purposes for which the funds are provided.

In addition, these reporting mechanisms will be used by ADAMHA to assess the need for technical assistance to the States in the development of a comprehensive, national services delivery system. Without the requested information, the Department will not be able to respond to requests for information on how the States intend to expend these monies, how the funds were expended, types of services provided, demographics of those served, and assessments of the adequacy and effectiveness of these programs and services in meeting the needs of national and State-level priority populations.

Respondents: State and local governments; *Number of Respondents:* 57; *Average Burden per Response:* Application—400 hours per response (comprised in FY 1991 or 200 hours for minimum information required and an additional 200 hours for full complement of tables; effective FY 1992, all information is mandatory); *Annual Report*—350 hours per response. *Estimated total annual burden:* 39,900 hours.

Additional Information: ADAMHA has responded to critical information requirements levied by Congress, the Department, the General Accounting Office, and the Office of National Drug Control Policy in developing a compatible format for State use in applying for Federal ADMS Block Grant monies. This information will be used to report on State activities to enhance the management and accountability of these important funds in the delivery of alcohol, drug abuse, and mental health services. Congress has recently appropriated significant new monies for these purposes, with particular emphasis on drug abuse treatment services, especially directed to pregnant women, intravenous drug abusers, and other populations at high risk for drug use (e.g., cocaine and crack).

To ensure these funds are directed and expended throughout the Nation and for these nationally targeted subgroups, ADAMHA is seeking new information sources to meet these reporting requirements. The guidelines and formats have been developed in conjunction with the States, which are awaiting this guidance in order to apply for the funds which must be obligated within the year they are made available. It is urgent that approval for these reporting requirements be granted on an expedited basis to provide adequate time for the submission, processing, and granting of awards for these funds. Further, information from these documents will be used to support the reauthorization of the Block Grant for congressional hearings due to be held in March 1991.

OMB approval has been requested by not later than Thursday, November 29. In keeping with the requirements for expedited review, we are publishing the complete set of application and annual report instructions.

OMB Desk Officer: Allison Herron.

Because of the time frame in which OMB has been asked to act on this submission, any comments and recommendations for the proposed information collection should be provided directly to the OMB Desk Officer designated above by telephone at (202) 395–7316 or by express mail at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: November 15, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

BILLING CODE 4160-20-M

Dear State ADMS Block Grant Liaison:

My purpose in writing is to invite you to apply for your State's fiscal year (FY) 1991 allotment under the Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant program, as amended by P.L. 101-374. The specific information requested and procedures to be followed are specified in this letter and its attachments.

The application invitation for the FY 1991 ADMS Block Grant differs significantly from past requests. This year you are permitted the option of submitting the application using a new, alternative format (Attachment A) or essentially the same suggested format as for the FY 1990 ADMS Block Grant (Attachment B). Enclosed are a set of forms to be used to provide the requested information (Attachment C). An updated copy of the statutory provisions governing the ADMS Block Grant, including the recent amendments, are also enclosed (Attachments D and E).

If you choose to apply or have already applied following the old format (Attachment B), that submission will be the basis for your award; nevertheless, you should complete the forms accompanying the new format to provide information necessary to support the reauthorization of the ADMS Block Grant in the spring of 1991. These include, as described above, the face page, the table of contents/checklist, the standardized format of assurances and agreements, and data on expenditures, needs, and services, This material should be provided no later than **January 18, 1990**.

If you choose to use the new format, I am requesting that you submit the application no later than **February 1, 1990**. This time frame will allow us sufficient time to conduct the necessary reviews and develop the analyses to aid in the justification of the program as the reauthorization process goes forward next year. Awards will be made using the same review procedures and criteria as in previous years. This review will enable ADAMHA to begin its program of increased State accountability and Federal technical assistance.

The changes reflected in the new application format were made in order to adequately assess and improve the prevention and treatment services provided by ADMS Block Grant funds in response to changes in the authorizing legislation, notably sections 1916(c)(20) and 1916(c)(21) of the Public Health Service (PHS) Act, and to generate information requested by the Congress in Section 509D of the PHS Act, and by the Office of National Drug Control Policy in the National Drug Control Strategy. This first year that the additional information is requested will also serve

Page 2

as a transition period, enabling us to respond to Congressional inquiries at the ADMS Block Grant reauthorization hearings expected to take place in early 1991.

The new format provides greater guidance for the completion of the application, standardizes the order for reporting the information required, provides forms for reporting data on expenditures, needs, and services, and contains instructions for completing and submitting a State Drug Abuse Treatment Plan. Analyses of the information submitted in the combined application and plan, when coupled with the data to be submitted in the statutorily required annual report and data available through such surveys as the National Drug and Alcohol Treatment Unit Survey and the Client Minimum Data Set, will enhance our ability to conduct forward planning for improved treatment services.

The new application format for the substance abuse portion now incorporates a number of the items that were to have been part of the Substance Abuse Services Plan, which the Office for Treatment Improvement and the State alcohol and drug agencies have been developing. This plan is now being requested as a part of the application because it was suggested by a number of States, and it will avoid some duplication of data requests.

The new application format requests that you provide the same information that was provided in earlier years on the intended use of funds for the community mental health services portion of the ADMS Block Grant. As in previous years, States will be expected to submit separately to the National Institute of Mental Health their State Comprehensive Mental Health Services Plan, required under Section 1925 of the Public Health Services Act.

As a result of the review of the draft Substance Abuse Services Plan and discussions with the National Association of State Alcohol and Drug Abuse Directors and the National Association of State Mental Health Program Directors, we recognize that not all the information requested is readily available in each State.

The review of the new application submissions will include an assessment of the need for technical assistance as we work together to develop a national service delivery system that stresses locally determined priorities and services and the need for more centralized data collection and analysis. Whenever your State does not have the information necessary to respond to a specific item within the time frames given for submitting the application, we ask that you describe the process that you do use in carrying out the activity or the alternative method of data collection used.

Page 3

There is now a table of contents/checklist that, when completed, will serve to indicate where a given form or narrative response is to be found in the completed application. The table of contents/checklist will be used by the reviewers to check the completeness of the application. Applications should be submitted in the order indicated in the instructions and table of contents to avoid errors in the review process. Completed applications must contain a description of the intended use of funds as required by the statute. The new format also includes a face page, where you are asked to identify contact persons for the mental health and substance abuse functional areas as well as for overall block grant administration. The new instructions also contain a standardized format of assurances and agreements required by the authorizing legislation to be signed by the Governor, as the Chief Executive Officer of the State or Territory, or by an appropriately authorized designee (Attachment B, Form-03).

Please submit the application directly to:

Mr. Thomas M. Reynolds
Division of Grants and Contract Management
ADAMHA
Parklawn Building, Room 13C-20
5600 Fishers Lane
Rockville, Maryland 20857

If you have any questions regarding this request, you may contact Gary Palsgrove or Herman I. Diesenhaus, at 301/443-3820, on any matters of a programmatic nature, and Thomas M. Reynolds, at 301/443-3334, on any matters of a fiscal or grants management nature. States anticipating a problem in completing the application or submitting it by the suggested due dates should immediately contact Dr. Diesenhaus. States that have already submitted or are developing an application using last year's suggested format should also contact Dr. Diesenhaus to discuss how they may include additional information.

Sincerely yours,

Frederick K. Goodwin, M.D.
Administrator

Enclosures

cc: State Mental Health Contact
State Substance Abuse Contact

ATTACHMENT A

NEW FORMAT

Guidelines for Completing Applications for the Alcohol and Drug Abuse and Mental Health Services Block Grant Program

Fiscal Year 1991

NOTIFICATION TO RESPONDENT OF ESTIMATED BURDEN

Public respondent burden for this collection of information is estimated to average 400 hours per application, including time for reviewing instructions and completing 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: Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, S.W., Washington, D.C., 20201, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

Prepared by: State Plans and Financing Branch
Division for State Assistance
Office for Treatment Improvement
Alcohol, Drug Abuse, and Mental Health Administration

October, 1990

Guidelines for Completing Applications for the Alcohol and Drug Abuse and Mental Health Services Block Grant Program - Fiscal Year 1991

Table of Contents

Page No.

Introduction..... 3
Background/Purpose..... 4
Preparation and Submission of the Application..... 6

Specific Instructions for Completing the Narrative and Forms..... 9

Section I. Face Page, Identifying Information, and Assurances..... 9

Section II. Description of Actual Use of Funds(FY1990)..... 12

Section III. Description of Intended Use of Funds(FY1991)..... 13
PART 1. Intended Allocation of ADMS Block Grant..... 14
PART 2. Intended Use of Alcohol and Drug Abuse Funds..... 14
A. Goals and objectives..... 17
B. Types of activities supported..... 20
C. Needs/demand assessment..... 33
D. Criteria and methods for distribution of allotments..... 41
E. Methodology used to purchase services and determine treatment capacity and quality..... 42
PART 3. Intended Use of Mental Health Funds..... 46
A. Goals and objectives..... 47
B. Types of activities supported..... 49
C. Needs/demand assessment..... 55
D. Criteria and methods for distribution of allotments..... 58
E. Methodology used to purchase services and determine treatment capacity and quality..... 58
Section IV. Appendices..... 61

List of Required and Optional Forms..... 63

Review of Applications..... 64
Review Process..... 64
Allotments and Awards..... 64
Administrative Review of Waiver Requests..... 65

Glossary of Key Terms..... 66

Instructions for the

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANT APPLICATION FOR FY 1991

INTRODUCTION

As part of its mission to assist States[1] and communities to improve services provided with Alcohol and Drug Abuse and Mental Health Services (ADMS) Block Grant Program funds, the Office for Treatment Improvement (OTI) is promoting increased State accountability for the management of these funds. This revised format for applying for the ADMS Block Grant funds is one of the mechanisms by which this increased accountability and services improvement will be achieved. Another mechanism already under way is the enhanced program of technical assistance through conferences and workshops, development of training materials and knowledge transfer manuals, and on-site consultation.

The new format for the ADMS Block Grant Application for Federal Fiscal Year (FY) 1991 differs from past application requests in that it provides greater guidance for the completion of the application and standardizes the format for reporting the information required. The FY 1991 ADMS Block Grant application requests the same basic information as that provided by the States in earlier years and uses standard formats wherever possible to gather data now collected by the States in a nonstandardized manner because of the history of the program. The revised format recognizes these differences and allows for variations in reporting the requested data. The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) and the States, working through the appropriate national associations, will consult on the standardized formats to be included in the FY 1992 Application following review of the information obtained through this initial effort.

The State is asked to provide detailed data on specific expenditures made from both the substance abuse and mental health portions of the ADMS Block Grant and State and local government funds to implement some of the requirements and certifications contained in the authorizing statute and related legislation in the manner that is required for providing the same information in the annual report. The State is not asked to describe its plan for carrying out all of the requirements to which it certifies (e.g., the requirement in Section 1916(c)(12) to protect the confidentiality of patient records). Compliance with these assurances and requirements will continue to be assessed through the on-site reviews. There is, however, an increase in the reporting requirements for the substance abuse portion of the block grant. There is no substantive change in the reporting requirements for the mental health portion.

[1] The term State will be used to refer to all the States and Territories that are eligible to receive ADMS Block Grant funds. Refer to the Glossary of Terms for the list of eligible States and Territories.

BACKGROUND/PURPOSE

As noted above, the FY 1991 ADMS Block Grant application requests that the States provide much of the same information as that provided in earlier years, using standard formats wherever possible. The application has been reformatted and reordered to provide for consistent presentation. These revisions will ensure more rapid comprehensive review, as well as improve the retrieval of information for forward planning, budgeting, reporting, monitoring, and technical assistance purposes. These changes were deemed necessary because of Congressional and Administration concerns regarding the quantity and quality of services being delivered with ADMS Block Grant funds.[2]

In this initial revised application, we are most concerned with obtaining improved information on how the State plans to expend funds for alcohol and drug abuse activities that meet the statutory requirements of the ADMS Block Grant Program and how it will conduct its oversight of these activities. Discussions have been initiated to ensure that the application requests only data that cannot be obtained through other existing data sources. The State Comprehensive Mental Health Services Plans, required under Sections 1925 and 1926 of the PHS Act, provide similar information regarding community mental health services funded through the block grant. These plans will continue to be submitted to the National Institute of Mental Health under guidelines, submission dates, and review processes determined by the Institute. The application changes for the mental health portion of the ADMS Block Grant primarily involve standardization of the format for describing the intended use of funds and the activities to be undertaken to meet statutory requirements (e.g., the children's services set-aside). Discussions have been initiated to determine what additional linkages are needed between the application and the mental health services plan and existing national data collection efforts. These issues will be addressed in the FY 1992 Application, after consultation with the State Mental Health Authorities by OTI and NIMH.

The increase in the reporting requirements for the substance abuse portion was deemed necessary in order to adequately assess and improve the services provided with ADMS Block Grant funds in response to changes in the authorizing statute, notably Sections 1916(c) (20) and (21), as well as to the spelling out by Congress of information desired about specific need indicators and treatment characteristics in Section 509D of the Public Health Service (PHS) Act.[3] Analysis of the information submitted in the application, when coupled with information from the legislatively required annual report and information available through other sources, will enhance the planning and resource allocation activities of ADAMHA and the States. The analyses will allow the Administration and Congress to assess the impact of ADMS Block Grant funds on

[2] The most recent expression of these concerns can be found in the Congressional Record for October 5, 1990 containing the House discussion of an amendment (Title XXII-Effective Rehabilitation) to H.R. 5269, Comprehensive Crime Control Act of 1990 (pp. H 9039-H 9042).

[3] The statutory authorities for the Alcohol and Drug Abuse and Mental Health Services Block Grant Program are contained in Part B of Title XIX, Sections 1911 through 1921, of the Public Health Service Act (42 U.S.C. 300x). The statutory authority for this application is Section 1916.

the delivery of substance abuse services in accord with the intent of the authorizing legislation as stated in Section 1915 (a)(1) of the PHS Act: ***planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs and activities to deal with alcohol and drug abuse.***

We recognize that not all the information requested is readily available in each State. We view this first effort to obtain the added information as a needs assessment that will enable OTI and the rest of ADAMHA to learn which States will require additional technical assistance in improving their data collection and analysis, quality assurance and evaluation, management, and planning capabilities as we work together to develop a national services system that recognizes the need for locally derived priorities and services and centralized data collection and analysis. That is why we ask that you do not attempt to provide an estimate when your State does not have reliable data to permit a response to a specific item within the time frames given for submitting the application. Rather, we ask that you describe the process that you do use in carrying out the activity or the alternative method of data collection used or to indicate what the problem is in obtaining the necessary data. We also ask you to describe the type of assistance you would desire in order to be able to provide the specific data in future years.

Experience with the expanded application during the first year will be used to initiate technical assistance activities that are focused on resolving ADMS Block Grant management infrastructure problems identified by the States and to develop a revised application process and format for future submissions.

We believe that this enhanced application format and complementary data collection efforts will not only help States strengthen their management and evaluation of ADMS Block Grant activities and their planning and resource allocation activities, but also will enable ADAMHA/OTI to report accurately to the Congress on the services made possible through expenditure of these funds.

PREPARATION AND SUBMISSION OF THE APPLICATION

Completed applications should be submitted to the Alcohol, Drug Abuse and Mental Health Administration no later than February 1, 1990. Submit an original signed copy of the application and 2 copies to:

Thomas M. Reynolds
Grants Management Officer
Division of Grants and Contracts Management
Alcohol, Drug Abuse, and Mental Health Administration
Room 13C-20
5600 Fishers Lane
Rockville, MD 20857

Forwarding the application to any other addressee results in processing delays.

Please respond to all items in the application form. ***Remember, wherever your State does not have reliable data to use in responding to a specific item within the time frames given for submitting the application, do not attempt to answer. Rather, we ask that you describe the process that you do use in carrying out the activity or the alternative method of data collection used if your State does not have the specific information requested or to indicate what the problem is in obtaining the necessary data and to describe the type of assistance you would desire in order to be able to provide a response in future years.***

The application format contains four sections. The first section requests information about the applicant agency and persons who will serve as contacts for specific questions about the implementation of the overall ADMS Block Grant and its substance abuse and mental health portions; it also contains the certifications that must be signed by the Chief Executive Officer of the State or Territory that is the recipient of the grant. There is a table of contents that also serves as a checklist to aid the applicant and reviewers in determining the completeness of the application.

The second section requests a description of the State's actual use of its FY 1990 ADMS Block Grant funds for both the mental health and substance abuse portions.

The third section requests a description of the State's intended use of its FY 1991 ADMS Block Grant funds. Part 1 of this section requests information on the State's intention to transfer funds among the mental health and substance abuse portions. Part 2 requests a description of the State's intended use of funds to be expended for substance abuse; this part incorporates elements of the Substance Abuse Services Plan, specifically dealing with the operational aspects of State planning and program management for the delivery of substance abuse services, including prevention and treatment services to targeted critical populations. Part 3 of this section requests a description of the State's intended use of the funds under the mental health portion of the grant. New forms are introduced to standardize the presentation of information previously submitted.

The fourth section is reserved for attachments, including four required appendices: group homes for recovering substance abusers, substance abuse prevention and early intervention, substance abuse services for women, substance abuse services for intravenous drug users and two optional appendices: substance abuse services for other critical populations and mental health services to other special populations. Numerous attachments should not be necessary, but if you wish to present additional material, each should be clearly marked with identifying information (i.e., the section of the application and the page number referenced) and paginated as a separate appendix (e.g., A-1, B-2).

The application must follow the standard format provided. The organization of the completed application must follow the order in the Table of Contents, which also serves as the checklist used by reviewers who are determining compliance with the statutorily required elements. Pages for the program narrative sections and additional copies of the forms required must be added in the order presented and the structure of the application should not be changed. Please keep your descriptions and responses brief, within the page limits indicated for narrative sections. Number the pages consecutively throughout the application at the center of the bottom of the page. Enter the page number for the beginning of a narrative section or a set of forms at the appropriate place in the Table of Contents. Please do not permanently bind the application. **As in earlier years, States whose applications do not contain the required information will be asked to submit additional documentation.**

Inquiries about programmatic issues that may arise in completing the application can be addressed to Gary Palsgrove, Senior Advisor for ADAMHA Block Grant Programs, or Herman I. Diesenhaus, Senior Advisor for State Plans Division for State Assistance, OTI, at 301/443-3820. Inquiries about fiscal or grants management issues can be directed to Thomas M. Reynolds, Grants Management Officer, Block Grant Programs, ADAMHA, at 301/443-3334.

Since this is the first year that this expanded, standardized application format is being used, we are interested in learning from the States which questions could be improved. We would also like suggestions that would make the application easier to complete. We would like to know whether responding to the questions in the application requires information which significantly exceeds your State's present capabilities. We would welcome any comments and recommendations that you may have for improving the application form and the instructions; any comments should be provided in a separate letter sent to:

Herman I. Diesenhaus, Ph.D.
Senior Advisor for State Plans
ADAMHA/OTI
Rockwall II Building -10th Floor
5600 Fisher Lane
Rockville, MD 20857

We are relying on the cooperation of State agencies to support this effort by describing their planning and management activities and programs in response to the questions in the instructions and in the forms as best they can in this first year. As noted above, when data is not available, explain the reasons for its unavailability (e.g., data not presently being collected in the form requested, staffing limitations, competing priorities such as preparation of State budget or legislatively required reports). Our mutual experience in completing and reviewing the expanded application during the first year will be used to initiate technical assistance activities that are focused on resolving any ADMS Block Grant management infrastructure problems identified by the States in the application and to develop a revised application process and format for future submissions.

Again, the original and two (2) copies of your State's completed application should be submitted to ADAMHA no later than February 1, 1990. If for any reason you anticipate not being able to meet this scheduled submission date, or if you have difficulties in providing the data requested, please contact Dr. Diesenhaus at 301/443-3820.

UNCLASSIFIED

Specific Instructions for Completing the Program Narrative and Forms

SECTION I
Identifying Information and Assurances

A. **Face Page and Identifying Information (ADMS Form 01).** A form is provided for submitting information heretofore derived from the cover letter and other parts of the application. We are requesting that you clearly identify the individuals responsible for the overall grant administration as well as for the substance abuse and mental health portions so that communications can be directed appropriately.

> **NOTE:** In the future, as has been requested by the States, notifications of required actions, deficiencies, etc. will be made as appropriate to both the person responsible for overall administration and the person responsible for the affected functional area.

The name of the State should be entered at the top of the page in the space provided.

1. **Name and Address of the State Agency Grantee.** List the responsible State agency as designated by the Governor. Provide the name and address of the agency and identify the organization unit that is designated as the component to receive the grant. For example, if the Division of Alcohol, Drug Abuse, and Mental Health Services is responsible for the grant but the funds flow through the Department of Health and Human Resources, the Department should be named as grantee, not the Division. Record this information on the Face Page, which is to be the first page of the application form and is so designated.

2. **Name and Address of the State Contact Person.** List a single individual who has overview responsibility for the total grant, including both the mental health and substance abuse portions, and how he/she can be contacted.

3. **Name and Address of the State Contact Person for the Substance Abuse Portion.** List a single individual who has overview responsibility for the substance abuse portion of the block grant and how he/she can be contacted.

4. **Name and Address of the State Contact Person for the Mental Health Portion.** List a single individual who has overview responsibility for the mental health portion of the block grant and how he/she can be contacted.

5. **State Expenditure Period.** Fill in the dates of the period during which the FY 1991 ADMS Block Grant funds will be expended. In most cases, this will be the State's fiscal year. The State and Regional Spending Plans, discussed below, request that information be provided on

expenditures of ADMS Block Grant, other available Federal grants, and State and local funds anticipated to be made during this coming State Expenditure Period as well as the last State Expenditure Period.

6. Date of Submission. Enter the date on which the application is submitted to ADAMHA. Check whether this is the Original submission or a Revision.

7. Name and Address of the State Contact Person Responsible for Completing the Application. List a single individual who had overview responsibility for completing the block grant application and how he/she can be contacted.

NOTE: Any change in the State Agency Grantee or a State Contact Person should be communicated immediately in writing through an original letter signed by an appropriate official (governor in the case of an agency change) to Thomas Reynolds, ADAMHA Division of Grants and Contracts Management at the address above (see page 6), with a copy sent to the OTI Division for State Assistance.

B. Table of Contents/Review Checklist (ADMS Form 02). A table of contents is provided in the application forms (see Attachment B-2). The Table of Contents will also serve as the Fiscal Year 1991 ADMS Block Grant Application Review Checklist. The organization of the completed application must follow the order in the Table of Contents. Pages for the program narrative sections and additional copies of the forms required must be added in the order presented and the structure of the application must not be changed. The page limits indicated for narrative sections must be followed.

1. The name of the State should be entered at the top of the page in the space provided.

2. Enter the page number of the start of a narrative section or a form or the beginning of a set of forms at the appropriate heading in the Table of Contents.

3. Number the pages consecutively throughout the application at the bottom of the page in the center.

NOTE: The application will be initially reviewed to determine whether each item required by the authorizing statute is contained in the application. The table of contents/checklist will enable you, as the applicant, and the reviewers to ascertain whether each requirement has been included and where in the application it will be found. Omission of some items may render an application incomplete and therefore unfundable. Explain the reasons for any omissions at that place in the application where the narrative or data requested was to have appeared. The person identified as the State Contact for Completion of the Application will be initially contacted to obtain the missing data or an explanation. The State

will be formally notified in writing of any deficiencies through an original letter addressed to the individual identified on the Face Page as the State Contact for the Grantee Agency with copies to those persons identified as the official State Contacts for the Mental Health and Substance Abuse functions.

C. Assurances. As requested by the States, standard forms are provided for the assurances required by the authorizing statute and PHS regulations.

1. Chief Executive Officer's (CEO's) Assurances (ADMS Form 03). The law requires that the CEO of the State or Territory personally sign many of the assurances required by statute. A form is included containing the assurances that must be signed by the CEO of the State or Territory or by an authorized designee. If the assurances form is signed by a designee, a copy of the designation must accompany the assurances form.

2. U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements. Grantees of the Office for Treatment Improvement are required to certify their compliance with certain Federal requirements regarding maintenance of a drug-free workplace. The form is self-explanatory. It need not be submitted if a Statewide or agency-wide assurance has already been submitted under governing regulations.

3. Certificates Regarding Lobbying and Disclosures. Complete and return with the application the form regarding lobbying and, if applicable, the disclosure forms. This certification must be signed and returned before any Federal grant or cooperative agreement exceeding $100,000 may be awarded. The forms are self-explanatory.

SECTION II

Description of Actual Use of Funds as Required By Section 1916(d) of the PHS Act in Accordance with Section 1742(a) of the Omnibus Reconciliation Act of 1981.

Section 1742(a) of the Omnibus Budget Reconciliation Act of 1981, requires that the State provide a description of how it has met the goals, objectives, and needs in the use of funds for the previous fiscal year (in this case, the previous year being FY 1990) as described in that previous year's application, and/or any subsequent revision of the original application.

This description should include information on the programs and activities supported and the services provided. The description of the actual use of funds should be completed in two parts. The first part should describe the actual use of the alcohol and drug abuse funds (the substance abuse portion), and the second part should similarly describe the actual use of mental health funds.

The description of the actual use of funds should address the requirements contained in the authorizing statute and listed below.

A. Goals and objectives carried out
B. Types of activities supported
C. Geographic planning areas served
D. Characteristics of individuals served
E. Criteria and methods for the distribution of allotments
F. Methodology used by State to purchase services and determine treatment capacity and quality.

As you have done in previous years, provide a brief narrative that spells out the actions taken to meet each of the requirements in accord with the goals and objectives spelled out in your FY 1990 application. A more detailed description of these actions and the activities funded is required in the Annual Report generally due no later than 6 months following completion of the last State Program Year. ***Limit your discussion to 5 pages.***

SECTION III

Description of Intended Use of Funds as Required By Section 1916(d) of the PHS Act in Accordance with Section 1742(a) of the Omnibus Reconciliation Act of 1981.

Background/Purpose

Section 1916(d) of the authorizing statute requires that the State submit a description of its intended use of the ADMS Block Grant funds. This description is to include information on the programs and activities to be supported and the services to be provided. The description of the intended use of funds should be completed in three parts. The first part should describe the State's use of its mental health and substance abuse allotments. The second part should describe the specific intended use of alcohol and drug abuse funds (the substance abuse portion), and the third part should similarly describe the specific intended use of mental health funds. The description of the intended use of funds should address the requirements listed below which are contained in the authorizing statute.

A. Goals and objectives of activities to be carried out
B. Types of activities to be supported
C. Needs/Demand Assessment: Geographic planning areas to be served and the characteristics of individuals to be served
D. Criteria and methods for the distribution of allotments
E. Methodology used by State to purchase services and determine treatment capacity and quality.

Greater detail and specification is required for the section on the intended use of alcohol and drug abuse funds than in the section on the intended use of mental health funds because of the separate submission required for the Comprehensive Mental Health Services Plan required by Sections 1925 and 1926 of the Public Health Service Act.

Wherever possible, forms are provided to simplify and standardize the reporting process for both the substance abuse and mental health portions. Selected key terms are defined in a glossary contained in the last section of these instructions.

Note again that we are relying on the cooperation of State agencies to support this effort by describing their planning and management activities and programs in response to the questions in the instructions and in the forms as best they can in this transitional year. When data is not available, explain the reasons for its unavailability, and describe the process that you use in carrying out the activity or the alternative method of data collection used.

SECTION III
PART 1

Intended Allocation of ADMS Block Grant

Section 1916(c)(6)(B) of the PHS Act allows the State to transfer up to 10 percent of its allotment for substance abuse activities to mental health activities or 10 percent of its allotment for mental health activities to substance abuse activities. In the narrative, indicate whether your State has made such a transfer for Federal Fiscal Year 1990 ADMS Block Grant funds or plans to make such a transfer for Federal Fiscal Year 1991 ADMS Block Grant funds. If yes, please indicate the amount of the funds that were and/or will be transferred and describe the nature of the transfer (mental health to substance abuse, or vice versa) and the reasons for the transfer. ***Limit your discussion to 1 page.***

SECTION III
PART 2

Intended Use of Alcohol and Drug Abuse Block Grant Funds

BACKGROUND/PURPOSE

As noted above, the FY 1991 ADMS Block Grant application requests that the States provide much of the same information as that provided in earlier years, using standard formats wherever possible. The application has been reformatted and reordered to provide for consistent presentation. These revisions will ensure more rapid comprehensive review, as well as improve the retrieval of information for budgeting, reporting, technical assistance, and monitoring purposes. In this revised application, we are most concerned with obtaining improved information on how the State plans to expend funds for alcohol and drug abuse activities that meet the statutory requirements of the ADMS Block Grant Program and how it will conduct its oversight of these activities.

The revised application incorporates elements from the recently developed guide for a voluntary State Substance Abuse Services Plan and from the various legislative proposals for a State Drug Abuse Treatment Plan. The voluntary State Substance Abuse Services Plan, developed in consultation with the National Association of State Alcohol and Drug Abuse Directors (NASADAD) over the last year, is now being requested as part of the annual ADMS Block Grant application by the Department of Health and Human Services in part to satisfy the requirement found at Section 1916(c)(21) of the PHS Act. It has been determined that there is statutory authority under Section 1916(a) of the Public Health Service Act to require that a State Drug Abuse Treatment Plan be part of the annual application.

During the pilot test and State agency review of the planning guide, a number of States had suggested that the two information requests, the application and the plan, be combined because of overlap among key items. The application includes requests for only some of the information included in the plan; other information will now be obtained through the on-site compliance reviews and a revised annual report. The revised application incorporates most of the elements of the Substance Abuse Services Plan and links them to statutory requirements. Several items were dropped because of State concerns (e.g, the questions regarding individual licensure and certification actions) and others added because of statutory requirements (e.g. independent peer review, inventory of individual programs, activities, and projects receiving ADMS Block Grant funds).

This first year that the additional information is requested will serve as a transition, and will enable us to respond to Congressional inquiries at the ADMS Block Grant reauthorization hearings expected to take place in early 1991. The revised application should also be seen as part of the comprehensive State Systems Development Program that we are now initiating. The linkage among data bases, applications, reports, and organizational development reviews can serve a number of purposes. There are three major goals for this program:

I. to strengthen the planning, evaluation, and management capability of the individual State alcohol and drug agencies;

II. to assure a high level of State accountability for the management of ADMS Block Grant funds, with special emphasis on drug abuse treatment; and

III. to help build a Federal-State partnership that can lead to further improvements in substance abuse services and systems, while maintaining appropriate latitude within the States for management policies and procedures.

We believe that ADAMHA/OTI and the State alcohol and drug agencies working together as partners can achieve these goals through five major activities:

1. collecting and sharing information on the infrastructure that exists in the State agencies responsible for administering the ADMS Block Grant with special emphasis on the key administrative functions of planning and coordination, training, quality assurance, program development, research and evaluation, and overall administration;

2. gathering uniform data on the incidence and prevalence of alcohol and drug problems, on treatment capacity, and on funding practices within the States and their subdivisions;

3. identifying barriers to providing quality services to all those in need, with special emphasis on targeted critical populations;

4. identifying State agency and local provider technical assistance needs; and

5. using a variety of knowledge transfer activities to disseminate model standards and guidelines for use by States in administering ADMS Block Grant funds, after gathering information about guidelines and standards used by the various States and other oversight bodies and refining them through consensus development activities.

As a result of the pilot test and review process, we recognize that not all the information requested is readily available in each State. We view this first effort to obtain the added information as a needs assessment that will enable OTI and the rest of ADAMHA to learn which States will require additional technical assistance in improving their management, data collection and analysis, quality assurance and evaluation, and planning capabilities as we work together to develop a national substance abuse services system that recognizes the need for locally derived priorities and services and centralized data collection and analysis. ***Wherever your State does not have reliable data to permit a response to a specific item within the time frames given for submitting the application, do not attempt to answer but indicate what the problem is in obtaining the necessary data and describe the type of assistance you would desire in order to be able to provide a valid response in future years.***

The needed information about alcohol and drug abuse programs and activities will be gathered through a variety of complementary mechanisms, of which the ADMS Block Grant Application is only one. We are trying to increase the information available without increasing the response burden unduly, so that existing data bases will be linked (e.g., NDATUS, SADAP, Annual Report, Minimum Data Set) and duplicative data gathering can be avoided, whenever possible. Other changes are being made in these data collection efforts to increase their compatibility and utility for managing the ADMS Block Grant. We believe that this enhanced application format and complementary data collection efforts will not only help States strengthen their management and evaluation of ADMS Block Grant activities and their planning and resource allocation activities, but also will enable ADAMHA/OTI to report accurately to the Congress on the improvements in substance abuse services made possible through expenditure of these funds.

A. Goals and Objectives of Alcohol and Drug Abuse Activities.

1. Goals and Objectives. In addition to the goals and objectives that the State has developed for the expenditure of ADMS Block Grant funds, the authorizing statute sets out national goals in its requirements and establishment of set-asides that should be addressed in this section. The State should describe the programs and activities that it will support with block grant and other funds to achieve each of these national goals. The State should also include a description of any State or local goals and objectives that are unique or differ from the national goals.

The overall goal for the expenditure of the substance abuse portion of the ADMS Block Grant, as stated in Section 1915 (a)(1) of the PHS Act, is: *planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs and activities to deal with alcohol and drug abuse.* The broad national goals that funds from the alcohol and drug abuse portion of the block grant should address are:

A. identify those populations, areas, and localities in the State with greatest need for alcohol abuse and alcoholism, and drug abuse services and to target programs, services, and resources accordingly, with public input into the proposed use and distribution of block grant alcohol and drug abuse funds.

B. discourage the abuse of alcohol and drugs by providing funding for prevention and early intervention programs;

C. assess and improve the quality and appropriateness of treatment and prevention services delivered by providers that receive funds from the Alcohol and Drug Abuse component of the block grant.

D. provide treatment for persons using drugs intravenously, with priority for funding given to programs that treat individuals infected with the etiologic agent for acquired immune deficiency syndrome;

E. improve alcohol and drug abuse programs and services designed for women, especially pregnant women and women with dependent children;

F. continue to provide for and encourage the development of group homes for recovering substance abusers, through the operation of a revolving loan fund.

Provide a brief narrative that spells out the specific objectives and action steps designed to meet each of these goals (*using no more than 1 page per goal*). The narrative should describe the programs and activities directed at each of the above goals and objectives. Goals, objectives, and action steps should be clearly and succinctly stated. Where additional information pertaining to a specific goal (e.g., Goal *E: services for women*) is requested

and therefore discussed elsewhere in the application (i.e., Section II, Part 2, C.2.b. of the application), cross reference the appropriate pages in your completed narrative.

Goals are general statements of desired ends, and objectives are more specific subelements undertaken to reach a goal. Remember, that in the annual report, the State will be required to address its progress toward meeting each goal and whether or not it accomplished each objective; therefore, each objective should be realistic and measurable. Identify and number each objective.

Your discussion of Goal *F: support for group homes* should address how the State has initiated and will continue to implement the requirements spelled out in Section 1916A, Group Homes for Recovering Substance Abusers, to set up a revolving fund to make loans for the costs of establishing programs for the provision of housing for groups of not less than 4 recovering individuals. Please describe the source of funds (ADMS Block Grant, State funds, etc.), identify the non-profit entity selected to manage the fund, summarize any written agreement between the State and the non-profit entity, and describe your plan to monitor operation of the fund in the coming Expenditure Period.

In a separate attachment, Appendix A, list those entities that have received loan funds under this program, describe each project briefly, and describe how the project fits into your overall plan to provide supportive, transitional housing for substance abusers who require such assistance during recovery.

2. **Planning and Public Input.** Section 1916(c)(19) of the PHS Act requires that funding for substance abuse services will be targeted to communities with the highest prevalence of substance abuse or the greatest need for substance abuse treatment services, and Section 1916(b) of the PHS Act requires the State to hold public hearings on the intended use and distribution of funds for each fiscal year. Describe briefly how planning to meet these needs is carried out in your State and the process the State uses to obtain public and legislative participation in the development and review of the plan and the ADMS Block Grant application. Describe the composition and role in the planning process, if any, of State, regional, and local advisory council(s). ***Limit the discussion to 2 pages.***

3. **Service Coordination.** Briefly respond to the following questions (***using no more than 1 page per question***) and complete the **Services Coordination Matrix.**

a. **Coordination Mechanisms.** What mechanisms does the State use to facilitate State-level and local interagency planning, service coordination, case management, and appropriate referral among local substance abuse prevention and treatment service providers with other services (e.g., social, health, correctional, vocational, and other services) to ensure that patients receive comprehensive services? We are particularly interested in coordination among the State agencies and local programs that receive funding through the various Federal block grant mechanisms that address the problems

of substance abuse (e.g., Preventive and Health Services, Social Services, Criminal Justice, Juvenile Justice and Delinquency Prevention, Drug-free Schools and Communities, Vocational Rehabilitation, Headstart, Maternal and Child Health Services, Child Abuse and Neglect, Medicaid).

b. **Referral to Appropriate Treatment.** What efforts is the State making to improve the referral of substance abusers to facilities that offer the most appropriate, cost-effective, and high quality treatment modalities?

c. **Barriers to Coordination.** Has the State alcohol and drug abuse agency identified and prioritized any significant factors (e. g., statutes, financing policies, administrative practices, etc.) that preclude or inhibit the effective coordination of State-level or local substance abuse prevention and treatment programs with other similar or related programs (e.g., criminal justice, vocational rehabilitation, health, mental health, social services, housing, and education programs)?

d. Complete the **Services Coordination Matrix** (ADMS Form 04) identifying which mechanisms the State alcohol and drug abuse agency uses in working with other agencies involved in substance abuse services to enhance State-level interagency planning and program implementation activities, legislation and policy development, service coordination, and activities involving joint financial participation. For each agency, place a mark (X) in the column for the mechanism which you use. Since States vary in the organization and names of Departments and agencies, you may wish to redo the matrix to tailor the listing of agencies to your structure and responsibilities (e.g., in some States, institutional corrections and parole are in a different agency than community corrections and probation; in some States, the Medicaid program is administered in the Public Health agency while in other States, it is part of the Social Services agency; in some States, the Department of Education is involved in administering Headstart programs while in other States there is a statewide coordinating association of community-based providers).

e. **Agency Relationships.** Immediately following the completed matrix, provide a brief description of the relationship with each agency and discuss whether it involves activities such as interagency planning, program implementation, legislation and policy development, local agency service coordination, and joint participation in funding specific programs (***using no more than 1/4 page per agency***).

B. Types of Activities to be Supported and State Spending Plan.

1. Substate Planning. Section 1916(c)(19) of the PHS Act requires that funding for substance abuse services be targeted to communities with the highest prevalence of substance abuse or the greatest need for substance abuse treatment services. Given this requirement, we ask that you briefly describe the method used in your State to carry out substate planning and to establish priorities for funding in order to meet the requirement that the State determine which communities (substate planning areas) have the highest prevalence of substance abuse and the greatest need for treatment services, laying out the information used to help make these decisions and how it is gathered. *Limit the description to 2 pages.*

> **NOTE:** *We recognize that substate planning areas (or regions) are defined differently from State to State. Substate planning regions may be counties, regions, catchment areas, health services districts, etc. For purposes of this application, use the subareas that are defined and used for your own planning and budgeting purposes; these areas are called "regions" on the forms to provide a common label for the different geopolitical units that States plan for.*

2. State and Substate Expenditures. We are asking you to provide the most current data available on the block grant expenditures that will be made during the project period to support the activities targeted at achieving the above goals and objectives. We are asking that you complete the State Spending Plan (ADMS Form 05) included in the application for the State as a whole and a Regional Spending Plan (ADMS Form 06) for each of the substate planning areas that are customarily used for planning and budgeting. We ask you to complete a Regional Activity Inventory (ADMS Form 07), for projects that provide services only within a single substate planning area (region), and a Statewide Project Inventory (ADMS Form 08), for projects or providers that are to serve the State as a whole.

a. Using the State Spending Plan (ADMS Form 05) and Regional Spending Plan (ADMS Form 06) forms provided in the application, provide expenditure data on programs and activities for both the last State Expenditure Period and the coming State Expenditure Period.

> **NOTE:** These forms request information on ADMS Block Grant and associated Federal, State, and local expenditures for the types of activities identified in the first column. In completing the forms, we would have preferred that you address all alcohol and drug funds appropriated by the State legislature, as well as the ADMS Block Grant and other Federal grants and local and other funds, whether or not these funds are administered by the State alcohol and drug abuse agency. However, we realize, as a number of States indicated in their comments on the draft Substance Abuse Services Plan and the new application format, that in most States the agency that administers the Substance Abuse portion of the ADMS Block Grant does not have the legislative authority and responsibility to collect this data, which cannot be easily gathered, and that in some States the data is not available at all. Therefore we have agreed to limit the information requested on the State Spending

Plan (ADMS Form 05) to the State agency that does administer the substance abuse portion of the block grant. If possible, in the narrative following the forms, list the other agencies that provide funding for substance abuse prevention and treatment services, either with State funds or Federal funds. For State and other Federal funds not administered by the State alcohol and drug abuse agency (such as funds going directly to a Department of Corrections for treatment of incarcerated drug abusers or the block grant established by the Drug-Free Schools and Communities Act of 1986 and the Community Youth Assistance Program administered by OSAP), indicate which agency administers the funds and whether their planning and allocation processes are coordinated with those of the State alcohol and drug agency in the narrative immediately following the form.

If possible, for those States that do have data available on all the activities, we would ask you to also complete a second set of forms that include expenditures for the other agencies that provide funding for substance abuse prevention and treatment services, either with State funds or Federal funds. Place these forms in an additional, separate appendix appropriately titled and paginated.

You are to enter the total amount of dollars expended for each of the activities listed under each major funding source.

NOTE: Enter the amount of the expenditures in thousands of dollars in the appropriate cell; enter a zero [0] if there are no expenditures; and enter N/A if the data are not available.

The first set of columns should report the expenditures of programs and activities funded during the last Expenditure Period. Report only the amounts actually expended. Expenditures for the last completed State Expenditure Period should be the actual expenditures made during the period. Enter the dates of the last completed State Expenditure Period in the space provided at the top of the form.

The second set of columns should report the expenditures of programs and activities planned for the coming Expenditure Period. The projected expenditures and revenues required to carry out the action plans described in the Goals and Objectives section of your FY 1991 ADMS Block Grant application should be reported here. Report either the amounts actually obligated, if your State budgeting process has progressed that far, and/or the amounts projected in your budgeting process. Whenever possible, report obligations. Enter the dates of the coming Expenditure Period in the space provided at the top of the form; be sure that they are consistent with the dates entered on the Face Page (ADMS Form 01).

NOTE: The figures for the coming State Expenditure Period will need to be the projections that you have used to establish obligations in your State budgeting process. If the actual amounts cannot be calculated by the time of submission then the best available estimate should be submitted. Indicate the nature of the method used to generate the data (i.e., whether coming

Expenditure Period estimates are based on obligations, allocations, current estimates, or a combination) in a clearly marked footnote that immediately follows the form. All footnotes should be clearly marked and follow the **State** and **Regional Spending Plan** forms in the narrative.

The columns represent major funding sources:

The **ADMS Funds** column should be used to report only the amount of ADMS Block Grant funds. Place an asterisk [*] in column 1 to indicate whether ADMS Block Grant funds from more than one award are used to fund any one activity because of the overlap between the Federal Fiscal Year (FFY) and the State Expenditure Period. Enter the total amount of all ADMS funds during the State Expenditure period in the appropriate column for the Federal Fiscal Year in which they were awarded to the State.

For the last State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could have been made from both the **FFY 1989** and **FFY 1990** awards. A column is provided to report the expenditures for each year.

For the coming State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could be made from both the **FFY 1990** and **FFY 1991** awards. A column is provided to report the anticipated expenditures for each year.

For States whose Fiscal Year coincides with the Federal Fiscal Year, enter the expenditure in the appropriate column (i.e., **FFY 1990** for the last and **FFY 1991** for the coming State Expenditure Period.

NOTE: OTI will generate the total amount of all ADMS Funds expended during each State Expenditure Period, regardless of the Federal Fiscal Year in which they were awarded. Section 1917(b)(1) requires States to maintain fiscal records that track the expenditures from each year's award. **Any State that has difficulty in providing this information by Federal Fiscal Year should so indicate in a footnote immediately following the form and place all the entries in the FY 1990 column for the last State Expenditure Period and in the FY 1991 column for the last State Expenditure Period.**

The **Medicaid** columns should be used to report all funds received from Medicaid, including the Federal and State shares.

The **Federal Medicaid** column should be used to report the total amount of the Federal share of benefits provided under Federal regulations.

The **State Medicaid column** should be used to report the total amount of State and local government matching (when appropriate) share of benefits provided under Federal regulations and the amount of State funds (and local government match when

appropriate) provided under a supplementary State program. [4]

The **Other Federal Funds** column should be used for reporting all other Federal funds (including ADAMHA program support funds, demonstration grants/contracts, Medicare, other public welfare funds such as food stamps, other public third party funds such as CHAMPUS, the Social Services Block Grant [Title XX], the Maternal and Child Health Block Grant, etc.) in each category. Examples of demonstration grants would be the OTI Waiting List Reduction grants and the Office for Substance Abuse Prevention grants for Services to High Risk Youth; OTI will provide the States with a list of grants, if needed.

NOTE: We have agreed to limit the information requested on the **State Spending Plan** (ADMS Form 05) to the State agency that administers the substance abuse portion of the block grant. Therefore, do not include other Federal grants that are not administered by the State alcohol and drug abuse agency. However, if you are able to provide this information, we would encourage you to do so since we will than be able to identify general trends and determine whether there are to be substantial decreases or increases in services available due to the completion or initiation of demonstration project grants (e.g., OTI Waiting List Reduction grants, OSAP High-Risk Youth demonstrations, NIDA HIV-AIDS outreach grants). Similarly, any changes in State requirements on the availability of Medicaid funds, whether they are increases or restrictions, should be identified, as should any changes in State or local government appropriations. This information will be helpful in assessing the impact of such increases and decreases on the overall system and in refining plans for future financing of the expansion and improvement of the system. Discuss briefly any such changes and any anticipated problems in the narrative immediately following the **State Spending Plan form.** ***Limit the description to 1 page.***

We have learned that in some States, a portion of these funds may be administered by the State alcohol and drug abuse agency (e.g., the portion of the Drug-Free Schools and Communities Block Grant to be allocated to local agency(s) by the Governor but not that portion designated for local school districts) and would thus be reported. Additionally, some subarea umbrella agencies and local providers may receive funds from other State and Federal sources; these expenditures should be included on the appropriate form whether it is the **Regional Spending Plan** (ADMS Form 06), the **Regional Activity Inventory** (ADMS Form 07), or the **Statewide Project Inventory** (ADMS Form 08). We recognize that this may create some discrepancies among the totals on the four forms.

[4] OTI will calculate the State share (and local share, when appropriate) applied to the Federal program for those States that have a distinct, supplementary State Medicaid program. We will use the ratio of State to Federal Medicaid funding for the calculation of total State matching funds, allowing for a distinction between matching funds and funds provided under the supplementary State program.

The **State Funds** column should be used to report all State general fund or special appropriations (e.g., fines, fees, earmarked taxes) administered by the State alcohol and drug agency.

The **Local Funds** column should be used to report all funds derived from appropriations by any local government entity (e.g., city, other municipality, special tax district, county).

The **Other Funds** column should be used to report funds received from all other sources, including patient fees, private donations (e.g. United Way, Robert Wood Johnson Foundation), and private third party payers (e.g., Blue Cross/Blue Shield, HMOs, commercial insurers) for the specific activity.

Indicate level of funding for each activity listed. Record the amount of ADMS Block Grant, Medicaid, Other Federal grant, State and Local Government, and Other funds for the last and coming Expenditure Periods in the appropriate column.

NOTE: We are not asking you to provide a column for total funding. The total across columns will be generated by OTI in our analysis. If you cannot provide the requested breakdown for a given category, use the **Other Funds** column. Be sure, however, that you have accounted for all sources of funds, either by distributing them among all 7 columns or in the **Other Funds** column. In a footnote immediately following the form, discuss the reason that the breakdown is not available.

Rows 1 through 4 of the forms concern expenditures for those direct service activities that have immediate impact on the persons experiencing or at risk of experiencing problems with alcohol and other drugs. Treatment and Rehabilitation includes all expenditures to provide and support direct services to patients while Prevention/Early Intervention includes all expenditures to provide and support direct service activities to persons at risk. Rows 5 and 6 (including subcategories 5A through 5F) concern the **infrastructure** expenditures related to services program development, support, and monitoring.

NOTE: OTI is interested in determining the level of funding available to the State and regional alcohol and drug umbrella agencies for the management and support of ADMS Block Grant funds in the context of total funding available. We have identified seven major functional areas (or cost centers) that comprise the infrastructure needed to support prevention and treatment activities. These funds are most likely to be expended at the State agency level or at a substate administrative agency. We recognize that these categories may be different than the classification system or chart of accounts used by your State agency; we ask that you use the best information that you have available and attempt to recast your dollar expenditures using the activity definitions provided below. You should provide the data for Row 5; providing the information for rows 5A through 5F is optional.

For each activity listed in the first column, we want you to record the level of funds in the appropriate column, using the following definitions:

1. Substance Abuse Treatment and Rehabilitation includes all expenditures to provide and support direct services to patients (e.g., outreach, detoxification, outpatient counseling, therapeutic community stays, hospital care, vocational counseling, case management, central intake, program administration).

NOTE: Use the Substance Abuse Treatment category if your agency does not distinguish between services directed at alcohol problems and drug problems, has a distinct funding category for treating persons experiencing problems with both alcohol and other drugs regardless of which problem is primary, or funds some or only combined treatment programs. Make every effort to differentiate between expenditures for treatment directed to persons with drug problems as opposed to alcohol problems and report the data in one of the next two categories.

2. Alcohol Treatment and Rehabilitation includes all expenditures to provide and support direct services to patients experiencing primary problems with alcohol (e.g., outreach, detoxification, outpatient counseling, hospital care, antabuse monitoring, vocational counseling, case management, central intake, program administration). An example of such funding would be NIAAA demonstration grants for services to the homeless that should be included in the Other Federal Funds category.

3. Drug Treatment and Rehabilitation includes all expenditures to provide and support direct services to patients experiencing primary problems with drugs (e.g., outreach, detoxification, methadone detoxification and maintenance, outpatient counseling, therapeutic community stays, hospital care, vocational counseling, case management, central intake, program administration). Examples of such funding would be the OTI Waiting List Reduction grants and the Bureau of Justice Assistance Block grant used to support treatment within a correctional facility, both of which should be included in the Other Federal Funds category.

NOTE: Use the Alcohol Treatment or Drug Treatment categories when such a differentiation is made in funding treatment providers, either because of the ADMS Block Grant requirements, State budgeting and regulatory practices, agency practices, or local priorities.

NOTE: We are not asking you to distinguish among prevention activities in the same manner.

4. Prevention includes expenditures for all primary prevention and early intervention activities and services directed toward persons who are non-users or who are at risk of becoming

dependent, as your State defines these activities in accord with Section 1916(c)(8) of the PHS Act, which requires the State to define these terms. The glossary contains the NDATUS definitions, which are used in identifying prevention and early intervention units for that survey.

In Appendix B, present your State's definition of "prevention" and "early intervention" and briefly describe your activities that carry out this provision, including a brief description of each project listed in the Regional or Statewide Project Spending Plan, an estimate of numbers of to be individuals served or impacted, and identification of targeted populations (e.g., youth/adolescents, women, intravenous drug abusers, blacks, Native Americans, etc.). *Limit the description to 1/2 page per project.*

> **NOTE:** Some States report including all Student Assistance Programs, Employee Assistance Program expenditures and other worksite activities such as drug testing in the prevention/early intervention category, while others differentiate the treatment and intervention costs associated with these activities. The situation is similar to that for outreach, with a lack of clearly agreed upon definitions as well as inconsistency in funding and reporting practices. Here also, future consultations with the States will be undertaken to define a uniform approach.

NOTE: Outreach is not included as a separate infrastructure cost center, despite its recognized importance, because of the lack of consistency in funding and reporting practices. Outreach includes all expenditures associated with getting persons at risk of problems or already experiencing problems to seek and utilize treatment services. An example of such funding would be NIDA's HIV-AIDS outreach grants, which would also be placed in the Other Federal Funds category. Also included in this category are educational or other services to persons with alcohol and other drug problems not in treatment (e.g., education about safe sexual practices such as condom use for IV Drug Abusers at risk for HIV infection). Some States fund outreach as a discrete activity; other States include outreach in their treatment costs, while still others include it in their prevention and early intervention category. Future consultations with the States will be undertaken to define a uniform approach. In the narrative following the form, briefly describe how your State funds outreach--as a separate cost center, as part of treatment, or as part of prevention. *Limit the description to 1/2 page.*

5. <u>Infrastructure</u> includes all expenditures associated with services program development, support, and monitoring. The infrastructure row should include the total costs for the 6 subcategories (A through F) listed below. These funds are most likely to be expended at the State agency level or at a substate

administrative agency. Where possible, expenditures for each of the subcategories should also be provided.

A. **Planning and Coordination** includes all expenditures related to State and substate planning activities such as State, regional and local personnel salaries pro-rated for time spent in planning meetings, data collection, analysis and writing, and traveling and in operating costs such as printing, advertising, and meeting expenses. Any contracts for planning and coordinating activities to community agencies or local governments should be entered here as should be the costs of any needs assessment projects using key informants or incidence and prevalence studies. Needs Assessment includes all expenditures relating to identifying the scope and magnitude of the problem, the resources available, the gaps in services, and the strategies to close those gaps. These funds are most likely to be expended at the State agency level or at a substate administrative agency.

B. **Quality Assurance** expenditures include all activities at the State agency level, at a substate administrative agency, or at the program-level (if identifiable) that are targeted at assuring conformity to accepted professional standards and to detect instances of deviations from acceptable practice for which corrective action need be taken. Include here the expenditures for carrying out the independent peer review activities required in Section 1916(c)(5). Any contracts with substate administrative agencies for monitoring local service providers should be included here.

C. **Training (Post-Employment)** includes all expenditures incurred for staff development and continuing education for personnel employed in local programs, coordinating agencies, and support agencies as long as the training is directed toward improving their competence and the effectiveness of services delivered. Post-employment training expenditures include any cost associated with inservice or off-site courses; tuition, expenses, and fees reimbursed to staff; operating costs, and salaries of trainers and support staff; and the cost of personnel involved in certification activities.

D. **Education (Pre-Employment)** includes all expenditures for support of students and fellows who are not yet regularly providing services but are in vocational, undergraduate, graduate or postgraduate programs designed to prepare them for the activity. This category includes scholarship and fellowship stipends as well as salaries of instructors and support personnel and operating costs.

E. **Program Development** includes all the expenditures for

salary and operating costs for State or substate agency support to local providers and planning groups through consultation, technical assistance and materials development. Examples of activities that would be included are: the design, development and implementation of a specific program rather than a plan; organizational development to improve practices (management, financial, or clinical) of a given provider; and support in getting a new service in operation in an already established provider.

F. Research, Evaluation, and Information Systems expenditures reflect formal scientific studies (e.g., clinical trials), demonstration projects testing the feasibility and effectiveness of a novel approach when there is an experimental design, evaluating the performance of service programs (whether directly by the State agency or by a contractor), and collecting and analyzing data used for monitoring performance and outcome.

6. Administration includes all expenditures associated with grants and contracts management, policy and auditing, personnel management, legislative liaison, and any residual costs associated with overhead in a large department or agency. This does not include monies expended for administration at the program level.

7. Total is the sum of all the expenditures reported above in rows 1 through 6.

8. Total State Substance Abuse Budget includes all expenditures for service and infrastructure activities, whether or not reported above. These totals should only be for the State alcohol and drug agency, responsible for administering the ADMS Block Grant, but may also include expenditures from other State agencies that are appropriated to or pass through this Agency.

b. The Regional Activity Inventory (ADMS Form 07) must be completed for each region or planning area in the State. We are asking for information on each of the providers and other activities[5] funded in each of the regions (i.e, subareas of your State that are defined and used for your own planning and budgeting purposes).

Duplicate as many of the Regional Activity Inventory forms (ADMS Form 07) as you need to list all the recipient provider agencies, projects, and activities in each region. On each page indicate the State and region in the spaces provided at the top of the form. Provide regional totals for each

[5] A given provider may receive only ADMS Block Grant funds, only State funds, or a mix of ADMS Block Grant and State funds. The data reported here are those supporting the block grant set-aside requirements and are not available through any other data collection method. Local providers must now be notified of the amount of the ADMS Block Grant funds that they receive, either directly from the State or through an umbrella agency.

column only on the last page; that is, complete the TOTAL row only for the last page of each region. Number the pages for the **Regional Activity Inventory** forms consecutively in the center at the bottom of each page.

On separate pages immediately following the Regional Activity Inventory forms, list the name of each provider or sub-recipient agency and the specific project for which funding is reported, if applicable, that is included in the Regional Activity Inventory. Provide both the name and address of those sub-recipients that do not have an NDATUS number. Number each entry consecutively by region, so that the number on the listing corresponds to the number entered in the first column of the Regional Activity Inventory form (ADMS Form 07). A recipient should be assigned only one number even if they will have multiple entries because they are funded to provide several different activities or projects.

Using the **Regional Activity Inventory** (ADMS Form 07) provided in the application, we ask you to enter the number that you have assigned to each project, provider, or recipient agency and activity in the list and then to enter the NDATUS or State identifier, activity code, and anticipated level of funding in thousands of dollars for the coming State Expenditure Period from each of the two major funding sources (the ADMS Block Grant and State Funds, here including any required local matching funds) and the major set-asides required by the ADMS Block Grant statute.

For each project, provider, and activity enter the following information in the appropriate cell:

1. Number assigned to a the provider, project, or activity. This number should correspond to the number assigned to the provider in the list described above.

2. NDATUS ID number (for treatment and prevention units). In order to avoid duplication of data collection efforts and to enable utilization of data obtained through the National Drug and Alcoholism Treatment Unit Survey (NDATUS) and the Minimum Data Set in responding to future Congressional reporting requirements, we are requesting that you provide in the second column the provider identification number from the NIDA master file (the SAFIS file) that has been or will be used on the NDATUS Survey form. For new providers, contact NIDA and assign a number in the customary manner.

3. Code for Type of Activity using the definitions of the activities given for the State Spending Plan (ADMS Form 05). If a given provider receives funding for more than one activity, there should be separate entries for each activity. Enter the two-digit code number for the type of activity funded.

01. Substance Abuse Treatment and Rehabilitation
02. Alcohol Treatment and Rehabilitation
03. Drug Treatment and Rehabilitation
04. Prevention and Early Intervention
05. Outreach
06. Planning and Coordination (including needs assessment)
07. Quality Assurance
08. Post-employment Training
09. Education
10. Program Development
11. Research, Evaluation, and Information Systems
12. Administration
13. Pass-through funds (Use for umbrella agencies only.)
14. Other (Indicate in a footnote the type of activity.)

NOTE: Outreach is included as a distinct activity for the Regional Activity Inventory as are all the other infrastructure sub-categories.

4. Level of ADMS Block Grant funding for this program or activity. **Be sure to distinguish the specific activity in Column 3.**

The **ADMS Funds** column should be used to report only the amount of ADMS Block Grant funds. Place an asterisk [*] alongside the number in column 1 to indicate whether ADMS Block Grant funds from more than one award are used to fund any one activity because of the overlap between Federal Fiscal Years and State Expenditure Periods. Enter the total amount of all ADMS funds during the State Expenditure period in the appropriate column for the Federal Fiscal Year in which they were awarded to the State.

For the last State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could have been made from both the **FFY 1989** and **FFY 1990** awards. A column is provided to report the expenditures for each year.

For the coming State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could be made from both the **FFY 1990** and **FFY 1991** awards. A column is provided to report the anticipated expenditures for each year.

For States whose Fiscal Year coincides with the Federal Fiscal Year, enter the expenditure in the appropriate column (i.e., FFY 1990 for the last and FFY 1991 for the coming State Expenditure Period.

NOTE: OTI will generate the total amount of all ADMS Funds expended during each State Expenditure Period, regardless of the Federal Fiscal Year in which they were awarded. Section 1917(b)(1) requires States to maintain fiscal records that track the expenditures from each year's award. **Any State that has difficulty in providing this information by Federal Fiscal Year should so indicate in a footnote immediately following the form and place all the entries in the FFY 1990 column for the last State Expenditure Period and in the FFY 1991 column for the last State Expenditure Period.**

5. Level of State funding for this program or activity. Where local matching funds are required in order to receive State and/or ADMS Block Grant funding, these revenues, whether from local government sources, patient fees, or third party payers, should be included in the "State funds" category. (Report all matching funds even if they exceed the amount needed to meet program requirements; that is, overmatching should be reported.)

6. Level of funding for the direct provision of alcohol services (ADMS Block Grant funds only).

7. Level of funding for the direct provision of drug services (ADMS Block Grant funds only).

8. Level of funding for the direct provision of prevention services (ADMS Block Grant funds only).

9. Level of funding for the provision of services to IV drug users (ADMS Block Grant funds only).

10. Level of funding for the provision of substance abuse services to women (ADMS Block Grant funds only). Indicate the programs that treat pregnant women by placing an asterisk [*] in this column.

NOTE: For columns 4 through 10, all cells must be filled in with either (1) a dollar amount in thousands, denoting the anticipated level of funding for the project period; or (2) a zero [0], denoting that no funds are anticipated to be awarded to the provider from that funding source or for that activity, or (3) N/A, denoting that the information is not available.

Columns 4 through 10 are not to be summed. A given project may have entries in more than one column (e.g., a provider receiving only ADMS funds from the State for treatment services for women who are IV drug abusers would be coded 03 in column 3 and have the same level of funding recorded in columns 4, 7, 9, and 10); if some of the funds are specifically for outreach, an additional entry should be reported in the next row, coded as 05 in column 3 with the same level of funding recorded in columns 4, 7, 9 and 10.

NOTE: We recognize that a number of States do not directly fund local treatment units or prevention providers but fund substate planning and administrative units (umbrella agencies) that may provide oversight, planning and coordination, priority development, training, and quality assurance. The form allows for these distinctions by requiring separate entries for specific activities funded for the same agency (i.e, direct services such as substance abuse treatment and prevention; infra-structure development activities such as planning and coordination and quality assurance.

Where the State, a local government unit, or a sub-recipient serves as an umbrella agency that passes through State and Federal funds to local providers to perform specific services (e.g., drug abuse treatment, outreach, waiting list reduction), the umbrella agency and these providers or projects must be listed and the pass-through funding data reported both for the local provider and for the umbrella agency, coding each activity appropriately. An additional activity code [13] is provided for funding from the State to the umbrella agency; this code should only be used for funds that are given for redistribution. An additional activity code [14] is provided for identifying activities or projects that are not classifiable into any of the other categories; provide an explanatory footnote, citing the region and number of the provider in the list.

For example, a clinic could receive funding directly from the State agency for both drug abuse treatment and rehabilitation and for prevention and early intervention activities; there should be two entries for this provider, with the same number in the first column, the same NDATUS number in the second column, and coded appropriately in the third column (03 and 04, respectively). Or a county health department, serving as a substate coordinating and umbrella agency, could receive funding from the State agency to directly carry out quality assurance (07), planning and coordination (06), and staff development (post-employment training, 09) activities; these three activities would each require a separate entry. The county health department may also receive direct services funds for service programs it directly administers with its own staff (e.g., a county-operated methadone outpatient clinic, 03) or that it contracts for from an independent agency (pass-through funds, 13); these two activities also would each require a separate entry, resulting in five rows or entries with the same provider number and NDATUS identifier, but each with a different activity code.

c. The **Statewide Project Inventory** (ADMS Form 08) must be completed for each project or provider that is designed to serve all areas of the State and does not serve a specific region or planning area. The instructions are the same as those for the **Regional Activity Inventory** (ADMS Form 07).

Duplicate as many of the **Statewide Project Inventory** forms as you need to provide for adequate space to list all the recipient agencies and individual projects conducted by the State agency. Provide a total for each column only on the last page, that is complete the TOTAL row only for the last page. Number the pages for the **Statewide Project Inventory** forms consecutively in the center at the bottom of each page.

On separate pages immediately following the Statewide Project Inventory forms, list the name of each provider or sub-recipient agency and the specific project for which funding is reported, if applicable, that is included in the Statewide Project Inventory. Provide both the name and address of those sub-recipients that do not have an NDATUS number. Number each entry consecutively, so that the number on the listing corresponds to the number entered in the first column of ADMS Form 08. A recipient should be assigned only one number even if they have multiple entries because they are funded to provide several activities or projects. Number the pages for the list consecutively in the center at the bottom of each page.

C. **Needs/Demand Assessment: Geographical Planning Areas and Characteristics of Individuals to be Served.** Section 1916(c)(10) requires that the State identify those populations, areas, and localities in the State with a need for mental health, alcohol abuse, and alcoholism and drug abuse services, and Section 1916(c)(19) requires that the state target ADMS Block Grant funds to those communities with the highest prevalence of substance abuse or the greatest need for treatment services as determined by the State after consideration of the demand for such services or the need for such services that exceeds the capacity to provide such services. The State is to take into account whether there is a high prevalence of drug-related criminal activity and a high incidence of communicable disease transmitted through intravenous drug abuse.

1. **Geographical Planning Areas to be Served.** For the State as a whole and the substate planning areas (regions) used in your budgeting and planning process, we ask that you provide the most current data available on several indices that are estimates of the number of persons in need of substance abuse services. We are asking you to provide the most current data available on the total number of persons, using whatever format and methodology that you customarily use for this purpose. If possible, provide a table to indicate the total number of persons in the State in need of services. If available, provide the same information for each of the State's substate planning areas, indicating the region for which data is presented. In the narrative, indicate the source of the data and briefly describe the methodology utilized by the State to generate this information. We recognize that there are many methods for doing needs/demand assessment and resource allocation, and that States and local communities use a variety of these methods out of preference and/or cost-considerations; therefore, we ask you to briefly describe the methodology used and the rationale for its use. If you cannot provide the data in this format, we ask you provide a brief narrative describing the methods that you do use for estimating the number of persons in need of substance abuse treatment. For States that use other methods (e.g., informed professional judgement, key informant survey, government share, utilization-based, problem-identification and analysis, social indicators), we ask you to briefly describe in the narrative immediately following the form the methodology used in developing the data reported and how it is used. *Limit the discussion to 2 pages.*

We also recognize that there are a number of different methods that can be used to operationalize the concepts contained in the statute of "the demand or the need for treatment services that exceeds the capacity to provide such

services," "a high prevalence of drug-related criminal activity," and " a high incidence of communicable disease transmitted through intravenous drug abuse." If you customarily use some other indices rather than those is asked for in the **Needs Assessment Summary Matrix** (ADMS Form 09), please provide an alternative table displaying these indices and briefly describe, in the narrative immediately following the form, the methodology utilized by the State to generate this information and the means by which this information is used to estimate treatment capacity needed and to prioritize resource allocation, if such estimates are done. ***Limit the any additional discussion to 1 page.***

OPTIONAL: If possible, complete the **Needs Assessment Summary Matrix** (ADMS Form 09) for the State as a whole, duplicating as many copies of the form as needed to list all of the State's planning regions. The STATE TOTALS row should only be filled out on the last page and should indicate the totals for the State in each of the categories listed. Indicate the total number of persons or the appropriate prevalence or incidence estimate in each of the columns for each region. The indices are:

1. **Total Population.** Indicate the total population for the State or for each region.

2. **IVDU.** Indicate the number of **intravenous drug users in need of treatment services.** This entry should include the number of IVDUs who are currently receiving treatment as well as the estimated number who are in need of treatment but are currently not being served. In the narrative immediately following the form, describe the method used to generate this information. ***Limit the description to 1 page.***

3. **IVDU/HIV+.** Indicate the number of **intravenous drug users in the region who have tested positive for the etiologic agent for acquired immune deficiency syndrome who are in need of treatment services.** This entry should include the number of individuals in this category who are currently receiving treatment as well as those in need of treatment who are currently not being served. In the narrative immediately following the form, describe the method used to generate this information. ***Limit the description to 1/2 page.***

4. **Women in need of treatment services.** Indicate the number of women in the region who are in need of substance abuse services. This entry should include the number of individuals in this category who are currently receiving treatment as well as those in need of treatment who are currently not being served. In the narrative immediately following the form, describe the method used to generate this information. ***Limit the description to 1/2 page.***

5. **Prevalence of drug-related criminal activity.** Indicate the estimated level of drug-related criminal activity. Insert additional column headings if more than one variable is used.

Describe the methodology for each of the indices used (e.g., number of drug-related arrests, rates of drug-related crimes/100,00 persons) that you choose to use to determine this prevalence in a footnote that immediately follows the Needs Assessment Summary Matrix. *Limit the description to 1 page.*

6. **Incidence of communicable diseases transmitted through intravenous drug use.** Indicate the estimated incidence of communicable diseases transmitted through IVDU in this region. Insert additional column headings if more than one variable is used. Describe the methodology for each of the indices used (e.g., rates or reported cases for HIV, ARC, hepatitis, syphilis) that you choose to use to determine incidence in a footnote that immediately follows the Needs Assessment Summary Matrix. *Limit the description to 1 page.*

NOTE: This is an optional form for FFY 1991. The narrative is not optional.

2. **Characteristics of Individuals to be Served.** While the State must address the needs of its total population, there are a number of subgroups that are especially vulnerable to substance abuse, have limited access to services for various reasons, and have special needs that require targeted attention, including additional financial resources, programs tailored to cultural values and unique characteristics, and specialized staff training. Some of these critical populations have been identified in the ADMS Block Grant set-asides (e.g., women in general, with special emphasis on pregnant and post-partum addicts and their substance-exposed infants; intravenous drug users) and the OTI grant program for Model Comprehensive Treatment Programs for Critical Populations (i.e., youth, racial/ethnic minority populations, arrestees, prisoners, and residents of public housing projects). Each State may have also identified and developed plans for serving other groups or subgroups with special needs or limited accessibility to existing resources (e.g., children of substance abusers and other high risk youth, inhalant abusers, Vietnam-era veterans, chemically dependent persons in the workplace, impaired drivers).

There are three Needs Assessment Worksheets that we would like completed. One is for the State as a whole (ADMS Form 10), indicating the number of individuals in the State in need of substance abuse services in each of the age and race/ethnicity categories. The other two are for the two critical populations that have identified set-asides: women (ADMS Form 11) and IV drug abusers (ADMS Form 12). Again, recognizing the variety of methods in estimating need and demand, we ask you to provide the data in whatever format that you routinely use in your planning methodology.

NOTE: These are optional forms for FFY 1991. The narrative is not optional.

We ask that you provide the same information for the other OTI critical populations or any other target populations that you identify, at your option, and we have provided a blank **Statewide Target Population Needs Assessment Worksheet** (ADMS Form 13) for your use. Duplicate as many copies of this form or an alternate as you need, identifying the population in the blank provided at the top of the form.

In all cases, please provide your definition of membership in the critical population and the criteria which you use to determine inclusion. This information should be included in the relevant appendix along with the most current information available on the efforts being made to address the special needs of each of the critical populations in response to the questions listed below. Whenever possible, reference the source of the data and describe the methodology utilized by the State to generate this information and to implement the described services.

a. Complete the **Statewide Needs Assessment Worksheet** (ADMS Form 10) for the State as a whole, indicating the number of individuals in the State in need of substance abuse treatment for each age and race/ethnicity grouping.

NOTE: The age and race/ethnicity categories used in the worksheet represent an attempt to be consistent with the groupings used in major Federal data collection activities (e.g., SADAP, NDATUS) but not with the categorical demonstration grant programs (e.g., OTI's Model Comprehensive Treatment Programs for Critical Populations, OSAP's Demonstration Grants for the Prevention, Treatment and Rehabilitation of Drug and Alcohol Abuse among High Risk Youth). Some States may use other groupings (e.g., Hawaii's unique need to distinguish among the Asian-American groups and to implement proportional funding for Native Hawaiians under Section 1912A[3][d] is recognized in the form) or may not break out their needs/demand estimates by any age or race/ethnicity groupings. In these cases, please provide us with a substitute form displaying whatever data you have currently available, arrayed by the groupings commonly used for your planning, budgeting, and resource allocation purposes.

OPTIONAL: For both critical populations, women and IV drug abusers, complete the appropriate **Needs Assessment Worksheet** (ADMS Form 11 or 12) for the State as a whole. The worksheet should indicate the number of all persons in the State who are in need of treatment for substance abuse and should indicate the number of persons in each age and race/ethnicity category.

b. ***Women, including women of child-bearing age who are in need of prenatal and perinatal services, with attention paid to the service needs of their substance-exposed infants.*** Section 1916(c)(14) requires that the State use not less than 10 percent of the funds expended in any fiscal year for alcohol and drug abuse programs and services designed for women, especially pregnant women and women with dependent children, including demonstration projects for the provision of residential services to pregnant women.

(1) Describe how the State has been funding and will continue to

fund activities to implement this provision in the last and coming State Expenditure Periods. This description ***should not exceed 2 pages*** and should be on a separate page that immediately follows the **Statewide Women's Needs Assessment Worksheet** (ADMS Form 11) in the application, if this optional form is completed.

(2) Describe how the State plans to monitor the adequacy of these efforts in meeting the needs of women in general, pregnant women, and women with substance-exposed infants and other dependent children in the State. Provide your best current information in responding to the following seven sets of questions:

(a) **Definition.** What is your definition of membership in the critical population and what are the criteria which you use to determine inclusion in the population?

(b) **Prevention Activities.** What efforts is the State making to target programs or activities that will prevent the increase of substance abuse among women and their dependent children? What role do Federally-funded demonstration grants and contracts play in your efforts?

(c) **Treatment Needs** - What is the State's most recent estimate of the number and location (i.e., rural, urban) of persons in need of treatment in this critical population? Provide documentation, including relevant data, to support these estimates. Reference the source of the estimate and the methodology used to determine treatment need. If possible, provide the data using a copy of the applicable **Statewide Needs Assessment Worksheet** or an alternate form. Duplicate as many copies as are needed and number the pages consecutively.

(d) **Treatment Capacity and Utilization** - What is the State's current capability (static capacity) to provide treatment for women in general, for pregnant women, and for women with dependent children that require child care services; that is, how many slots are available Statewide to provide treatment in public programs (and private, if this data is available)? What is the State's current capability (dynamic capacity) to provide treatment for members of this special population; that is, how episodes of treatment have been provided in the last Expenditure Period and how many episodes will be provided Statewide in the coming Expenditure Period. If possible, provide the data using the **Treatment Capacity Matrix** (ADMS Form 14) and the **Treatment Utilization Matrix** (ADMS Form 15), or an alternate form using your State's methodology for measuring capacity and utilization. Duplicate as many copies as are needed and number the pages consecutively.

(e) **Treatment Expansion/Improvement** - What has the State done or what is it planning to do to expand and/or improve outreach, treatment, child care services, prenatal and postnatal care, relapse prevention, follow-up care, and other services (e.g. supported housing, vocational training and job placement, detoxification, HIV testing and counseling, case management) for this critical population? What role do Federally-funded demonstration grants and contracts play in your efforts?

(f) **Major Problems** - What, if any, problems does the State face in trying to expand service capacity and/or improve the quality of services over the project period to this critical population?

(g) **Technical Assistance Needs** - What, if any, technical assistance or knowledge transfer activities are needed by the State and its local programs to improve or expand services for this critical population?

Please limit your discussion of these questions to no more than 4 pages.

In a separate appendix (Appendix C), briefly describe each of the projects identified in the Regional Activity Inventory that are offered to women of child-bearing age who are in need of prenatal and perinatal services, with attention paid to the service needs of their substance exposed infants, as well as to the child care needs of their older dependent children, and the intended objectives of each funded effort.[6]

c. Persons whose substance(s) of abuse is/are intravenously administered (IVDUs) and their family members, collaterals, and sexual partners, who are HIV infected or at risk of HIV/AIDS.

(1) Sections 1912A and 1915(c) of the PHS Act require that not less than 50 percent of the funds expended to combat drug problems in any fiscal year be used for specific activities targeted at these persons (whether it be treatment, prevention, outreach, or training). Describe how the State has been implementing and will continue to implement this requirement. ***This description should not exceed 1 page.***

(2) Describe how the State plans to monitor the adequacy of these efforts in meeting the needs of IVDUs and their family members, collaterals, and sexual partners, who are HIV infected or at risk of HIV/AIDS in the State. Provide your best current information in responding to the following seven sets of questions:

(a) **Definition.** What is your definition of membership in the critical population and what are the criteria which you use to determine inclusion in the population?

(b) **Prevention Activities.** What efforts is the State making to target programs or activities that will prevent the increase of intravenous drug abuse and HIV/AIDS among this critical population? What role do Federally-funded demonstration grants and contracts play in your efforts?

(c) **Treatment Needs** - What is the State's most recent estimate of the number and location (i.e., rural, urban) of persons in need of treatment in this critical population? Provide documentation, including relevant data, to support these estimates. Reference the source of the estimate

[6] In the Regional Activity Inventory, be sure that you have provided specific information identifying which agencies receive funding under this provision and the amount of ADMS Block Grant funds used for each unit. Be sure that the code identifying the specific activities funded is accurately completed (e.g., treatment, prevention, outreach, training), with a separate entry for the amount of block grant funds utilized for each.

and the methodology used to determine treatment need. If possible, provide the data using a copy of the applicable **Statewide Needs Assessment Worksheet** or an alternate form. Duplicate as many copies as are needed and number the pages consecutively.

(d) **Treatment Capacity and Utilization** - What is the State's current capability (static capacity) to provide treatment for persons who are IVDUs; that is, how many slots are available Statewide to provide treatment in public and private programs? What is the State's current capability (dynamic capacity) to provide treatment for members of this special population; that is, how episodes of treatment have been provided in the last Expenditure Period and how many episodes will be provided Statewide in the coming Expenditure Period. If possible, provide the data using the **Treatment Capacity Matrix** (ADMS Form 14) and the **Treatment Utilization Matrix** (ADMS Form 15), or an alternate form using your State's methodology for measuring capacity and utilization. Duplicate as many copies as are needed and number the pages consecutively as part of the appendix.

(e) **Treatment Expansion/Improvement** - What has the State done or what is it planning to do to expand and/or improve outreach, treatment, relapse prevention, follow-up care, and other services (e.g. supported housing, vocational training and job placement, detoxification, HIV testing and counseling, acute and supportive medical and nursing care, case management) for this critical population? What role do Federally-funded demonstration grants and contracts play in your efforts?

(f) **Major Problems** - What, if any, problems does the State face in trying to expand service capacity and/or improve the quality of services over the project period to this critical population?

(g) **Technical Assistance Needs** - What, if any, technical assistance or knowledge transfer activities are needed by the State and its local programs to improve or expand services for this critical population?

Please limit your discussion of these questions to no more than 4 pages.

(3) Describe how the State has been and will continue to assure that funds described above will not be used: (1) to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleaning needles for such injections, or (2) to carry out any testing for the etiologic agent for acquired immunodeficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling. ***This description should not exceed 1 page.***

(4) Section 1916(c)(16) of the PHS Act requires that the State will receive notification of when a program treating IV drug abusers has reached 90 percent capacity. Describe how the State has been implementing and will continue to assure the implementation of this

requirement. This description should be ***limited to 2 pages.***

(5) Section 1916(c)(17) of the PHS Act requires that IV drug abusers are accepted for treatment within 7 days. Describe how the State has been implementing and will continue to assure the implementation of this requirement. This description ***should not exceed 1 page.***

(6) Section 1916(c)(18) of the PHS Act requires that the State carry out outreach activities for IV Drug Abusers. Describe how the State has been and will continue to assure the implementation of this provision. This description should ***not exceed 1 page.***[7]

In a separate appendix (Appendix D), briefly describe the intended objectives of each funded project, the services to be offered, the number of at risk individuals or families or patients to be served or impacted, the amount of treatment capacity (slots or your own unit of service) to be added, if appropriate, and the demographic characteristics of persons you are expecting to serve.

d. **Other Critical Populations.** A response is optional for the other critical populations that OTI and DHHS have identified as needing special attention. For any of the critical populations listed below or a population that your State has identified as needing special attention, please provide your best current information and respond to the same seven sets of questions in **Appendix E.** Provide data on the number persons needing services in the manner that you customarily use for planning and budgeting purposes by completing one or more of the **Statewide Target Population Needs Assessment Worksheet** (ADMS Form 13) or an alternate form as appropriate for the State as a whole and its planning regions. If possible, provide the data on treatment using the **Treatment Capacity Matrix** (ADMS Form 14) and the **Treatment Utilization Matrix** (ADMS Form 15), or an alternate form using your State's methodology for measuring capacity and utilization. Duplicate as many copies as are needed and number the pages consecutively as part of the appendix.

* Racial and ethnic minorities;

* Persons who are homeless or at risk of being homeless;

* Adolescents and high risk youth;

* Persons currently incarcerated or otherwise involved with the criminal justice system;

[7] In the **Regional Activity Inventory** (ADMS Form 07), be sure that you have provided specific information identifying which agencies receive funding under this provision and how the funding that they receive under the drug abuse portion of the ADMS Block Grant funds is utilized. Be sure that the code for identifying the specific activities funded is accurately completed (e.g., treatment, prevention, outreach, training), with a separate entry for the amount of block grant funds utilized for each activity.

* Persons who live in rural areas;

* Individuals with a diagnosis of co-existing substance abuse and mental disorders ("dual diagnosis patients")

* Residents of public housing projects (individuals who are permanent legal residents of public housing projects (housing units or developments that are subsidized by local and/or Federal governments);

* Low income families with pre-school age children enrolled in Headstart;

* Families with children where the parents' addiction problems have resulted in charges of child abuse and neglect; and

* Low income individuals and their families, particularly those on and/or eligible for welfare and Medicaid.

We suggest that you provide the same information and complete the same forms for any other critical populations which your State has determined to have special needs and for which the State has developed or is planning to develop programs, whether you use ADMS Block Grant funds, State funds, other Federal grant funds, Medicaid, or all four.

D. **Criteria and Methods for the Distribution of Allotments.** Briefly describe the criteria and methods that the State currently uses to distribute the Alcohol and Drug Abuse portion of ADMS Block Grant funds to local entities and programs for the provision of prevention and treatment services in compliance with sections 1915(a)(1), 1915(b), and 1916(c)(19) of the Public Health Service Act.

For example, criteria used for distributing funds may include a statewide needs assessment to determine the prevalence of drug abuse problems with communities or planning areas ranked to determine priorities for expansion funding when treatment resources are insufficient to meet these needs and waiting lists exist. Other criteria and methods may involve seeking to equalize staff salaries across regions or to increase staff retention by providing for cost of living increases, or using communities' relative ranking on individual direct and indirect indices of drug problems (such as median family income, emergency room drug-related encounters, drug-related arrests, and incidence of hepatitis) or a combination of indices. Methods for distributing funds may include mailing announcements to community groups and local governments to solicit letters of intent to provide services within the specified geographical areas and service categories, formal contract bidding procedures to determine the service provider for a given geographical area or critical population, or purchase of services on an as needed basis from qualified providers.

Describe briefly how information about substate planning is used to impact the funding decisions necessary to meet the required targeting, both among and within substate planning areas. Describe the monitoring process

used to assure that the funded programs continue to serve the communities with the highest prevalence of substance abuse or the greatest need for treatment services. Describe how the information is used to assure targeting among and within each of the regions or other smaller subareas of your State that are defined and used for your own planning and budgeting purposes (e.g., cities within regions).

In your discussion, identify whatever financial conditions (e.g., matching requirements, maintenance of effort, licensure, performance contracting) that the State imposes on local entities or programs that receive State funds to provide substance abuse prevention and treatment services.

If the process for allocating ADMS Block Grant funds to local entities and programs differs substantially from the process for allocating State funds, please explain the rationale for these differences.

Limit your description to 3 pages.

E. Methodology used by State to Purchase Services and Determine Treatment Capacity and Quality.

1. **Treatment Capacity and Utilization.** We ask you to briefly describe the methods used by the State to purchase treatment capacity and services from local providers, to determine treatment capacity, and to determine the reasonable cost of capacity and services purchased (*using no more than 3 pages for all 3 questions*).

a. **Mechanisms Used to Manage and Measure Treatment Capacity and Utilization.** For both the last Expenditure Period and the coming Expenditure Period, complete a **Treatment Capacity Matrix** (ADMS Form 14) and a **Treatment Utilization Matrix** (ADMS Form 15) to provide information on the State's capability to provide treatment for persons with alcohol and drug problems; that is, report how many slots are available Statewide to provide treatment in the public sector (static capacity) and how many episodes of treatment have and could be provided within the project period (dynamic capacity).

Enter the dates for the two Expenditure Periods at the top of the form in the space provided on both forms. If possible, also complete a separate form for each of your State's substate planning regions, noting the region at the top of the form in the space provided. Number the pages consecutively in the center of the bottom of the page.

The rows on both forms are the NDATUS type of care categories. Definitions are provided in the glossary. For each type of care listed, identify the State's capability to provide treatment for persons with alcohol and drug problems. In the first column, report only those individuals who are in treatment for an alcohol problem only. In the second column, report only those individuals who are in treatment for a drug problem only. In the third column, report only those individuals who are in treatment for both alcohol and drug problems. In the fourth column, report the total of the first three columns. If you cannot provide the data for the separate groups, explain why in the narrative immediately following the forms.

On the **Treatment Capacity Matrix** (ADMS Form 14) enter the static capacity for each type of care. Static capacity is defined as the maximum number of patients who can be treated at any one time in a distinct treatment unit under full operating conditions. A slot is a unit of measure of treatment capacity. In the appropriate column, enter the number of slots available for persons with either a drug or an alcohol problem during the applicable Expenditure Period. Provide the number of slots that are expected to be in operation during the entire expenditure period. Identify whether appreciable increases or decreases were experienced in the last State Expenditure Period or are expected during the coming State Expenditure Period, and explain in the narrative immediately following the forms.

On the **Treatment Utilization Matrix** (ADMS Form 15) enter the dynamic capacity for each type of care. Dynamic capacity is defined as the maximum number of episodes of care that can be provided by the treatment unit in a year assuming a specified length of stay. An episode is a single treatment experience with a given admission and discharge date. In the appropriate column, enter the number of episodes of treatment provided for persons with either a drug or a alcohol problem during the applicable Expenditure Period. Report all persons who have received or will receive any treatment in a type of care during the Expenditure Period. For purposes of completing this form, obtain the number of episodes by adding the number of persons who were on the rolls at the beginning of the Expenditure Period and all those who were admitted during the Expenditure Period. These could be duplicated admissions.

> **NOTE:** Although the National Drug Control Strategy and Federal budgeting for treatment expansion have used the concepts of "slots" to describe the mechanism used to determine treatment capacity and "slot costs" to establish funding levels for services purchased through the ADMS Block Grant and the Waiting List Reduction Program, we recognize that there are a variety of methods for measuring treatment capacity and utilization and for purchasing services (e.g., episodes, units of service, personnel and operating budgets, capitation), and that States and local communities may use one or more of these methods. If your State, and/or its subdivisions, does not use slots, episodes, or the NDATUS type of care categories, please describe the mechanism by which you purchase and measure treatment capacity and utilization (e.g., units of service, episodes, personnel and operating line item budgets, deficit reduction, capitation) and provide the information in a similar matrix using your methodology.

b. **Methods Used to Purchase Services.** Briefly describe the methods used by the State to purchase treatment capacity and services from local providers. For example, services may be purchased by grant or contract, on a competitive basis or non-competitive basis. Contracts or grants may be for a specified time (e.g., a year) with renewal dependent on satisfactory performance or on a competitive procurement. Or the State may provide annual funding on a formula basis to a subarea administrative agency (e.g., a county health department); the formula may be similar to the formula used to establish ADMS Block Grant allotments to States. The county agency then awards part of its funds to purchase services from local providers using a grant mechanism to obtain a specified number of units of service (e.g., group

counseling hours; education sessions).

c. **Methods Used to Determine Reasonable Cost.** Describe the methodology that the State uses to determine the reasonable cost of services for whichever methodology is used. For example, describe how the State determines what the cost per slot or unit of service should be that it purchases from all providers or the formula used to distribute funds to regional administrative units. Describe variations, if any, that are used to fund projects serving specific geographic areas or critical populations (e.g, rural and urban areas, economically disadvantaged populations).

2. **Quality Assurance, Performance Criteria, Program Standards, and Evaluation.**

a. **Program Performance Monitoring.** For programs that receive State and/or ADMS Block Grant funds, describe briefly how the State agency awarding those funds monitors and evaluates the performance of substance abuse service providers during the funding period? Where appropriate, please include a discussion of monitoring mechanisms such as: management information and outcome monitoring systems, periodic program activity reports, periodic fiscal reports, grant/contract applications, program records, site visits, licensure/accreditation reports, performance contracting, and independent peer review. For each of the monitoring mechanisms used, please provide a brief description of the methods used (e.g., the application forms, licensure/accreditation standards, and/or monitoring checklists). You may wish to use the questions below for independent peer review as a guide. ***Limit your discussion of these mechanisms to 3 single-spaced pages.***

b. **Independent Peer Review.** Section 1916(c)(5) requires that each State provide for periodic independent peer review to assess the quality and appropriateness of treatment services in programs funded by the ADMS Block Grant. Each State should have by now developed policies and procedures which cover the State Agencies' and local treatment service providers' responsibilities and authorities, as established by legislative, regulatory or executive authorities, for independent peer review. We are asking you to describe how you have been and will continue to implement this requirement. ***Limit your discussion of the five sets of questopns on independent peer review to 3 single-spaced pages.***

(1) Describe your State's procedures for the implementation of this provision, including a definition of "peer review", identification of who (or what entity) will conduct these activities, and a schedule for how often such "periodic" reviews will be conducted.

(2) Describe the data collection requirements, including a description of peer review data elements and reports required from treatment programs and/or peer review agencies pertaining, generally, to the quality and appropriateness of care in those programs and, specifically, to patient-oriented adverse or sentinel health events occurring during treatment, the quality and appropriateness of care standards, criteria, indicators and other related information used to perform peer review, and the methodology for selecting cases for peer review including sampling techniques.

(3) Include a brief description of the relationship of the independent peer review program to the State's other quality assurance mechanisms, such as licensure and monitoring activities, and to accrediting programs such as the Joint Commission on Accreditation of Healthcare Organizations and the Commission on Accreditation of Rehabilitation Facilities.

(4) Identify the staff by organizational unit and position title (not name) assigned in the State or regional umbrella agencies to conduct or manage the independent peer review program.

(5) Provide a description of the kinds of findings and recommendations generated by the peer review program which identify quality and appropriateness of care problems, corrective actions or opportunities for improvement, and the known and perceived impacts on and improvements to the quality and appropriateness of care that can be attributed to the peer review program.

3. **Treatment Improvement.** Describe key elements in the State's strategy to augment existing programs and to establish new treatment programs, where needed. Describe briefly what, if any, plans the State has to help overcome obstacles that restrict the expansion of treatment capacity in local communities, such as zoning ordinances or community resistance to siting new treatment programs. Describe briefly the role that Federally-funded demonstration projects play in your efforts. Describe briefly what technical assistance you would wish to receive from OTI to implement this strategy. ***Use no more than 3 pages.***

4. **Human Resources.** Briefly respond to the following questions. ***Limit the total discussion to 4 pages, using no more than 1 page per set of questions.***

a. What, if any, efforts are being made by the State to address staffing shortages in substance abuse programs, especially in geographic areas of high demand for services and to critical populations?

b. If available, provide data on the current staff recruitment and retention patterns of substance abuse treatment programs funded by State or ADMS Block Grant funds? For those programs, geographic areas and professions that experience the most difficulty in recruitment and retention, what are the most significant factors that contribute to these problems and what, if any, actions has the State already taken or does the State intend to take to strengthen treatment program recruitment and retention of qualified staff?

c. Does the State perform or require licensure or certification of treatment program clinical staff? How does the State ensure that State and local substance abuse programs provide adequate and appropriate inservice training to help employees stay abreast of the latest and most effective treatment techniques? Does the State impose inservice education requirements on local service providers as a condition for financial assistance?

d. Does the State have drug-free patient and workplace programs, requirements, or initiatives (e.g., employee assistance programs) that include some form of drug testing and that apply to employees of State and local substance abuse services programs and facilities? If no such programs exist at the State or local level, does the State plan to establish such requirements, and, if so, how?

SECTION III
PART 3

Intended Use of Mental Health Block Grant Funds

BACKGROUND/PURPOSE

As noted above, the FY 1991 ADMS Block Grant application requests that the States provide much of the same information as that provided in earlier years, using standard formats wherever possible. The application has been reformatted and reordered to provide for consistent presentation. These revisions will ensure more rapid comprehensive review, as well as improve the retrieval of information for forward planning, budgeting, reporting, technical assistance, and monitoring purposes.

In this revised application, while we are most concerned with obtaining improved information on how the State plans to expend funds for alcohol and drug abuse activities that meet the statutory requirements of the ADMS Block Grant Program and how it will conduct its oversight of these activities, we are also beginning to address similar concerns for the community mental health services funded through the program. Discussions have been initiated on how some of the application data requirements can be obtained through other existing data sources. The State Comprehensive Mental Health Services Plans, required under Sections 1925 and 1926 of the PHS Act, provide much of the same information regarding community mental health services funded through the block grant. These plans will continue to be submitted to the National Institute of Mental Health under guidelines, submission dates, and review processes determined by the Institute and will be more closely coordinated with the ADMS Block Grant in the future.

The application changes for the mental health portion of the ADMS Block Grant primarily involve standardization of the format for describing the intended use of funds and the activities to be undertaken to meet statutory requirements (e.g., the children's services set-aside). Discussions have been initiated to determine what additional linkages are needed between the application and the mental health services plan and existing national data collection efforts. These issues will be addressed in the development of the FY 1992 Application, after consultation by OTI and NIMH with the State Mental Health Authorities.

Completion of the narrative and forms is optional for FY 1991. You may provide the data in the format used in previous years, completing the Table of Contents/Review Checklist (ADMS Form 02) to aid in the review.

During the latter stages of the review of the revised application, we have begun discussing with NIMH and NASMHPD how best to coordinate these different approaches and information requests. The application includes requests for only some of the information required; other information will now be obtained through the on-site compliance reviews and a revised annual report. This first year that the additional information is requested will serve as a transition, and will enable us to respond to Congressional inquiries at the ADMS Block Grant reauthorization hearings expected to take place in early 1991.

As a result of these discussions, we recognize that not all the information requested is readily available in each State in the format desired. We view this first effort to obtain the added information as a needs assessment that will enable OTI and the rest of ADAMHA to learn which States will require additional technical assistance in improving their management, data collection and analysis, quality assurance and evaluation, and planning capabilities. We ask again that wherever your State does not have reliable data to permit a response to a specific item within the time frames given for submitting the application, you do not attempt to answer but indicate what the problem is in obtaining the necessary data and describe the type of assistance you would desire in order to be able to provide a valid response in future years.

A. Goals and Objectives of Mental Health Services Activities. In addition to the goals and objectives that the State has developed for the expenditure of ADMS Block Grant funds, the authorizing statute sets out national goals, through its requirements and establishment of set-asides, that should be addressed in this section. The State should describe the programs and activities that it will support with ADMS Block Grant and other funds to achieve each of these national goals and to achieve State and local goals, if they differ. The State should also include a description of any State or local goals and objectives that are unique or differ from the national goals.

Drawing primarily from Sections 1915 (a)(2) and 1916(c)(3) of the PHS Act, the overall goal of the mental health portion of ADMS Block Grant can be summarized as: the provision of comprehensive community mental health services to individuals residing in a defined geographic area so that these services are available and accessible promptly, in a manner which preserves human dignity and assures continuity and high quality, cost-effective care. The broad national goals that funds from the mental health portion of the ADMS Block Grant should address are:

A. identify those populations, areas, and localities in the State with greatest need for mental health services and target programs, services, and resources accordingly, with public input into the proposed use and distribution of ADMS Block Grant mental health funds.

B. assess and improve the quality and appropriateness of treatment provided by community mental health centers that receive funds from the Mental Health component of the ADMS Block Grant.

C. provide comprehensive mental health services with special attention given to individuals who are seriously mentally ill and other identified currently underserved populations.[8]

D. improve and expand the services and programs designed for seriously emotionally disturbed children and adolescents.

E. improve and expand the services and programs designed for mentally ill elderly individuals.

F. continue to provide and develop new community mental health services and programs.

G. coordinate mental health and healthcare services provided within healthcare centers.

1. **Goals and Objectives.** Provide a brief narrative that spells out the specific objectives and action steps designed to meet each of these goals (***using no more than 1 page per goal***). The narrative should describe the programs and activities directed at each of the above goals and objectives. Goals, objectives, and action steps should be clearly and succinctly stated. Where additional information pertaining to a specific goal (e.g., Goal ***D: services for children and adolescents***) is discussed elsewhere in the application (i.e., Section II, Part 3, C.2.a. of the application), cross reference the appropriate pages in your completed application.

Goals are general statements of desired ends, and objectives are more specific subelements undertaken to reach a goal. Remember, that in the annual report, the State will be required to address its progress toward meeting each goal and whether or not it accomplished each objective; therefore, each objective should be realistic and measurable. Identify and number each objective.

2. **Planning and Public Input.** Section 1916(e)(1) of the PHS Act establishes the requirements for the State Mental Health Services Planning Council and Section 1916(b) of the PHS Act requires the State to hold public hearings on the intended use and distribution of funds for each fiscal year. Describe briefly how planning to meet these needs is carried out in your State and the process the State follows to obtain public and legislative participation in the development and review of the plan and the ADMS Block Grant application. Describe the composition and role, if any, of the State Mental Health Services Planning Council and any other State, regional, and local advisory council(s). ***Limit the discussion to 2 pages.***

---

[8] The application will follow the convention adopted by the National Institute of Mental Health and use the phrases "adults and children with severe and disabling mental illness" or "persons with severe and persistent disabling mental illness" or "seriously mentally ill" wherever feasible and not in conflict with the governing statute, rather than the phrase contained in the authorizing legislation "the chronically [mentally] ill," since the word "chronic" may be identified by consumers and family members as having a negative connotation. This concern has been addressed in the Drug Abuse Treatment Technical Corrections Act of 1988 (P.L. 101-93), which substitutes the phrase "seriously mentally ill" in Section 1916(e)(3)(iii) of the PHS Act but not elsewhere in the authorizing statute.

B. Types of Activities to be Supported and State Spending Plan.

1. **Expenditures.** We are asking you to provide the most current data available on the block grant expenditures that will be made to support the activities planned to achieve the above goals and objectives.

a. **State Expenditures.** Using the **Mental Health State Spending Plan** (ADMS Form 16), we ask you to provide expenditure data for both the last Expenditure Period and the anticipated or coming Expenditure Period. This information will be helpful in assessing the impact of changes in the availability of project grants and Medicaid on the overall system. Entries for the last Expenditure Period should be the actual expenditures while the entries for the coming Expenditure Period will need to be the projections used in your budgeting process.

This form requests information on ADMS Block Grant and associated Federal, State, and local expenditures and revenues on the types of activities identified in the first column. Expenditures for the last Expenditure Period should be the actual expenditures made during the period. Therefore, provide the information for that period which have actual expenditures. Enter the dates of the last Expenditure Period in the space provided at the top of the form.

The figures for the coming Expenditure Period will need to be the projections that you have used to establish obligations in your State budgeting process. Enter the dates of the coming Expenditure Period in the space provided at the top of the form; be sure that they are consistent with the dates entered on the **Face Page** (ADMS Form 01). If the actual amounts cannot be calculated by the time of submission then the best available estimate should be submitted, with a footnote describing the method of estimation. All footnotes should be clearly marked and follow ADMS Form 16 in the narrative.

Rows 1 and 2 of ADMS Form 16 concern expenditures for those direct services activities that have immediate impact on the persons diagnosed as mentally ill or at risk of mental illness. Treatment includes all expenditures to provide and support direct services to patients. Prevention/Education includes all expenditures to provide services to the general population and those at risk of specific mental illnesses. Row 3 (including subcategories 3A through 3F) concern the infrastructure expenditures related to services program development, support, and monitoring. OTI is interested in determining the level of funding available to the State and regional mental health umbrella agencies for the management and support of ADMS Block Grant funds in the context of total funding available.

NOTE: We have identified seven major functional areas (or cost centers) that comprise the infrastructure needed to support prevention and treatment activities. These funds are most likely to be expended at the State agency level or at a substate administrative agency. We recognize that these categories may be different than the classification system or chart of accounts used by your State agency; we ask that you use the best information that you have available and attempt to recast your dollar expenditures using the activity definitions provided below. Future consultations with the State Mental Health Authorities and NIMH

will be undertaken to determine the utility and validity of the approach, and if desired, define a uniform approach using procedures similar to those employed in the Mental Health Statistics Improvement Program.

You are to enter the total amount of dollars expended for each of the activities listed under each major funding source. The first set of columns should report the expenditures of programs and activities funded during the last Expenditure Period. Report only the amounts actually expended.

The second set of columns should report the expenditures of programs and activities planned for the coming Expenditure Period. The projected expenditures and revenues required to carry out the action plans described in the Goals and Objectives Section of your FY 1991 ADMS Block Grant application should be reported here. Report either the amounts actually obligated, if your State budgeting process has progressed that far, and/or the amounts projected in your budgeting process. Whenever possible, report obligations. Indicate the nature of the method used to generate the data (i.e., whether coming Expenditure Period estimates are based on obligations, allocations, current estimates, or a combination) in a clearly marked footnote that immediately follows the form.

The columns represent major funding sources:

The **ADMS Funds** column should be used to report only the amount of ADMS Block Grant funds. Place an asterisk [*] in column 1 to indicate whether ADMS Block Grant funds from more than one award are used to fund any one activity because of the overlap between Federal Fiscal Years and State Expenditure Periods. Enter the total amount of all ADMS funds during the State Expenditure period in the appropriate column for the Federal Fiscal Year in which they were awarded to the State.

For the last State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could have been made from both the **FFY 1989** and **FFY 1990** awards. A column is provided to report the expenditures for each year.

For the coming State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could be made from both the **FFY 1990** and **FFY 1991** awards. A column is provided to report the anticipated expenditures for each year.

For States whose Fiscal Year coincides with the Federal Fiscal Year, enter the expenditure in the appropriate column (i.e., FFY 1990 for the last and FFY 1991 for the coming State Expenditure Period.

NOTE: OTI will generate the total amount of all ADMS Funds expended during each State Expenditure Period, regardless of the Federal Fiscal Year in which they were awarded. Section 1917(b)(1) requires States to maintain fiscal records that track the expenditures from each year's award. Any State that has difficulty in providing this information by Federal Fiscal Year

should so indicate in a footnote immediately following the form and place all the entries in the FFY 1990 column for the last State Expenditure Period and in the FFY 1991 column for the last State Expenditure Period.

The **Medicaid** columns should be used to report all funds received from Medicaid, including the Federal and State shares.

The **Federal Medicaid** column should be used to report the total amount of the Federal share of benefits provided under Federal regulations.

The **State Medicaid column** should be used to report the total amount of State and local government matching (when appropriate) share of benefits provided under Federal regulations and the amount of State funds (and local government match when appropriate) provided under a supplementary State program.[9]

The **Other Federal Funds** column should be used for reporting all other Federal funds (including ADAMHA program support funds, demonstration grants/contracts, Medicare, other public welfare funds such as food stamps, other public third party funds such as CHAMPUS, the Federal portion of the Social Services Block Grant [Title XX], the Education for the Handicapped and Vocational Rehabilitation grant, etc.) in each category. Examples of demonstration grants would be the NIMH Community Support and Homeless demonstrations; OTI will provide the States with a list of grants, if needed.

The **State Funds** column should be used to report all State general fund appropriations or special appropriations (fines, fees, earmarked taxes) received from the State alcohol and drug agency and any other State agencies.

The **Local Funds** column should be used to report all funds derived from appropriations by any local government entity (e.g., municipality, city, county).

The **Other Funds** column should be used to report funds received from all other sources, including patient fees, private donations (e.g. United Way, Robert Wood Johnson Foundation), and private third party payers (e.g., Blue Cross/Blue Shield, HMOs, commercial insurers) for the specific activity.

NOTE: We are not asking you to report total funding. This information will be generated in our analysis. If you cannot provide the requested breakdown for a given category, use the Other Funds column. In a footnote immediately following the form,

[9] OTI will calculate the State share (and local share, when appropriate) applied to the Federal program for those States that have a distinct, supplementary State Medicaid program. We will use the ratio of State to Federal Medicaid funding for the calculation of total State matching funds, allowing for a distinction between matching funds and funds provided under the supplementary State program.

discuss the reason that the break down is not available.

For each of the activities listed in the first column, we want you to record the level of funds in the appropriate column:

1. Treatment includes all expenditures to provide and support direct services to patients (e.g., outreach, outpatient psychotherapy, psychoactive medication prescription and monitoring, community support, psychosocial rehabilitation, residential treatment center stays, hospital care, vocational counseling, case management, central intake, program administration).

2. Prevention includes expenditures for all primary prevention and early intervention activities and services (e.g., media campaigns, parenting skills training, screening programs) directed toward persons who are at risk, as your State defines these activities.

3. Infrastructure includes all expenditures associated with services program development, support, and monitoring. The infrastructure row should include the total costs for the 6 subcategories (A through F) listed below. These funds are most likely to be expended at the State agency level or at a substate administrative agency. Where possible, expenditure for each of the subcategories should also be provided.

A. Planning and Coordination includes all expenditures related to State and substate planning activities such as State, regional and local personnel salaries pro-rated for time spent in planning meetings, data collection, analysis and writing, and traveling and in operating costs such as printing, advertising, and meeting expenses. Any contracts for planning and coordinating activities to community agencies or local governments should be entered here as should be the costs of any needs assessment projects using key informants or incidence and prevalence studies. Needs Assessment includes all expenditures relating to identifying the scope and magnitude of the problem, the resources available, the gaps in services, and the strategies to close those gaps. These funds are most likely to be expended at the State agency level or at a substate administrative agency.

B. Quality Assurance expenditures include all activities at the State agency level, at a substate administrative agency, or at the program-level (if identifiable) that are targeted at assuring conformity to accepted professional standards and to detect instances of deviations for which corrective action need be taken. Include here the expenditures for carrying out the independent peer review activities required in Section 1916(c)(5). Any contracts with substate administrative agencies for monitoring local service providers should be included here.

C. Training (Post-Employment) includes all expenditures incurred for staff development and continuing education for personnel employed in local programs, coordinating agencies, and support agencies as long as the training is directed toward improving their competence and the effectiveness of services delivered. Post-employment training expenditures include any cost associated with inservice or off-site courses; tuition, expenses, and fees reimbursed to staff; operating costs, and salaries of trainers and support staff; and the cost of personnel involved in certification activities.

D. Education (Pre-Employment) includes all expenditures for support of students and fellows in vocational, undergraduate, graduate, and pot graduate programs who are not yet regularly providing services but are in programs designed to prepare them for the activity. This category includes scholarship and fellowship stipends as well as salaries of instructors and support personnel and operating costs.

E. Program Development includes all the expenditures for salary and operating costs for State or substate agency support to local providers and planning groups through consultation, technical assistance and materials development. Examples of activities that would be included are: the design, development and implementation of a specific program rather than a plan; organizational development to improve practices (management, financial, or clinical) of a given provider; and support in getting a new service in operation in an already established provider.

F. Research, Evaluation, and Information Systems expenditures reflect formal scientific studies (e.g., clinical trials), demonstration projects testing the feasibility and effectiveness of a novel approach when there is an experimental design, evaluating the performance of service programs (whether directly by the State agency or by a contractor), and collecting and analyzing data used for monitoring performance and outcome.

4. Administration includes all expenditures associated with grants and contracts management, policy and auditing, personnel management, legislative liaison, and any residual costs associated with overhead in a large department or agency. This does not include monies expended for administration at the program level.

5. Total is the sum of all the expenditures reported above in Rows 1 through 4.

NOTE: Enter the amount of the expenditures in thousands of dollars in the appropriate cell; enter a zero [0] if there are no expenditures; enter N/A when data are not available.

b. **Substate Expenditures.** Using as many copies needed of the **Mental Health Service Area Activity** (ADMS Form 17), we ask you to enter the name of each provider or recipient agency and activity, the anticipated level of funding in thousands of dollars for the coming State Expenditure Period from the ADMS Block Grant and State Funds for each of the populations described in the statute: **children and adolescents, elderly, persons with severe and persistent mental illnesses,** or for the **general population** (i.e., no specific subpopulation is targeted).

On the **Mental Health Service Area Activity Inventory** (ADMS Form 17), list the name of each community mental health services provider to be funded with from the ADMS Block Grant in the first column and than enter the anticipated level of funding to be obligated for the coming State Expenditure Period from ADMS Block Grant and State Funds in next three columns.

The **ADMS Funds** column should be used to report only the amount of ADMS Block Grant funds. Place an asterisk [*] next to the name in column 1 to indicate whether ADMS Block Grant funds from more than one award are used to fund any one activity because of the overlap between Federal Fiscal Years and State Expenditure Periods. Enter the total amount of all ADMS funds during the State Expenditure period in the appropriate column for the Federal Fiscal Year in which they were awarded to the State.

For the last State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could have been made from both the **FFY 1989** and **FFY 1990** awards. A column is provided to report the expenditures for each year.

For the coming State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could be made from both the **FFY 1990** and **FFY 1991** awards. A column is provided to report the anticipated expenditures for each year.

For States whose Fiscal Year coincides with the Federal Fiscal Year, enter the expenditure in the appropriate column (i.e., FFY 1990 for the last and FFY 1991 for the coming State Expenditure Period.

NOTE: OTI will generate the total amount of all ADMS Funds expended during each State Expenditure Period, regardless of the Federal Fiscal Year in which they were awarded. Section 1917(b)(1) requires States to maintain fiscal records that track the expenditures from each year's award. Any State that has difficulty in providing this information by Federal Fiscal Year should so indicate in a footnote immediately following the form and place all the entries in the FFY 1990 column for the last State Expenditure Period and in the FFY 1991 column for the last State Expenditure Period.

Enter the level of **State Funds** for this program or activity. Where local matching funds are required in order to receive State and/or ADMS Block Grant funding, these revenues, whether from local government sources, patient fees, or third party payers, should be included in the "State funds" category. (Report all matching funds even if they exceed the amount needed to meet program requirements; that is, overmatching should be reported.)

Enter the total funding available to the provider in the column for the special population targeted. If any other special population is targeted, enter the total funding in the last column (**Other**) and identify and describe the population briefly in a footnote in the narrative immediately following ADMS Form 17.

NOTE: A given provider may receive only ADMS Block Grant funds, only State funds or a mix of ADMS Block Grant and State funds. Where local matching funds are required in order to receive State and ADMS Block Grant funding, these revenues, whether from local government sources, patient fees, or third party payers, should be included in the "State funds" category. The types of major activities to be reported are those supporting the block grant set-aside requirements and are not available through any other data collection method.

The **Mental Health Service Area Activity Inventory** (ADMS Form 17) should be completed for each substate mental health service area used by your State for your own planning and budgeting purposes. We are asking for the same funding source information for each of the providers funded in each service area.

NOTE: Enter the amount of the expenditures in thousands of dollars in the appropriate cell; enter a zero [0] if there are no expenditures; and enter N/A if the data are not available.

Duplicate as many of the **Mental Health Service Area Activity Inventory** forms (ADMS Form 17) as you need to list all the recipient provider agencies, projects, and activities in each region. On each page indicate the State and region in the spaces provided at the top of the form. Provide regional totals for each column only on the last page; that is, complete the TOTAL row only for the last page of each service area. Number the pages for the forms consecutively in the center at the bottom of each page.

C. Needs/Demand Assessment: Geographical Planning Areas and Characteristics of Individuals to be Served. Section 1916(c)(10) requires that the State identify those populations, areas, and localities in the State with a need for mental health, alcohol abuse, and alcoholism and drug abuse services, and Section 1915(a)(2) requires that the State make grants from ADMS Block Grant funds to community mental health centers for services to severely mentally disturbed children and adolescents, persons with severe and persistent mental illness, mentally ill elderly individuals, and any other identifiable subpopulations that are currently underserved. Additional populations and services identified in the statute are outpatient services for residents of the area that have been discharged from an inpatient facility and screening

services for those at risk of hospitalization. We are asking you to briefly describe the mechanisms used in your State to meet these requirements for community mental health services to the populations so identified, ***using no more than 1 page.***

1. **Geographical Planning Areas to be Served.** We are asking you to provide the most current data available on the total number of persons in need of treatment for mental illness, using whatever format and methodology that you use for this purpose. If possible, provide a table to indicate the total number of persons in the State in need of mental health services. If available, provide the same information for each of the mental health service areas, defined in accord with Section 1916(c)(3)(A), and indicating the Region (mental health service area) for which data is presented. In the narrative, indicate the source of the data and briefly describe the methodology utilized by the State to generate this information (***not to exceed 1 page***). We recognize that there are many methods for doing needs/demand assessment and resource allocation, and that States and local communities use a variety of these methods out of preference and/or cost-considerations; therefore, we ask you to briefly describe the methodology used and the rationale for its use.

> **NOTE:** Do not duplicate any material covered in more detail in your Comprehensive Mental Health Services Plan. Provide a cross reference to the pages in that document where the material can be found.

2. **Characteristics of Individuals to be Served.** While the State must address the needs of its total population, there are a number a subgroups that are especially vulnerable and that have special needs that require targeted attention, including additional financial resources, programs tailored to cultural values and unique characteristics, and specialized staff training. Some of these special populations have been identified as deserving such special attention in the ADMS Block Grant statute: individuals with severe and persistent mental illness, seriously emotionally disturbed children and adolescents, the mentally ill elderly, residents of the area that have been discharged from an inpatient facility, and persons at risk of hospitalization. We ask that you focus on these populations in the application.

a. **Children and Adolescents.** Section 1916(c)(15) requires that 10 percent of the Mental Health portion of the ADMS Block Grant be used to fund services for severely emotionally disturbed children and adolescents and that not less than 50% of these funds will be used to provide new or expanded services that were not available prior to October 1, 1988.

(1) Describe briefly how the State has and will continue to fund activities to implement this provision. On the **Mental Health Service Area Activity Inventory** (ADMS Form 17), provide specific information identifying which units received funding under this provision and the amount of ADMS Block Grant and State funds for each unit.

> (2) Describe the adequacy of these efforts in meeting the needs for mental health services to severely emotionally disturbed children and adolescents:

(a) **Definition.** What is your definition of membership in the special population and what is the criteria which you use to determine inclusion?

(b) **Prevention Activities.** What efforts is the State making to target programs or activities that will prevent the increase of mental illness in this special population?

(c) **Treatment Needs** - What is the State's most recent estimate of the number and location (i.e., rural, urban) of persons in need of treatment in this special population? Provide documentation, including relevant data, to support these estimates. Reference the source of the estimate and the methodology used to determine treatment need. If possible, provide the data in tabular form.

(d) **Treatment Capacity and Utilization** - What is the State's current capability to provide treatment for members of this special population. Provide the information using the standard methodology by which you purchase and measure treatment capacity and utilization. If possible, provide the data in tabular form.

(e) **Treatment Expansion/Improvement** - What has the State done or what is it planning to do to expand and/or improve outreach, treatment, follow-up care, and other services (e.g., special education, supported housing, vocational training and job placement, case management) for this special population? What, if any, role have Federally funded demonstration project played in your effort.

(f) **Major Problems** - What, if any, problems does the State face in trying to expand and/or improve services over the coming Expenditure Period to this special population?

(g) **Technical Assistance Needs** - What, if any, technical assistance and knowledge transfer activities are needed by the State and its local programs to improve services for this special population?

Limit the total discussion to 4 pages.

b. **Other Populations.** In addition, we are asking you to provide in **Appendix F** the most current information available on the efforts being made to address the special needs of two of the other special populations discussed in the statute with ADMS Block Grant funds (i.e., mentally ill elderly, persons with severe and persistent mental illness).

NOTE: Do not duplicate any material covered in more detail in your Comprehensive Mental Health Services Plan. Provide a cross reference to the pages in that document where the material can be found.

As noted above, additional populations and the specific services that can be funded are identified in the statute as outpatient services for residents of the area that have been discharged from an inpatient facility and screening services for those at risk of hospitalization. We ask you to

respond to the seven sets of questions listed above for each group that you select. A response is optional for these special populations and any other such target populations that your State has identified as needing special attention. For any of the special populations, please provide your best current information by providing needs assessment data and responding to the same seven questions. Whenever possible, reference the source of the data and describe the methodology utilized by the State to generate this information and to implement the described services. ***Please limit your discussion to no more than 4 pages of narrative for each population that you include.***

D. Criteria and Methods for the Distribution of Allotments. Briefly describe the criteria and methods that the State currently uses to distribute the mental health portion of the ADMS Block Grant to local entities and programs for the provision of community mental health services in compliance with sections 1915(a)(2), 1916(c)(3), 1916(c)(4), and 1916(e)(2)(B) (***using no more than 3 pages***). For example, criteria used for distributing funds may include a formula based on population size, a statewide community survey as a needs assessment to determine the prevalence of problems with catchment areas ranked to determine priorities for expansion funding when treatment resources are insufficient to meet these needs and waiting lists exist, or a formula for providing for cost of living and merit increases to retain experienced staff or for relative ranking on direct and indirect indices of problems such as school suspensions or median family income, or a combination. Methods for distribution of funds may include mailing announcements to community groups and local governments to solicit letters of intent to provide services within the specified mental health service areas and service categories, review of continuation applications from previously funded community mental health centers, formal contract bidding procedures to determine the service provider for a given service area or special population, or purchase of services on an as needed basis from a number of qualified providers.

Identify whatever financial conditions (e.g., matching requirements, maintenance of effort, licensure, performance contracting) that the State imposes on local entities or programs that receive State funds to provide community mental health treatment services.

If the process for allocating ADMS Block Grant funds to local entities and programs differs substantially from the process for allocating State funds, please explain the rationale for these differences.

E. Methodology used by State to Purchase Services and Determine Treatment Capacity and Quality.

1. Treatment Capacity and Utilization. We ask you to briefly describe the methods used by the State to purchase treatment capacity and services from local providers, to determine treatment capacity, and to determine the reasonable cost of capacity and services purchased (***using no more than 2 pages***).

a. Mechanisms Used to Manage and Measure Treatment Capacity and Utilization. We recognize that there are a variety of methods for measuring treatment capacity and utilization and for purchasing services (e.g.

episodes, units of service, personnel and operating budgets, DRGs, capitation), and that States and local communities may use one or more of these methods. Please describe the mechanism by which you purchase and measure treatment capacity and utilization, and provide data on the capacity and services provided using your methodology.

b. **Methods Used to Purchase Services.** Briefly describe the methods used by the State to purchase treatment capacity and services from local providers (***using no more than 1 page***). For example, services may be secured by grant or contract, on a competitive basis or non-competitive basis. Contracts or grants may be for a specified time (e.g., a year) with renewal dependent on satisfactory performance or renewal dependent on a competitive procurement. Or the State may provide contract funding on an annual basis to a subarea administrative agency (e.g., a county health department, comprehensive community mental health services board) using a population-based formula; the formula may be similar to that used to establish ADMS Block Grant allotments to States. The county umbrella agency then awards funds to local providers using a grant mechanism to obtain a specified number of units of service (e.g., group counseling hours; education sessions). Contracts or grants may be for a specified time (e.g., a year) with renewal dependent on satisfactory performance or renewal dependent on a competitive procurement.

c. **Methods Used to Determine Reasonable cost.** Describe the methodology that the State uses to determine the reasonable cost of services for whichever methodology is used. For example, describe how the State determines what the cost per unit of service should be that it purchases from all providers or the formula used to distribute funds to regional administrative units. Describe variations, if any, that are used to fund projects serving specific geographic areas or critical populations (e.g, rural and urban areas, economically disadvantaged populations).

2. Quality Assurance, Performance Criteria, Program Standards, and Evaluation.

a. **Program Performance Monitoring.** For programs that receive State and/or ADMS Block Grant funds, describe briefly how the State agency awarding those funds monitors and evaluates the performance of mental health service providers during the funding period. Where appropriate, please include a discussion of monitoring mechanisms such as: management information and outcome monitoring systems, periodic program activity reports, periodic reports, grant/contract applications, program records, site visits, performance contracting, licensure/accreditation reports, and independent peer review. For each of the monitoring mechanisms used, please provide a brief description of the methods used (e.g., application forms, licensure/accreditation standards, and/or monitoring checklists). ***Limit your discussion of these mechanisms to 3 single-spaced pages.***

b. **Independent Peer Review.** Section 1916(c)(5) requires that each State provide for periodic independent peer review to assess the quality and appropriateness of treatment services in programs funded by the ADMS Block Grant. Each State should have by now developed policies and procedures which cover the State Agencies' and local treatment service providers'

responsibilities and authorities, as established by legislative, regulatory or executive authorities, for independent peer review. We are asking you to describe how you have been and will continue to implement this requirement. Address the following five items and ***limit your discussion of independent peer review to 3 single-spaced pages.***

(1) Describe your State's procedures for the implementation of this provision, including a definition of "peer review", identification of who (or what entity) will conduct these activities, and a schedule for how often such "periodic" reviews will be conducted.

(2) Describe the data collection requirements, including a description of peer review data elements and reports required from treatment programs and/or peer review agencies pertaining, generally, to the quality and appropriateness of care in those programs and, specifically, to patient-oriented adverse or sentinel health events occurring during treatment, the quality and appropriateness of care standards, criteria, indicators and other related information used to perform peer review, and the methodology for selecting cases for peer review including sampling techniques.

(3) Include a brief description of the relationship of the independent peer review program to the State's other quality assurance mechanisms, such as licensure and monitoring activities, and to accrediting programs such as the Joint Commission on Accreditation of Healthcare Organizations and the Commission on Accreditation of Rehabilitation Facilities.

(4) Identify the staff by organizational unit and position title (not name) assigned in the State or regional umbrella agencies to conduct or manage the independent peer review program.

(5) Provide a description of the kinds of findings and recommendations generated by the peer review program which identify quality and appropriateness of care problems, corrective actions or opportunities for improvement, and the known and perceived impacts on and improvements to the quality and appropriateness of care that can be attributed to the peer review program.

3. **Treatment Improvement.** Describe key elements in the State's strategy to augment existing programs and to establish new treatment programs, where needed. Describe what role, if any, Federally funded demonstration projects play in your efforts. Describe briefly what, if any, plans the State has to help overcome obstacles that restrict the expansion of treatment capacity in local communities, such as zoning ordinances or community resistance to siting new treatment programs. Describe briefly what technical assistance you would wish to receive from OTI to implement this strategy.

Limit the total discussion to 4 pages.

SECTION IV
Appendices

There are six appendices to be included with the application:

A. Group Homes for Recovering Substance Abusers (see page 18).

B. Substance Abuse Prevention and Early Intervention: Definitions and Project Descriptions (see page 26).

C. Substance Abuse Services to Women: Project Descriptions and Responses (see page 38).

D. Treatment for Intravenous Drug Abusers: Project Descriptions and Responses (see page 40)

E. Substance Abuse Services to other Critical Populations: Responses (see page 40) (Optional).

F. Mental Health Services to other Special Populations: Responses (see page 57) (Optional).
   1. Mentally ill elderly
   2. Persons with severe and persistent mental illness
   3. Other

Additional attachments should not be necessary, but if you wish to present additional material, each should be clearly marked with identifying information (i.e., the section of the application and the page number referenced), included in the Table of Contents, and paginated as separate appendices.

In Appendices E and F, we are asking you to provide the most current information available on the efforts being made to address the special needs of the special populations discussed in the statute or identified by your State as requiring special attention by responding to seven sets of questions and providing data on either our forms or those customarily used for your own planning and budgeting, if possible. A response is optional for these special populations. Whenever possible, reference the source of the data and describe the methodology utilized by the State to generate this information and to implement the described services. ***Please limit your discussion to no more than 4 pages of narrative for each population in Appendix E.***

(a) **Definition.** What is your definition of membership in the special population and what is the criteria which you use to determine inclusion?

(b) **Prevention Activities.** What efforts is the State making to target programs or activities that will prevent the increase of substance abuse or mental illness in this special population?

(c) **Treatment Needs** - What is the State's most recent estimate of the number and location (i.e., rural, urban) of persons in need of treatment in this special population? Provide documentation, including relevant data, to support these estimates. Reference the source of the estimate and the methodology used to determine treatment need. If possible, provide the data using a copy of the **Statewide Target Population Needs Assessment Worksheet** (ADMS Form 13) included in the application. Duplicate as many copies as are needed and number the pages consecutively.

(d) **Treatment Capacity and Utilization** - What is the State's current capability to provide treatment for members of this special population. Provide the information using the standard methodology by which you purchase and measure treatment capacity and utilization.

(e) **Treatment Expansion/Improvement** - What has the State done or what is it planning to do to expand and/or improve outreach, treatment, follow-up care, and other services (e.g., supported housing, vocational training and job placement, case management) for this special population? What role do Federally funded demonstration projects play in your efforts?

(f) **Major Problems** - What, if any, problems does the State face in trying to expand and/or improve services over the project period to this special population?

(g) **Technical Assistance Needs** - What, if any, technical assistance or knowledge transfer activities are needed by the State and its local programs to improve services for this special population?

LIST OF REQUIRED AND OPTIONAL FORMS

Form 01	Face Page
Form 02	Table of Contents/Review Checklist
Form 03	CEO Assurances
Form 04	Service Coordination Matrix
Form 05	State Spending Plan
Form 06	Regional Spending Plan
Form 07	Regional Activity Inventory
Form 08	Statewide Project Inventory
Form 09	Needs Assessment Summary Matrix (Optional)
Form 10	Statewide Needs Assessment Worksheet (Optional)
Form 11	Statewide Women's Needs Assessment Worksheet (Optional)
Form 12	Statewide IVDU's Needs Assessment Worksheet (Optional)
Form 13	Statewide Target Population's Needs Assessment Worksheet (Optional)
Form 14	Treatment Capacity Matrix
Form 15	Treatment Utilization Matrix
Form 16	Mental Health State Spending Plan Form (Optional)
Form 17	Mental Health Service Area Activity Inventory Form (Optional)

REVIEW OF APPLICATIONS

Review Process

The Division of Grants and Contracts Management (DGCM), ADAMHA, serves as the point of contact for receipt and review of ADMS Block Grant applications. For FY 1991 applications will be initially reviewed by staff from DGCM and the other ADAMHA components involved in program administration for completeness and compliance with block grant statute and regulations concerning certifications and the description of the intended use of funds. As in previous years, the notification of award will be dependent on completeness of the application containing the required certifications and description of the intended use of funds. Failure to provide required certifications and descriptions will result in delays in making the award.

A second objective review that will involve ADAMHA staff and consultants, including representatives of other State ADM agencies, subarea administrative agencies and local provider staff, will follow. This peer review will focus on the technical merit of the activities and funding patterns described in the application and will be used in this transition year to identify national trends in service delivery, problems being encountered, and technical assistance needs, nationally and locally. The application and its review will serve as baseline data for the organizational development reviews and evaluations of the State's capacity to administer the ADMS Block Grant. Review of the revised application will enable OTI to initiate technical assistance activities focused on resolving ADMS Block Grant management infrastructure problems identified by the States.

Additional information will be sought from the State contacts listed on the Face Page if the material in the application is deemed insufficient to assess either compliance or technical merit. We are not seeking data for data's sake. As noted previously, we ask that wherever your State does not have reliable data to permit a response to a specific item within the time frames given for submitting the application, do not attempt to answer but to indicate what the problem is in obtaining the necessary data and to describe the type of assistance you would desire in order to be able to provide a reliable and valid response in future years. We are relying on the cooperation of State agencies to support this effort by describing their planning and management activities and programs in response to the questions in the instructions and in the forms as best they can. We need you to explain the reasons for the unavailability of any needed data so we can jointly develop the next steps.

Allotments and Awards

Sections 1912, 1912A and 1913 of the PHS Act set out the procedures to be followed in determining the allocation for each State and Territory. Award processes and decisions remain the same as in previous years. Appropriations and allocations for FY 1991 are not yet known, and awards will not be made until the final Federal budget is adopted.

Administrative Review of Waiver Requests.

The Anti-Drug Abuse Act of 1988 (Public Law 100-690) amended the Public Health Service Act by reauthorizing the Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant. The Act also authorized the Secretary of Health and Human Services, upon the request of a State, to waive certain requirements under the ADMS Block Grant program. The authority to grant such waivers has been delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). Waivers can be requested for the following requirements:

1. 50 Percent Set-Aside for Intravenous (IV) Drug Abuse, Section 1915(C);
2. Construction or Rehabilitation of Substance Abuse Facilities, Section 1912(A);
3. Maintenance of Effort, Section 1916(c)(11)(B); and
4. 55 Percent Set-Aside for new Community Mental Health Services and Programs, Section 1916(c)(2)(B).

Guidelines are available to help those States that may wish to apply for any of these waivers. The Guidelines provide direction on information that should be submitted to support the request for a waiver. However, the format and documentation of a waiver request are subject to some State discretion. ADAMHA will use the waiver framework described in the Guidelines to assess each request for completeness and comparability.

The granting of a waiver under any of these authorities is a discretionary matter subject to the decision of the Administrator, based on the individual merits of each case. The Administrator will not automatically grant each waiver.

The guidelines for requesting waivers for requirements 1, 2, and 3 listed above were published in the Federal Register on June 2, 1989 at 54 FR 23696 et seq. Copies of the Guidelines for requesting each waiver can be obtained from:

Mr. Gary Palsgrove
Senior Advisor for Block Grants
Division for State Assistance
ADAMHA/OTI
Rockwall Building - 10th floor
5600 Fishers Lane
Rockville, MD 20857

Telephone: (301) 443-3820

GLOSSARY OF KEY TERMS[10]

ADAMHA PROGRAM SUPPORT FUNDS - Include here all funds received for prevention, training, research, treatment, etc., from NIAAA, NIDA, OTI, OSAP, or NIMH through direct project grants/contracts (including services and services research). These are included in the **Other Federal Funds** column on the spending plan forms.

AMERICAN INDIAN/ALASKAN NATIVE - A person having origins in any of the original people of North America.

ASIAN-AMERICAN/PACIFIC NATIVE - A person having origins in any of the original people of the Far East, Indian subcontinent, Southeast Asia, or the Pacific Islands.

BLACK, NOT OF HISPANIC ORIGIN - A person having origins in any of the people of sub-Saharan Africa or Haiti who do not self-classify as Hispanics.

CAPACITY OF TREATMENT - The maximum number of individuals who could be enrolled as active clients given the unit's staffing, funding, and physical facility at that time. For residential and other 24-hour care units, treatment capacity is equal to the number of beds available at the unit. For outpatient units, treatment capacity reflects the maximum active client caseload a unit could carry. This maximum caseload would depend upon such factors as the percentage of total staff hours devoted to direct client care, the average length of counseling sessions, and the frequency of client visits to the unit.

CHILD CARE SERVICES - Services which provide care for minor children of active clients, including supervised activities.

COMMUNITY MENTAL HEALTH CENTER - Includes five types of services which are provided in a comprehensive manner in order to provide a community service. The five services provided by CMHC's are outpatient care, inpatient care, partial hospitalization, emergency care and consultation and education.

CUSTODIAL/DOMICILIARY - Provision of food, shelter, and assistance in routine daily living on a long-term basis for persons with alcohol or other drug-related problems. Classify any such services as long-term rehabilitation treatment units.

DETOXIFICATION (Drug or Drug-free) - The period of planned withdrawal from drug dependency, whether or not supported by use of a prescribed medication. If methadone is being used, detoxification cannot exceed 180 days. When

---

[10] ^The majority of key terms included in this glossary have been adapted from the National Drug and Alcohol Treatment Unit Survey (NDATUS). Questions about the accuracy or applicability of any definition to each State's methodology should be address to Herman Diesenhaus at (301) 443-3820. In all cases, the definition contained in the applicable statute would be controlling.

methadone detoxification exceeds 180 days, the treatment modality becomes maintenance. A treatment regimen that does not include any pharmacologic agent or medication as the primary part of the drug treatment including drug detoxification. Temporary medication may be prescribed in a drug free modality, e.g., short-term use of tranquilizers or clonidine for opiate withdrawal, but the primary treatment method is counseling (individual, group, family, etc.), and not pharmacotherapy.

DETOXIFICATION (Social or Medical) - The systematic reduction or elimination of the effects of alcohol in the body whether on a drug-free basis, in a specialized nonmedical facility by trained personnel with physician services available when required or through the use of medication under the supervision of medical personnel in a hospital or other 24-hour care facility.

DYNAMIC CAPACITY - the total number of patients that a [project] might treat over a stated period of time, a year being the common period of measurement. For example, over the course of a year, a static inpatient detoxification slot theoretically could yield a dynamic capacity of 52, because it is possible to detoxify a patient in one week.

EARLY INTERVENTION SERVICES - These services are intended to encourage persons to seek early help for their alcohol and drug problems, provide crisis services, educate the helping professions to recognize persons with substance abuse problems and to offer appropriate services, and the like.

EPISODE - a single treatment experience with a given admission and discharge date.

FAMILY COUNSELING/THERAPY SERVICES - Services which are provided during the same session to members of a family/collateral group.

FUNDING SOURCE - Includes all sources of operating funds for a treatment unit in effect during an Expenditure Period.

HISPANIC - A person of Cuban, Mexican, Puerto Rican, and all other Spanish cultures and origins, regardless of race (includes Central and South America and Spain).

HOSPITAL INPATIENT - An institution that provides 24-hour services for the diagnosis, detoxification and treatment (rehabilitation, recovery) of patients through an organized medical or professional staff and permanent licensed medical/psychiatric facilities that include inpatient beds, medical, and nursing services.

LOCAL GOVERNMENT FUNDS - Provided by local government (city, county, etc.) to provide treatment or prevention services on a program or unit level.

METHADONE MAINTENANCE - The continued administering of methadone and other approved pharmacological adjuncts at relatively stable dosage levels as an oral substitute for an individual dependent on opiates. This may be administered in conjunction with appropriate social and medical services. This category also includes those clients who are being withdrawn from

maintenance treatment.

METHADONE TREATMENT - Refers to methadone maintenance or detoxification. Methadone maintenance is the continued administering of methadone, in conjunction with provision of appropriate social and medical services, at relatively stable dosage levels for 180 days or more. Methadone is used as an oral substitute for opiates during the rehabilitative phase of treatment. This category also includes those clients who are being withdrawn from maintenance treatment.

OTHER FEDERAL FUNDS - Funds made available to the States or treatment units from any Federal agency, e.g., Federal Prison System, Veterans Administration, Bureau of Community Health Services, Indian Health Service, etc. This designation is to be used when ADAMHA Program Support funding categories are not appropriate. Medicaid funds should not be included in this category.

OUTPATIENT - Treatment/recovery/aftercare, or rehabilitation services provided by a unit where the client does not reside in a treatment facility. The client receives drug abuse or alcoholism treatment services with or without medication, including counseling and supportive services. Daycare is included in this category. This is also known as non-residential services in the alcoholism field.

OUTREACH SERVICES - Outreach activities involve efforts in the community for early case-finding and early intervention services to drug and alcohol abusers. These services would also include efforts to educate various groups about drug and alcohol abuse.

NATIVE HAWAIIAN - A person having origins in any of the original people of the Hawaiian Islands.

PATIENT (CLIENT) FEES - Direct payment to the treatment unit from consumers for services received. May be proportioned on a sliding-scale based on individual or family income.

PREVALENCE - the number (rate) of persons in the community who have been diagnosed as having an alcohol or drug related problem requiring treatment. May be established through direct measures or indicators such as counts of the number of patients in treatment and extrapolations from surveys or indirect measures or indicators such as extrapolations from the number of drug-related emergency room visits or of the number of hepatitis patients in treatment, or drug-related deaths reported by coroners, by counts of the numbers of persons arrested for drug-related crimes--possession, selling or number of arrestees testing positively for drugs.

PREVENTION/EDUCATION - Those activities that are intended to reduce or minimize the incidence of new drug abuse or alcoholism problems and the negative consequences of the use of alcohol and/or licit or illicit drugs. Available services may vary widely but are generally associated with information, education, alternatives, and primary and early intervention activities, and may also encompass services such as literature distribution, media campaigns, clearinghouse activities, speaker's bureau, and school or

peer group situations. These services may be directed at any segment of the population.

Activities, programs and projects can be differentiated by the primary group targeted: prevention and early intervention activities are targeted at non-users, experimenters, occasional users, and individuals just emerging as drug users who are at high risk of becoming dysfunctional users of any drug, including alcohol. Treatment and rehabilitation activities are targeted at those persons already experiencing problems related to the consistent use of alcohol and other drugs.

PRIVATE DONATION FUNDS - Contributions from foundation grants, cash donations, cash value of donated goods, and contributions from United Way and other charitable institutions. These are included in the **Other Funds** category.

PRIVATE THIRD PARTY FUNDS - This category includes payments from Blue Cross and Blue Shield Plans, other commercial insurance companies, and independent plans. Independent plans include employer- or employee-sponsored programs, health maintenance organizations, and private group clinics. These are included in the **Other Funds** category.

PUBLIC THIRD PARTY FUNDS - Benefits paid through Title XVIII (Medicare), XIX (Medicaid), or XVI (Supplemental Security Income, SSI. This category includes the Civilian Health Medical program of the Uniformed Services (CHAMPUS) and the Civilian Health and Medical Program of the Veterans' Administration (CHAMP-VA). These are included in the **Other Federal Funds** category.

PUBLIC WELFARE - Medical or social service benefits or payments made available through local general assistance or general assistance or general relief programs, including food stamps. These are included in the **State or Local Government Funds** categories as appropriate.

QUALITY ASSURANCE - Activities designed to evaluate, certify, or improve the quality of [treatment] care in order to enhance the health of consumers and the cost-effectiveness of care.

REHABILITATION/RESIDENTIAL - An approach which provides a planned program of professionally directed assessment, diagnosis, care, and treatment for the restoration of functioning for persons impaired by drugs or alcoholism. In some States, this type of care is referred to as treatment or recovery (excluding detoxification). Includes services provided in hospitals and nonmedical treatment facilities (including a prison or a jail) that provides residential support, ambulatory care during the treatment and rehabilitation process including individual and family counseling, group therapy and other health-related services. Residential facilities include quarterway house, halfway house/recovery homes, group homes and therapeutic communities.

RESEARCH SERVICES - Activities performed by unit staff to systematically collect and/or analyze empirical data based on the scientific model of developing knowledge.

SLOT - A unit of measure of treatment capacity. The maximum number of persons who can be treated or carried on a person's rolls at any one time, given the programs's physical characteristics, size and composition of staff, and financial and other resources. For example, if an outpatient program has set a policy that there must be one counselor for every 20 patients and it has five full-time counselors, then the program has a capacity of 100 slots. In other words, the program should not keep more than 100 persons on its active patient rolls given its current resources. Because patients are regularly being discharged and new patients admitted, a single slot, in the course of a year can be filled by more than one person. A 20-bed facility designed to provide inpatient detoxification in a standard course of treatment of one month can serve at least 240 persons a year (20 beds x 12 months), but it still has only 20 slots. Slots and persons served are not synonymous. Treatment costs may also be calculated using the concept of slots. The "annual average cost per treatment slot" is equal to a program's total cost of providing treatment over the year divided by the average treatment capacity, expressed as slots for that year. A slot may be conceptualized as the capacity to provide treatment for one patient for one year.

STATE - As used in this application, State refers to all the States and Territories eligible to receive ADMS Block Grant funds as described in Section 1912A(g)(1)(B)--the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and the successor States to the former Trust Territory of the Pacific Islands. Where a requirement does not apply to any State or Territory, the exception will be noted (e.g., revolving loan fund for group homes for recovering substance abusers).

STATE EXPENDITURE PERIOD - the period during which ADMS Block Grant funds will be expended by the State, which, in most cases, will be the State's fiscal year. Several forms request that information be provided on expenditures of major sources of funds (e.g., ADMS Block Grant, other available Federal grants, and State and local funds) anticipated to be made during this coming State Expenditure Period as well as made during the last State Expenditure Period.

STATE GOVERNMENT FUNDS - Funds provided by State legislation to provide prevention and treatment services on a program or unit level. These are included in the State or Local Government Funds categories as appropriate.

STATE/LOCAL GOVERNMENT FEES FOR SERVICE - State or local monies paid to programs or units as reimbursement for services provided to clients or patients. These are included in the State or Local Government Funds categories as appropriate.

STATIC CAPACITY (or Budgeted Capacity) - the number of patients that a treatment project is funded or budgeted to treat. A slot may be conceptualized as the capacity to provide treatment for one patient for one year.

TREATMENT (Not Methadone) - Formal organized services for persons who have abused alcohol and/or other drugs. These services are designed to alter

specific physical, mental, or social functions of persons receiving care by reducing client disability or discomfort, and ameliorate the signs or symptoms caused by alcohol and/or drug abuse. For purposes of this survey, detoxification services are considered to be a treatment. This is also referred to as recovery services in some States.

TYPE OF CARE - The primary treatment approach or regimen assigned to the client by the treatment unit staff. Types of care as shown on the drug and alcohol matrices on pages 2 and 3 of the form are differentiated by the type and extent of therapy and services administered to the client.

UMBRELLA AGENCY - a substate or local organization [planning unit] that oversees prevention and treatment projects. Federal and State funds are sometimes channeled through such an area agency; thus, it should be doing planning as well as monitoring the use of funds and provision of services.

WHITE (Not Hispanic) - A Caucasian person having origins in any of the people of Europe (including Portugal), North Africa, or the Middle East.

DRAFT

OMB No: 0930-0080

NOTIFICATION OF RESPONDENT BURDEN--
SEE LAST PAGE

Expires:

ATTACHMENT B
(ADMS)

FISCAL YEAR (FY) 1991 ADMS BLOCK GRANT APPLICATION REQUIREMENTS

This format is modeled after the fiscal year (FY) 1990 requirements and may be used to meet the minimum requirements for (FY) 1991 applications. This format is based only on the present Federal statutory requirements. However, consistent with those statutory requirements the following items must be a part of the FY 1991 application:

A. An assurance that the legislature of the State[1] has conducted public hearings on the proposed use and distribution of the ADMS Block Grant funds, as required in Section 1916(a) and (b) of the PHS Act.

B. The Chief Executive Officer's certification that the State will comply with the requirements of Section 1916(c) (1) through (21) of the PHS Act, as amended by P.L. 101-374. (The certification must be made by the Chief Executive Officer personally or by an individual formally authorized to make such certifications on behalf of the Chief Executive Officer; a copy of any such authorization must be included.)

We suggest, and will accept, a Chief Executive Officer's certification as follows: "I hereby certify that the State/Territory will comply with Section 1916 (c) (1) through (21) of the PHS Act, as amended by P.L. 101-374."

C. The State's agreement that it will comply with Section 1915(c)(2) of the PHS Act, as amended by Section 2025 of P.L. 100-690. We suggest, and will accept, the following certification:

"The State agrees that payments received under the ADMS Block Grant and used pursuant to Section 1915(c) will not be expended --

1. to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of

[1] As used in this application State refers to all the States and Territories eligible to receive ADMS Block Grant Funds and to which these assurances apply by statute.

cleansing needles for such hypodermic injection; or

2. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling."

D. The Chief Executive Officer's certification that the State will comply with Section 1916(e) of the PHS Act, as amended by Section 2035 of P.L. 100-690.

We suggest, and will accept, the following certification:

"I hereby certify that the State agrees to establish and maintain a State mental health planning council in accordance with the provisions of Section 1916(e) of the PHS Act.

1. The duties of the Council will be --

a. to serve as an advocate for chronically mentally ill individuals, severely emotionally disturbed children and youth, and other individuals with mental illnesses or emotional problems; and

b. to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

2. The Council will be composed of residents of the State, including representatives of --

a. the principal State agencies with respect to -

(1) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(2) the development of the plan submitted pursuant to Title XIX of the Social Security Act;

b. public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

c. seriously mentally ill individuals who are receiving (or have received) mental health

services; and

d. the families of such individuals.

3. Not less than 50 percent of the members of the Council will be individuals who are not State employees or providers of mental health services.

4. The Council may assist the State in the preparation of the description of intended expenditures required in Section 1916(d) of the PHS Act."

E. The State's assurance that the State has provided for the establishment and ongoing operation of a revolving fund in accordance with Section 1916A(a) of the PHS Act (Group Homes for Recovering Substance Abusers).

We suggest, and will accept, the following certification:

"I hereby certify that the State has provided for the establishment and ongoing operation of a revolving fund in accordance with Section 1916A(a) of the PHS Act."

F. A description of the intended use of the block grant funds as required by Section 1916(d) of the PHS Act and in accordance with the specifications of Section 1742(a) of the Omnibus Budget Reconciliation Act of 1981; i.e., (a) a statement of goals and objectives; (b) information on the types of activities to be supported, geographic areas to be served, and categories or characteristics of individuals to be served; and (c) the criteria and method established for the distribution of funds, including details on how the distribution of funds will be targeted on the basis of need to achieve the purposes of the block grant funds.

G A description, as required by Section 1742(a) of the Omnibus Budget Reconciliation Act of 1981, of how the State has met the goals, objectives, and needs in the use of funds for the previous fiscal year (in this case, the previous year being FY 1990) as described in that previous year's application, and/or any subsequent revision of the original application.

Finally, you should complete and forward the attached certification regarding Drug Free Workplace requirements (unless your State has a current Statewide or Agency-wide certification

for 1991 on file with the Department of Health and Human Services) and Certification Regarding Lobbying and (if appropriate) disclosure form consistent with instructions transmitted last year.

Please note that P.L. 101-374 has amended the formula for determining the intra-state distribution of the ADMS allotment between Mental Health and Substance Abuse by permanently incorporating the effect last year of the "DOT supplemental funds" on the actual distribution.

Unless the Chief Executive Officer indicates otherwise, we plan to award the FY 1991 ADMS Block Grant to the same State entity that was designated to receive and administer the FY 1990 grant.

DRAFT

ATTACHMENT B
(ADMS)

FISCAL YEAR (FY) 1991 ADMS BLOCK GRANT APPLICATION REQUIREMENTS

This format is modeled after the fiscal year (FY) 1990 requirements and may be used to meet the minimum requirements for (FY) 1991 applications. This format is based only on the present Federal statutory requirements. However, consistent with those statutory requirements the following items must be a part of the FY 1991 application:

A. An assurance that the legislature of the Territory has conducted public hearings on the proposed use and distribution of the ADMS Block Grant funds, as required in Section 1916(a) and (b) of the PHS Act.

B. The Chief Executive Officer's certification that the Territory will comply with the requirements of Section 1916(c) (1) through (21) of the PHS Act, as amended by P.L. 101-374. (The certification must be made by the Chief Executive Officer personally or by an individual formally authorized to make such certifications on behalf of the Chief Executive Officer; a copy of any such authorization should be included.)

We suggest, and will accept, a Chief Executive Officer's certification as follows: "I hereby certify that the Territory will comply with Section 1916(c)(1) through (21) of the PHS Act, as amended by P.L. 101-374."

C. The Territory's agreement that it will comply with Section 1915(c)(2) of the PHS Act, as amended by Section 2025 of P.L. 100-690. We suggest, and will accept, the following certification:

"The Territory agrees that payments received under the ADMS Block Grant and used pursuant to Section 1915(c) will not be expended --

1. to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or

2. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling."

D. The Chief Executive Officer's certification that the Territory will comply with Section 1916(e) of the PHS Act, as amended by Section 2035 of P.L. 100-690.

We suggest, and will accept, the following certification:

"I hereby certify that the State agrees to establish and maintain a State mental health planning council in accordance with the provisions of Section 1916(e) of the PHS Act.

1. The duties of the Council will be --

a. to serve as an advocate for chronically ill individuals, severely emotionally disturbed children and youth, and other individuals with mental illnesses or emotional problems; and

b. to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

2. The Council will be composed of residents of the State, including representatives of --

a. the principal State agencies with respect to -

(1) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(2) the development of the plan submitted pursuant to Title XIX of the Social Security Act;

b. public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

c. seriously mentally ill individuals who are receiving (or have received) mental health services; and

d. the families of such individuals.

3. Not less than 50 percent of the members of the Council will be individuals who are not State employees or providers of mental health services.

4. The Council may assist the State in the preparation of the description of intended expenditures required in Section 1916(d) of the PHS Act."

E. A description of the intended use of the block grant funds as required by Section 1916(d) of the PHS Act and in accordance with the specifications of Section 1742(a) of the Omnibus Budget Reconciliation Act of 1981; i.e., (a) a statement of goals and objectives; (b) information on the types of activities to be supported, geographic areas to be served, and categories or characteristics of individuals to be served; and (c) the criteria and method established for the distribution of funds, including details on how the distribution of funds will be targeted on the basis of need to achieve the purposes of the block grant funds.

F. A description, as required by Section 1742(a) of the Omnibus Budget Reconciliation Act of 1981, of how the Territory has met the goals, objectives, and needs in the use of funds for the previous fiscal year (in this case, the previous year being FY 1990) as described in that previous year's application, and/or any subsequent revision of the original application.

Finally, you should complete and forward the attached certification regarding Drug Free Workplace requirements (unless your Territory has a current Statewide or Agency-wide certification for 1991 on file with the Department of Health and Human Services) and Certification Regarding Lobbying and (if appropriate) disclosure form consistent with instructions transmitted last year.

Please note that P.L. 101-374 has amended the formula for determining the intra-state distribution of the ADMS allotment between Mental Health and Substance Abuse by permanently incorporating the effect last year of the "DOT supplemental funds" on the actual distribution.

Unless the Chief Executive Officer indicates otherwise, we plan to award the FY 1991 ADMS Block Grant to the same entity that was designated to receive and administer the FY 1990 grant.

NOTIFICATION TO RESPONDENT OF ESTIMATED BURDEN

Public respondent burden for this collection of information is estimated to average 200 hours per application, including time for reviewing instructions and completing 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: Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, S.W., Washington, D.C., 20201, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

ADMS B-T

ATTACHMENT C

Forms for Completing Applications for the Alcohol and Drug Abuse and Mental Health Services Block Grant Program - Fiscal Year 1991

LIST OF REQUIRED AND OPTIONAL FORMS

Form 01	Face Page
Form 02	Table of Contents/Review Checklist
Form 03	CEO Assurances Certification Regarding Drug-Free Workplace Requirements Certification Regarding Lobbying Disclosure of Lobbying Activities
Form 04	Service Coordination Matrix
Form 05	State Spending Plan
Form 06	Regional Spending Plan
Form 07	Regional Activity Inventory
Form 08	Statewide Project Inventory
Form 09	Needs Assessment Summary Matrix (Optional)
Form 10	Statewide Needs Assessment Worksheet (Optional)
Form 11	Statewide Women's Needs Assessment Worksheet (Optional)
Form 12	Statewide IVDU's Needs Assessment Worksheet (Optional)
Form 13	Statewide Target Population's Needs Assessment Worksheet (Optional)
Form 14	Treatment Capacity Matrix
Form 15	Treatment Utilization Matrix
Form 16	Mental Health State Spending Plan Form (Optional)
Form 17	Mental Health Service Area Activity Inventory Form (Optional)

Prepared by: State Plans and Financing Branch
Division for State Assistance
Office for Treatment Improvement
Alcohol, Drug Abuse, and Mental Health Administration

October, 1990

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANT APPLICATION FOR FY 1991

STATE NAME _____

1. STATE AGENCY TO BE THE GRANTEE FOR THE ADMS BLOCK GRANT

Agency Name: _____

Organization Unit: _____

Street Address: _____

City: _____ Zip Code _____

2. CONTACT PERSON FOR THE GRANTEE OF THE ADMS BLOCK GRANT

Name: _____

Agency Name: _____

Street Address: _____

City: _____ Zip Code _____

Telephone: _____ FAX Number _____

3. CONTACT PERSON FOR THE SUBSTANCE ABUSE PORTION

Name: _____

Agency Name: _____

Street Address: _____

City: _____ Zip Code _____

Telephone: _____ FAX Number _____

4. CONTACT PERSON FOR THE MENTAL HEALTH PORTION

Name: _____

Agency Name: _____

Street Address: _____

City: _____ Zip Code _____

Telephone: _____ FAX Number _____

5. STATE EXPENDITURE PERIOD: From: _____ to _____

6. DATE SUBMITTED: _____ ____ Original ____ Revision

7. CONTACT PERSON RESPONSIBLE FOR APPLICATION SUBMISSION

NAME: _____ TELEPHONE: _____

OMB No: 0930-0080

Expiration:

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANT APPLICATION FOR FY 1991

STATE NAME_____

This table of contents indicates the order in which the sections of the application must be submitted. Please indicate in the space provided the page number for the start of each section of narrative and forms in the application. This page will be the second page of completed application. The table of contents will serve as the ADMS Block Grant Application Checklist to be used by reviewers.

TABLE OF CONTENTS/REVIEW CHECKLIST

Page number

SECTION I. Identifying Information and Assurances

A. Face Page ..... _____

B. Table of Contents/Checklist..... _____

C. Assurances..... _____

1. Chief Executive Officer's Assurances..... _____

2. Certification Regarding Drug-Free Workplace..... _____

3. Certification Regarding Lobbying and Disclosures..... _____

SECTION II. Description of Actual Use of Funds

A. Goals and Objectives Carried Out..... _____

B. Types of Activities to be Supported..... _____

C. Geographic Planning Areas to be Served..... _____

D. Characteristics of Individuals Served..... _____

E. Criteria and Methods for the Distribution of Allotments..... _____

F. Methodology used by State to Purchase Services and Determine Treatment Capacity and Quality..... _____

SECTION III. Description of Intended Use of Funds

PART 1. Intended Use of ADMS Block Grant Funds..... _____

PART 2. Intended Use of Alcohol and Drug Abuse Block Grant Funds

A. Statement of Goals and Objectives for FY 1991..... _____

1. Goals and Objectives of Alcohol and Drug Abuse Activities..... _____

2. Planning and Public Input..... _____

3. Service Coordination..... _____

a. Coordination Mechanisms..... _____

b. Referral to Appropriate Treatment..... _____

c. Barriers to Coordination..... _____

d. Services Coordination Matrix..... _____

e. Agency Relationships..... _____

B. Types of Activities to be Supported..... _____

1. Substate Planning..... _____

2. State and Substate Expenditure..... _____

a. State and Regional Spending Plan Forms..... _____

b. Regional Activity Inventory Forms..... _____

c. Statewide Project Inventory Forms..... _____

C. Needs/Demand Assessment: Geographical Planning Areas and Characteristics of Individuals to be Served..... _____

1. Geographical Planning Areas to be Served..... _____

a. Needs Assessment Summary Matrix Forms..... _____

2. Characteristics of Individuals to be Served..... _____

a. State Needs Assessment Worksheets..... _____

b. Statewide Women's Needs Assessment Worksheet..... _____

1. Description of Implementation of Set-Aside for Substance Abuse Services Designed for Women..... _____

2. Description of Plans to Monitor Set-Aside for Women..... _____

c. Statewide IVDU's Needs Assessment Worksheet..... _____

1. Description of Implementation of Set-Aside for Intravenous Drug Users..... _____

2. Description of How State Will Monitor Adequacy of Efforts in Meeting Needs of IVDUs..... _____

3. Description of How State Will Assure That Funds Will Not be Used for Distributing Needles or Bleach..... _____

4. Description of How State Will Assure That It Is Notified When a Program Has Reached 90 Percent Capacity..... _____

5. Description of How State Will Assure Implementation of Requirement that IV Drug Users are Accepted for Treatment Within 7 Days..... _____

6. Description of Outreach Activities for IV Drug Users..... _____

d. Other Critical Populations..... _____

D. Criteria and Methods Established for Distribution of Allotments..... _____

E. Methodology used by State to Purchase Services..... _____

1. Treatment Capacity and Utilization..... _____

a. Mechanism Used to Manage and Measure Treatment Capacity..... _____

1. Treatment Capacity and Utilization Forms..... _____

b. Methods Used to Purchase Services..... _____

c. Description of Method Used to Determine Reasonable Cost..... _____

2. Quality Assurance, Performance Criteria, Program Standards, and Evaluation..... _____

a. Program Performance Monitoring..... _____

b. Independent Peer Review..... _____

3. Treatment Improvement..... _____

4. Human Resources..... _____

PART 3 Intended Use of Mental Health Block Grant Funds

A. Statement of Goals and Objectives for FY 1991..... _____

1. Goals and Objectives..... _____

2. Planning and Public Input..... _____

B. Types of Activities to be Supported..... _____

1. Expenditures..... _____

a. State Expenditures..... _____

b. Substate Expenditures/Mental Health Service Area Activity Inventory..... _____

C. Needs/Demand Assessment: Geographical Planning Areas and Characteristics of Individuals to be Served..... _____

1. Geographical Planning Areas to be Served..... _____

2. Characteristics of Individuals to be Served..... _____

a. Children and Adolescents..... _____

b. Other Populations..... _____

D. Criteria and Methods Established for Distribution of Allotments..... _____

E. Methodology Used by State to Purchase Services and Determine Treatment Capacity and Quality..... _____

1. Treatment Capacity and Utilization..... _____

a. Mechanisms Used to Manage and Measure Treatment Capacity and Utilization..... _____

b. Methods Used to Purchase Services..... _____

c. Methods Used to Determine Reasonable Costs..... _____

F. Quality Assurance, Performance Criteria, Program Standards, and Evaluation..... _____

1. Program Performance Monitoring..... _____

2. Independent Peer Review..... _____

3. Treatment Improvement..... _____

SECTION IV. Appendices..... _____

A. Group Homes for Recovering Substance Abusers..... _____

B. Substance Abuse Prevention and Early Intervention..... _____

C. Substance Abuse Services for Women..... _____

D. Treatment for Intravenous Drug Abusers..... _____

E. Substance Abuse Services for Other Critical Populations (Optional)..... _____

F. Mental Health Services for Other Special Populations (Optional)..... _____

HEAD

STATE

FISCAL YEAR 1991 ADMS BLOCK GRANT APPLICATION CERTIFICATIONS/AGREEMENTS/ASSURANCES AS REQUIRED BY PUBLIC HEALTH SERVICE ACT

As part of the annual application for ADMS Block Grant funds required by subsection 1916 (a) of the Public Health Services Act, the chief executive officer (or an authorized designee) of the applicant organiztion is required to certify that the State will comply with:

A. Sections 1916(c) (1) through (21) of the PHS Act.
B. Public Hearings conducted by Legislature, Section 1916(b).
C. Sterile Needles; AIDS Testing Requirement, Section 1915(c)(2).
D. State Mental Health Planning Council Requirement, Section 1916(e).
E. Revolving Fund and Group Homes for Recovering Substance Abusers, Sections 1916A(a).

We will accept signature of this form as certification of compliance. If signed by a designee, a copy of the designation must be attached.

A. Certification of State Compliance, Sections 1916(c) (1) through (21).

I hereby certify that, "the State will comply with Section 1916 (c) (1) through (21) of the PHS Act, as amended by P.L. 101-374."

B. Public Hearings conducted by Legislature, Section 1916(b).

I hereby certify that, "the legislature of the State has conducted public hearings on the proposed use and distribution of funds to be provided under section 1914."

C. Sterile Needles; AIDS Testing Requirement, Section 1915(c)(2).

I hereby certify that "the State agrees that payments received under the ADMS block grant and used pursuant to Section 1915(c) will not be expended--

A. to carry out any programs of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or

B. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling."

D. State Mental Health Planning Council Requirement, Section 1916(e).

I hereby certify that the State "agrees to establish and maintain a State mental health planning council in accordance with the provisions of Section 1916e of the PHS Act.

(1) The duties of the Council will be --

a. to serve as an advocate for chronically mentally ill individuals, severely emotionally disturbed children and youth, and other individuals with mental illnesses or emotional problems; and

b. to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

(2) The Council will be composed of residents of the State, including representatives of --

a. the principle State agencies with respect to -

(1) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(2) the development of the plan submitted pursuant to Title XIX of the Social Security Act;

b. public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

c. seriously mentally ill individuals who are receiving (or have received) mental health services; and

d. the families of such individuals.

(3) Not less than 50 percent of the members of the Council will be individuals who are not State employees or providers of mental health services.

(4) The Council may assist the State in the preparation of the description of intended expenditures required in subsection (d) of the PHS Act.

E. Revolving Fund and Group Homes for Recovering Substance Abusers, Section 1916A(b).

I hereby certify that, "the State has provided for the establishment and ongoing operation of a revolving fund in accordance with Section 1916A(b) of the PHS Act."

As part of the annual application for ADMS Block Grant funds required by subsection 1916 (a) of the Public Health Services Act, I, as the chief executive officer (or an authorized designee[1]) of the State of _____ do certify that the State will comply with the above sections of the PHS Act.

_____
Name of Chief Executive Officer or designee

_____
Signature of CEO or designee

_____
Title

_____
Date Signed

VOID

[1] If signed by a designee, a copy of the designation must be attached.

TERRITORIES

FISCAL YEAR 1991 ADMS BLOCK GRANT APPLICATION CERTIFICATIONS/AGREEMENTS/ASSURANCES AS REQUIRED BY PUBLIC HEALTH SERVICE ACT

As part of the annual application for ADMS Block Grant funds required by subsection 1916 (a) of the Public Health Services Act, the chief executive officer (or an authorized designee) of the applicant is required to certify that the Territory will comply with:

A. Sections 1916(c) (1) through (21) of the PHS Act.
B. Public Hearings conducted by Legislature, Section 1916(b).
C. Sterile Needles; AIDS Testing Requirement, Section 1915(c)(2).
D. Mental Health Planning Council Requirement, Section 1916(e).

We will accept signature of this form as certification of compliance. If signed by a designee, a copy of the designation must be attached.

A. Certification of Territory Compliance, Sections 1916(c)(1) through (21).

I hereby certify that, "the Territory will comply with Section 1916 (c) (1) through (21) of the PHS Act, as amended by P.L. 101-374."

B. Public Hearings conducted by Legislature, Section 1916(b).

I hereby certify that, "the legislature of the Territory has conducted public hearings on the proposed use and distribution of funds to be provided under section 1914."

C. Sterile Needles; AIDS Testing Requirement, Section 1915(c)(2).

I hereby certify that "the Territory agrees that payments received under the ADMS block grant and used pursuant to Section 1915(c) will not be expended--

A. to carry out any programs of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or

B. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling."

D. Mental Health Planning Council Requirement, Section 1916(e).

I hereby certify that the Territory "agrees to establish and maintain a mental health planning council in accordance with the provisions of Section 1916e of the PHS Act.

(1) The duties of the Council will be --

a. to serve as an advocate for chronically mentally ill individuals, severely emotionally disturbed children and youth, and other individuals with mental illnesses or emotional problems; and

b. to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the Territory.

(2) The Council will be composed of residents of the Territory, including representatives of --

a. the principle Territorial agencies with respect to -

(1) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(2) the development of the plan submitted pursuant to Title XIX of the Social Security Act;

b. public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

c. seriously mentally ill individuals who are receiving (or have received) mental health services; and

d. the families of such individuals.

(3) Not less than 50 percent of the members of the Council will be individuals who are not Territorial employees or providers of mental health services.

(4) The Council may assist the Territory in the preparation of the description of intended expenditures required in subsection (d) of the PHS Act.

As part of the annual application for ADMS Block Grant funds required by subsection 1916 (a) of the Public Health Services Act, I, as the chief executive officer (or an authorized designee[1]) of the Territory of _____ do certify that the Territory will comply with the above sections of the PHS Act.

_____
Name of Chief Executive Officer or designee

_____
Signature of CEO or designee

_____
Title

_____
Date Signed

DRAFT

[1] If signed by a designee, a copy of the designation must be attached.

STATE NAME _____

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.

By _____ Date: _____

(Signature of Governor or authorized designee)*

For: _____

Name of Grantee

_____

Title of Grant Program

Application Page ____

* If signed by other than the Governor, the designation must be in writing and should accompany this disclosure.

COPY

STATE NAME _____

U.S. Department of Health and Human Services

Certification Regarding

Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or 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 HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

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 no 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).

By _____ Date: _____

(Signature of Official Authorized to Sign Application)

For: _____

Name of Grantee

_____

Title of Grant Program (i.e., ADMS, MHSH, or CYAP)

Application Page _____

SERVICES COORDINATION MATRIX

STATE _____

	MECHANISM			
AGENCY	NONE	WORKING AGREEMENT	MEMORANDUM OF AGREEMENT	FORMAL CONTRACT
Governor's Office				
Education				
Criminal Justice				
Adult Corrections				
Juvenile Corrections				
Vocational Rehabilitation				
Public Health				
Maternal and Child Health				
Primary Care Centers				
Mental Health				
Social Services				
Highway Safety				
Public Housing				
Medicaid				
Headstart				
Child Protective Services				
Other:				
Other:				
Other:				

OMB No: 0930-0080

Expiration:

STATE SPENDING PLAN

STATE _____

ACTIVITY	LAST STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____								COMING STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____							
	ADMS GRANT		MEDICAID		OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER	ADMS GRANT		MEDICAID		OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER
	FFY89	FFY90	FEDERAL	STATE					FFY90	FFY91	FEDERAL	STATE				
1. SUBSTANCE ABUSE TREATMENT																
2. ALCOHOL TREATMENT																
3. DRUG TREATMENT																
4. PREVENTION																
5. INFRASTRUCTURE																
A. PLANNING AND COORDINATION																
B. QUALITY ASSURANCE																
C. TRAINING (post-employment)																
D . EDUCATION																
E. PROGRAM DEVELOPMENT																
F. RESEARCH AND EVALUATION																
6. ADMINISTRATIVE																
7. TOTAL (1 thru 6)																
8. TOTAL STATE SUBSTANCE ABUSE BUDGET																

NOTE: EXPRESS FIGURES IN THOUSANDS OF DOLLARS

DRAFT

ADMS FORM-05 9/90

Application page _____

OMB No: 0930-0080

Expiration:

REGIONAL SPENDING PLAN

STATE _____

REGION _____

ACTIVITY	LAST STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____								COMING STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____							
	ADMS GRANT		MEDICAID		OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER	ADMS GRANT		MEDICAID		OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER
	FFY89	FFY90	FEDERAL	STATE					FFY90	FFY91	FEDERAL	STATE				
1. SUBSTANCE ABUSE TREATMENT																
2. ALCOHOL TREATMENT																
3. DRUG TREATMENT																
4. PREVENTION																
5. INFRASTRUCTURE																
A. PLANNING AND COORDINATION																
B. QUALITY ASSURANCE																
C. TRAINING (post-employment)																
D. EDUCATION																
E. PROGRAM DEVELOPMENT																
F. RESEARCH AND EVALUATION																
6. ADMINISTRATIVE																
7. TOTAL (1 thru 6)																
8. TOTAL REGIONAL SUBSTANCE ABUSE BUDGET																

NOTE: EXPRESS FIGURES IN THOUSANDS OF DOLLARS

ADMS FORM-06 9/90

Application page _____

DRAFT

OMB No: 0930-0080

Expiration:

REGIONAL ACTIVITY INVENTORY

STATE ____________

REGION ____________

STATE EXPENDITURE PERIOD: FROM _______ TO _______

DRAFT

PROVIDER NUMBER	NDATUS ID	ACTIVITY CODE	ADMS GRANT FFY90	ADMS GRANT FFY91	STATE FUNDS	ALCOHOL SERVICES	DRUG SERVICES	PREVENTION	IVDU SERVICES	WOMEN SERVICES
TOTAL										

ADMS FORM-07 9/90

Application Page ______

NOTE: EXPRESS FIGURES IN THOUSANDS OF DOLLARS

OMB No: 0930-0080

Expiration:

STATEWIDE PROJECT INVENTORY

STATE _____

STATE EXPENDITURE PERIOD: FROM _____ TO _____

PROVIDER NUMBER	NDATUS ID	ACTIVITY CODE	ADMS GRANT FFY90	ADMS GRANT FFY91	STATE FUNDS	ALCOHOL SERVICES	DRUG SERVICES	PREVENTION	IVDU SERVICES	WOMEN SERVICES
TOTAL										

ADMS FORM-08 9/90

Application Page _____

NOTE: EXPRESS FIGURES IN THOUSANDS OF DOLLARS

DRAFT

OMB No: 0930-0080
Expiration:

NEEDS ASSESSMENT SUMMARY MATRIX

STATE _____

REGION	Total Population	Number of IVDUs needing Treatment Services	Number of IVDUs/HIV needing Treatment Services	Number of Women needing Treatment Services	Prevalence of Drug Related Criminal Activity			Incidence of Communicable Diseases Transmitted thru IVDU		
STATE TOTAL										

ADMS FORM - 09 9/90

APPLICATION PAGE _____

DRAFT

OMB No: 0930-0080

Expiration:

DRAFT

STATEWIDE NEEDS ASSESSMENT WORKSHEET

STATE _____

AGE

RACE/ETHNICITY

	White, not of Hispanic Origin	Black, not of Hispanic Origin	Hispanic	American Indian or Alaskan Native	Asian or Pacific Islander	Native Hawaiians	Other or Unknown
<18							
18 - 20							
21 - 24							
25 - 34							
35 - 44							
45 - 54							
55 - 64							
65+							

Application Page _____

ADMS FORM-10 9/90

OMB No: 0930-0080

Expiration:

DRAFT

STATEWIDE WOMEN'S NEEDS ASSESSMENT WORKSHEET

STATE _____

AGE / RACE/ETHNICITY

	White, not of Hispanic Origin	Black, not of Hispanic Origin	Hispanic	American Indian or Alaskan Native	Asian or Pacific Islander	Native Hawaiians	Other or Unknown
<18							
18 - 20							
21 - 24							
25 - 34							
35 - 44							
45 - 54							
55 - 64							
65+							

Application Page _____

ADMS FORM-11 9/90

OMB No: 0930-0080

Expiration:

STATEWIDE IVDU'S NEEDS ASSESSMENT WORKSHEET

STATE _____

AGE

RACE/ETHNICITY

	White, not of Hispanic Origin	Black, not of Hispanic Origin	Hispanic	American Indian or Alaskan Native	Asian or Pacific Islander	Native Hawaiians	Other or Unknown
<18							
18 - 20							
21 - 24							
25 - 34							
35 - 44							
45 - 54							
55 - 64							
65+							

DRAFT

Application Page _____

ADMS FORM-12 9/90

OMB No: 0930-0080

Expiration:

DRAFT

STATEWIDE TARGET POPULATION'S NEEDS ASSESSMENT WORKSHEET

STATE _____

TARGET POPULATION _____

AGE

RACE/ETHNICITY

	White, not of Hispanic Origin	Black, not of Hispanic Origin	Hispanic	American Indian or Alaskan Native	Asian or Pacific Islander	Native Hawaiians	Other or Unknown
<18							
18 - 20							
21 - 24							
25 - 34							
35 - 44							
45 - 54							
55 - 64							
65+							

Application Page _____

ADMS FORM-13 9/90

TREATMENT CAPACITY MATRIX

STATE _____

REGION _____

OMB No: 0930-0080

Expiration:

	LAST STATE EXPENDITURE PERIOD/DATES: FROM _____ TO _____				COMING STATE EXPENDITURE PERIOD/DATES: FROM _____ TO _____			
TYPE OF CARE	ALCOHOL PROBLEMS	DRUG PROBLEMS	ALCOHOL AND DRUG	TOTAL	ALCOHOL PROBLEMS	DRUG PROBLEMS	ALCOHOL AND DRUG	TOTAL
DETOXIFICATION (24 hr care)								
HOSPITAL INPATIENT								
FREE - STANDING RESIDENTIAL								
REHABILITATION/RESIDENTIAL								
HOSPITAL INPATIENT								
SHORT-TERM (30 days or less)								
LONG-TERM (over 30 days)								
AMBULATORY (less than 24 hr care)								
DRUG-FREE/NON-METHADONE								
METHADONE-TREATMENT								
INTENSIVE OUTPATIENT								
DETOXIFICATION								

For each type of care listed, identify the State's capability to provide treatment for persons with alcohol and drug problems (static capacity). In the appropriate column, enter the number of slots available for persons with either a drug or an alcohol problem during the applicable Expenditure Period.

We recognize that there are a variety of methods for measuring treatment capacity and for purchasing services, and that States and local communities may use one or more of these methods. If the State and/or its subdivisions do not use slots or the NDATUS type of care categories, please describe the mechanism by which you purchase and measure treatment capacity (e.g., units of service, episodes, personnel and operating budgets, capitation) and provide the information in a matrix using your State's methodology.

ADMS FORM-14 9/90

Application Page _____

STATE _____

REGION _____

TREATMENT UTILIZATION MATRIX

OMB No: 0930-0080

Expiration:

	LAST STATE EXPENDITURE PERIOD/DATES: FROM _____ TO _____				COMING STATE EXPENDITURE PERIOD/DATES: FROM _____ TO _____			
TYPE OF CARE	ALCOHOL PROBLEMS	DRUG PROBLEMS	ALCOHOL AND DRUG	TOTAL	ALCOHOL PROBLEMS	DRUG PROBLEMS	ALCOHOL AND DRUG	TOTAL
DETOXIFICATION (24 hr care)								
HOSPITAL INPATIENT								
FREE - STANDING RESIDENTIAL								
REHABILITATION/RESIDENTIAL								
HOSPITAL INPATIENT								
SHORT-TERM (30 days or less)								
LONG-TERM (over 30 days)								
AMBULATORY (less than 24 hr care)								
DRUG-FREE/NON-METHADONE								
METHADONE-TREATMENT								
INTENSIVE OUTPATIENT								
DETOXIFICATION								

For each type of care listed, identify the State's utilization of treatment resources for persons with alcohol and drug problems (dynamic capacity). In the appropriate column, enter the number of episodes of treatment provided for persons with either a drug or an alcohol problem during the applicable Expenditure Period.

We recognize that there are a variety of methods for measuring treatment capacity and for purchasing services, and that States and local communities may use one or more of these methods. If the State and/or its subdivisions do not use episodes or the NDATUS type of care categories, please describe the mechanism by which you purchase and measure treatment capacity (e.g., units of service, episodes, personnel and operating budgets, capitation) and provide the information in a matrix using your State's methodology.

OMB No: 0930-0080

Expiration:

MENTAL HEALTH STATE SPENDING PLAN

STATE _____

DRAFT

ACTIVITY	LAST STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____								CURRENT STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____							
	ADMS GRANT		MEDICAID		OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER	ADMS GRANT		MEDICAID		OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER
	FFY89	FFY90	FEDERAL	STATE					FFY90	FFY91	FEDERAL	STATE				
1. TREATMENT																
2. PREVENTION/EDUCATION																
3. INFRASTRUCTURE																
A. PLANNING AND COORDINATION																
B. QUALITY ASSURANCE																
C. TRAINING (post-employment)																
D. EDUCATION																
E. PROGRAM DEVELOPMENT																
F. RESEARCH AND EVALUATION																
4. ADMINISTRATIVE																
5. TOTAL (1 thru 4)																

NOTE: EXPRESS FIGURES IN THOUSANDS OF DOLLARS

ADMS FORM-16 9/90

Application Page _____

OMB No: 0930-0080
Expiration:

MENTAL HEALTH SERVICE AREA ACTIVITY INVENTORY

STATE _____

REGION _____

STATE EXPENDITURE PERIOD: FROM _____ TO _____

NAME OF COMMUNITY SERVICE PROVIDER	ADMS GRANT FFY90	ADMS GRANT FFY91	STATE FUNDS	CHILDREN	ELDERLY	SEVERE & PERSISTENT	GENERAL POPULATION	OTHER
TOTAL								

ADMS FORM-17 9/90

Application Page _____

NOTE: EXPRESS FIGURES IN THOUSANDS OF DOLLARS

DRAFT

Dear State ADMS Block Grant Liaison:

This is a reminder that the State must submit an annual report for 1990 pertaining to the use of Alcohol and Drug Abuse and Mental Health Services (ADMS) Block Grant funds. This report is not the same as the description required to be submitted as part of the State's annual application. The requirement for an annual report is identified separately in the Public Health Service (PHS) Act at Section 1917(a), Part B, Title XIX. That Section states that "Each State shall prepare and submit to the Secretary annual reports on its activities...", and it then describes the information that the annual report must encompass.

DHHS Regulations governing block grant programs (45 CFR Part 96) were revised on October 13, 1987 in Vol. 52, No. 197 of the Federal Register. Among other things, the revision amended the provision at Section 96.17 to require the annual report to be made public and transmitted to the Secretary within six months of the end of the block grant reporting period. For the health block grants the reporting period has been defined to be the same as the program year determined by the State to be the basis for administering activities funded under the block grants.

The annual ADMS report will be reviewed by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) to assure that it contains the information prescribed in Section 1917(a) -- i.e., it must include:

1. A discussion demonstrating that ADMS block grant funds were expended in accordance with block grant requirements and consistent with the needs the State identified pursuant to the Section 1916(c)(10);

2. A description of the activities of the State under the ADMS block grant;

3. A detailed description of the new or expanded alcohol and drug abuse and mental health programs and services initiated and provided in accordance with paragraphs (14) and (15) of Section 1916(c);

   NOTE: In order to assist ADAMHA in responding to Congressional reporting requirements in this area, States are encouraged (to the extent possible) to provide specific information on the number of programs funded and number of clients served (including demographic characteristics) in those programs which received set-aside monies. In addition, the State is asked to provide a description of any State assessments which address the adequacy of these efforts in meeting the needs of the

Page 2

targeted populations, especially in comparison with the level of services prior to the beginning of the set-asides in FY 1985.); and,

4. A record of the purposes for which ADMS block grant funds were spent, the recipients of ADMS block grant funds, and of the progress made toward achieving the purposes for which the ADMS block grant funds were provided.

As you are aware the Anti-Drug Abuse Act of 1988 (P.L. 100-690) added a number of new requirements which must be reported on by ADAMHA to Congress and the Administration. Accordingly, you are requested to specifically respond in the annual report to the items enclosed as Attachment A. This attachment has been designed to assist you in responding adequately to items 2 and 3 above.

The above items and Attachment A in effect are a checklist which will guide ADAMHA in its review of the annual report. I suggest the State will find it helpful to use this checklist approach in drafting the annual report. ADAMHA will use your annual report, in part, to comply with section 1916(f) which requires the Secretary to report annually to Congress concerning certain block grant activities. To help us prepare this annual report to Congress, it would be helpful if you would also enclose a copy of your report on either a 3 1/2 inch or 5 1/4 inch DOS formatted floppy diskette, either in WordPerfect or ASCII text format.

Should annual reports submitted for 1990 be determined to be incomplete or to contain certain information that could be construed as evidence of noncompliance with Federal statutory requirements, you will be requested to submit additional information that will complete the report or clarify compliance issues.

Please feel free to contact me if you have any questions about this request. You can reach me at (301) 443-3820.

Sincerely yours,

Thomas M. Reynolds
Grants Management Officer
Block Grant Programs

Enclosure

OMB No: 0930-0080

Expiration:

Attachment

ADMS BLOCK GRANT ANNUAL REPORT
FISCAL YEAR 1990

1. 50 Percent Intravenous (IV) Drug Abuse Set-Aside (1912A (i)(1), and 1915(c) and 1916(c)(16) and (17).

a. Describe how the State has been implementing this IV set-aside requirement: indicate the specific programs/activities funded (treatment, prevention, outreach, training), amount of Block Grant funds utilized, number of client/patients served or impacted, amount of treatment capacity (slots) added, if appropriate, and the demographic characteristics of clients served.

b. Describe how the State assures that funds described above are not used: 1) to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such injections, or 2) to carry out any testing for the etiologic agent for acquired immunodeficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling.

c. Describe how the State requires any such IV program to notify the State upon reaching 90 percent of its capacity to admit individuals to the program.

d. Describe how the State assures, with respect to notifications under paragraph c. above, that to the minimuin extent practicable, each individual who requests and is in need of treatment for IV drug abuse is admitted to a program described in such paragraph within 7 days after making the request.

2. Outreach Activities for IV Drug Abusers (1916(c)(18))

Describe how the State requires any program receiving ADMS Block Grant funds to carry out outreach activities to encourage individuals in need of treatment for IV drug abuse to undergo such treatment.

3. Alcohol and Drug Abuse Set-Aside for Women--10 Percent (1916(c)(14).

a. Describe State activities to implement this provision. Provide specific information identifying which units received funding under this provision, the amount of ADMS Block Grant funds used for each unit, and a brief description of the intended objectives of each funded effort.

b. Describe the adequacy of these efforts in meeting the needs of pregnant women and women with dependent children in the State.

4. Mental Health Set-Aside for Severely Emotionally Disturbed Children and Adolescents--10 Percent (1916(c)(15))

a. Describe State activities to implement this provision. Provide specific information identifying which units received funding under this provision, the amount of ADAMS Block Grant funds used for each unit, and a brief description of the intended objectives of each funded effort.

b. Describe the adequacy of these efforts in meeting the needs for mental health services for severely disturbed children and adolescents.

5. Group Home Revolving Fund (1916A)

a. How was the $100,000 revolving fund established in the State? Please discuss the source of funds (Block Grant, State funds, etc.), identify the non-profit entity selected to manage the fund, any written agreement between the State and the non-profit entity, etc.

b. Describe how the revolving fund is being operated including loan requirements, application procedures, eligibility requirements, interest rates charged etc.

c. How does the State plan to monitor the revolving account? If applicable, how many loans were actually make in FY 1989?

6. Prevention Activities--20 Percent (1916(c)(8))

a. Provide the State definition of "prevention" and "early intervention"?

b. Brielfly describe State activities to carry out this provision, including identification of which units received these prevention monies, the amount of ADMS Block Grant funds used for each, an estimate of numbers of individuals served or impacted, and identification of targeted populations (youth/adolescents, women, intravenous drug abusers, blacks, Native-Americans, etc), if applicable.

7. Target Highest Prevalence Populations (1916(c)(19))

a. How does the State determine which communities have the highest prevalence of substance abuse and the greatest need for treatment services?

b. What information is used to help make these decisions and how is it gathered?

c. How is this information used to impact the funding decisions necessary to meet the required targeting?

d. Describe the monitoring process used to assure that the funded programs continue to target the communities with the highest prevalence of substance abuse or the greatest need for treatment services.

8. Discretionary Authority--10 Percent (1916(c)(6)(B))

Did the State use this authority to transfer funds within the Block Grant and in which direction, i.e. whether from substance abuse to mental health, or vice-versa? What percentage of the total grant was shifted?

9. State Plan for Treatment of All in Need/Estimate of Needed Resources (1916(c)(21))

Describe how the State will assure the implementation of this provision.

10. Independent Peer Review (1916(c)(5))

Describe the State's procedures for the implementation of this provision, including the State's definition of "peer review", identification of who (or what entity(s)) will conduct these activities, and a schedule for how often such "periodic" reviews will be conducted.

NOTIFICATION TO RESPONDENT OF ESTIMATED BURDEN

Public respondent burden for this collection of information is estimated to average 300 hours per annual report, including time for reviewing instructions and completing 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: Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, S.W., Washington, D.C., 20201, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

[FR Doc. 90-27334 Filed 11-19-90; 8:45 am]
BILLING CODE 4160-20-C

Federal Register

Tuesday
November 20, 1990

Part VII

Department of Agriculture

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Log Export and Substitution Restrictions; Interim Rule; Request for Public Comment

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Log Export and Substitution Restrictions

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for public comment.

SUMMARY: This interim rule is being issued to comply with those requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 that take effect before final rules to fully implement the Act can be issued. The interim rule defines certain terms necessary to facilitate uniform compliance; prescribes procedures for making certifications required by statute to exempt a person from prohibitions against substitution if the person has exported unprocessed private timber in the previous 24 months; prescribes application procedures for sourcing areas; and continues previously established surplus species until the Secretary can proceed with public hearings on these and other candidate species. Public comment is invited and will be considered in adoption of a final rule.

DATES: *Effective Date:*

This interim rule is effective November 20, 1990. Comments must be received in writing by December 20, 1990.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2400), 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 Director, Timber Management Staff, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. Parties wishing to view comments are encouraged to call ahead (477–6893) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ron Lewis, Timber Management Staff (202) 475–3755.

SUPPLEMENTARY INFORMATION:

Rationale for Interim Rule

This interim rule implements those provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (hereafter referred to as the Act) that take effect before comprehensive rules can be proposed, analyzed, and finalized within the statutorily required 9 months. The provisions to be implemented by this interim rule are as follows:

1. The sourcing area application and approval procedures;

2. The procedures for certification that exempt a non-manufacturer, an applicant for a sourcing area, or a person with a historic export quota from prohibitions against exports within the preceding 24-month period;

3. The extension of the current surplus species until hearings can be held; and

4. The definitions necessary to implement these provisions.

Good cause exists to make the above-noted provisions immediately effective without prior notice and the opportunity to comment in an interim rule. The sourcing area boundary application and approval procedures are necessary because the Act specifically requires the procedures to be prescribed within 3 months from the date of enactment, the application to be submitted a month thereafter, and a determination from the Secretary to be made 4 months after the submission. Given the tight deadlines in the Act for the Secretary to structure workable procedures and for both the applicants and the Secretary to apply and respond, it would be impracticable to give prior notice and obtain comment prior to adoption of the rulemaking.

The Act also establishes a specific deadline of 3 months from the date of enactment for the submission of the certificates exempting persons from prohibitions against substitution if the person has exported in the preceding 24-month period. Not only is the Secretary required to prescribe the procedures for certification, but the Act provides potential applicants only a limited time to apply for them.

A certification procedure for non-manufacturers must also be included in the interim rule. Although the Act does not address non-manufacturers, it would be impracticable to administer this certificate under a different period of time for submission.

The continuation of the currently determined surplus species, Port Orford cedar and Alaska Yellow cedar is necessary to close a gap in the Act until hearings can be held to determine new surplus species. The Act states that the prohibition against export of unprocessed timber from Federal lands west of the 100th meridian in the 48 contiguous States will not apply to specific quantities of grades and species of such timber that the Secretary determines to be surplus. This determination must be made in regulations, pursuant to the Administrative Procedures Act (5 U.S.C. 553). The conference report states that Congress expects the Secretaries of Agriculture and Interior to hold hearings to determine whether species currently designated as surplus have no domestic markets. There would be significant disruption regarding timber sale contracts if currently designated species were suddenly considered not to be surplus. Accordingly, the Department is continuing those species already determined to be surplus under existing regulations until hearings can be held. Again, it would be impracticable to provide for notice and comment on this prior to adoption since the delay would be disruptive and create a hiatus that neither the Act nor the current regulations could fill.

Also included in this interim rule is a recitation of the provisions in the Act regarding direct and indirect substitution. The inclusion of these provisions provide the necessary context to explain and understand sourcing areas.

Current Rules

The current restrictions on exporting unprocessed timber harvested from Federal lands have been renewed annually by the Appropriations Act for Interior and Related Agencies, by which Forest Service programs are funded. The current restrictions are found in 36 CFR 223.48, 223.87, and 223.160–223.164. These rules will remain in effect on all contracts awarded prior to enactment of this Act. The Act also specifically provides that contracts for timber on Federal lands in the State of Washington administered by the Region 6 Office of the Forest Service awarded prior to the issuance of a final rule shall be governed by the current regulations. The current substitution rules shall remain in effect for all contracts awarded after the date of enactment until such time as final rules are issued to implement the Act.

Amendment to Part 223 Subpart B

Section 223.48 of subpart B of the current rules governing timber sale contracts must be revised to reflect passage of this Act. Accordingly, paragraph (a) makes clear that contracts awarded prior to August 20, 1990, the date of enactment, remain subject to the Timber Export and Substitution rules at subpart D of part 223. Paragraph (b) directs that all contracts awarded after August 20, 1990, shall include a clause making such contracts subject to the new Act.

Amendment to Part 223 Subpart D

Subpart D of part 223 governed timber export and substitution prior to enactment of the new Act. Because of

the Act and the adoption of new regulations, it is necessary to add a new § 223.159 to subpart D to make clear that the provisions of subpart D remain in effect for contracts awarded prior to August 20, 1990. Section 223.159 also provides that § 223.161 governing Alaska contracts will remain in effect. Section 223.159 further continues the existing surplus species determination contained in § 223.163 until hearings can be held and new regulations are issued. As previously noted, this is necessary to prevent disruption of sales and to close a gap created by the Act. Section 223.159 also provides that contracts awarded between August 20, 1990, and the date final rules are published implementing this Act will be governed by § 223.162. Section 223.159 further provides that the provisions of subpart F of part 223 will implement the following and shall apply to all contracts awarded after August 20, 1990:

(1) Sourcing area application and approval procedures;

(2) Certification procedures;

(3) Continues surplus species determinations;

(4) Sourcing area disapproval, review procedures; and

(5) Definitions.

The application of portions of the timber and substitution regulations in effect prior to enactment to contracts awarded after August 20, 1990, is required by section 490(a)(2)(A) of the Act (16 U.S.C. 620b).

New Subpart F, Section-by-Section Analysis

Section 223.186 Definitions

The complexity of this Act requires definitions in order to explain and understand critical terms. Section 493 of the Act (16 U.S.C. 620e) defines several terms that require refinement and new terms that must be defined in order to understand the provisions included in the interim rule. The following terms are defined in this rule: Act, Acquire, Cants or Flitches, Export, Federal lands, Fiscal year, Non-manufacturer, Person, Private lands, Purchase, Substitution, and Unprocessed timber. Each of these terms is used in at least one of the provisions in the interim rule.

The term "Act" refers to the Forest Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) that is being implemented by this interim rule. The term "Acquire" is defined to clarify that purchase and acquire have the same meaning and are used interchangably in the rule. Both terms are used in the Act, however, the Act is not clear about the usage of the terms.

The terms "Cants" or "Flitches" were added to provide a clear meaning for these often confusing terms. The definition of these terms is based on custom and practice. This interim rule treats "cants" and "flitches" as synonymous for purposes of this program. The definition in the interim rule is based on definitions in Recommended Lumber Terminology and Invoice Procedure, compiled and published by Western Wood Products Association, April, 1977 and Wood Handbook: Wood as an Engineering Material, U.S. Department of Agriculture, Forest Products Laboratory, Forest Service Handbook No. 72, August, 1974.

The term "Export" is patterned after an existing definition at 36 CFR 223.160. It is defined to clarify at what point export occurs so that it can be clearly determined if a violation of the Act and interim rule prohibiting export has occurred.

The term "Federal lands" has been included to clearly define the lands that are subject to the interim rule. For the purpose of this interim rule, the term "Federal lands" refers to those Federal lands west of the 100th meridian in the contiguous 48 States.

A definition of the term "Fiscal year" is necessary to specify the time period applicable in the event of disapproval of a sourcing area application or for other reporting or recordkeeping requirements.

The term "Non-manufacturer" is included to clearly identify the segment of the timber industry that is included under this interim rule and that does not own or operate a manufacturing facility.

The term "Person" is included in this interim rule to provide consistency of meaning and understanding. The Act includes "business affiliate" as a person. Persons are affiliates of each other when either directly or indirectly, one person controls or has the power to control the other or a third party or parties controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships. Further guidelines on determining affiliation are found in the Small Business Administration regulation in 13 CFR 121.401.

The term "Private lands" has been included to provide a common understanding of the private lands included under this interim rule.

The term "Purchase" has been included to clarify that "purchase" and "acquire" are synonymous.

The term "Substitution" has been included to provide a clear understanding of the word in relation to its usage in the interim rule and to provide a clear understanding of when conduct violates the regulations.

The term "Unprocessed timber" has been included to clarify the distinction between unprocessed timber and processed timber. The Act uses both "suitable for end product use" and "intended for remanufacture" as criteria. In order to enforce the Act more effectively, the interim rule uses a definition that aims at the more precise concept of "intent." Intent will be demonstrated, in part, by the manufacturer's certificate, which requires a statement of intent. Unprocessed timber is timber not processed to the extent necessary to meet standards and specifications for end product use and is intended for remanufacture.

Section 223.187 Determination of Unprocessed Timber

Nearly every section of the Act (16 U.S.C. 620 *et seq.*) refers to unprocessed timber. Section 493 of the Act (16 U.S.C. 620e) includes a definition of what is not included in the term "unprocessed timber." Section 223.187 is established to clearly set forth what the minimum standards of processing are for timber to be considered not unprocessed. This section is needed to clearly understand the intent of the Act.

The definition in the Act includes references to standards and grades of lumber that must be met in order to comply with the law. In order to determine that these standards have been met, the Forest Service will require that the shipper of record have in its possession an original copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standards. This certificate must be prepared for each shipment and be available for inspection upon request of the Forest Service.

Western red cedar is excluded from sections 490(b) and 491 of the Act (16 U.S.C. 620b and 620c). The exclusions refer to western red cedar which are domestically processed into finished products to be sold into domestic or international markets. Because of the complexity of processed and unprocessed western red cedar, § 223.187 includes the definition taken from the current timber export and substitution regulations.

Section 223.188 Prohibitions Against Exporting Federal Timber

Section 489 of the Act (16 U.S.C. 620a) continues the prohibition against export of timber from Federal lands west of the 100th meridian in the contiguous 48 States that has been renewed annually through the Appropriations Act for Interior and Related Agencies. Section 223.188 merely repeats the language of the Act.

Section 223.189 Prohibitions Against Substitution

Section 490 of the Act (16 U.S.C. 620b) places limitations on the direct or indirect substitution of unprocessed Federal timber for unprocessed timber exported from private lands. Section 490(a) of the Act (16 U.S.C. 620b) entitled "Direct Substitution" states that no person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if—

(A) Such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(B) Such person has exported unprocessed timber originating from private lands during the preceding 24-month period.

Section 490(b) of the Act (16 U.S.C. 620b) entitled "Indirect Substitution" states that no person may, beginning on September 10, 1990, purchase from any other person unprocessed timber originating from Federal lands, if such person would be prohibited from purchasing such timber directly from a department or agency of the United States. Acquisitions of western red cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this paragraph. A limited amount of timber originating from Federal lands in the State of Washington administered by the Region 6 Office of the Forest Service is also exempt from the prohibition against indirect substitution.

Exemption from prohibition against the purchase of Federal timber. Section 490 of the Act (16 U.S.C. 620b), also states that the prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands in the 24 months prior to the enactment of this Act does not apply to any person who has a historic export quota approved by the Secretary, if the person certifies to the Secretary that he/she will cease exporting unprocessed timber originating from private lands by February 20, 1991, and ceases exporting in accordance with such certification. The certification is required by November 20, 1990.

In order to enforce the Act and the export program, applicants for the certification exempting a person from the prohibition against exporting during the preceding 24-month period are required to certify that they fully understand the requirements of this Act. Proper enforcement of the program is dependent upon complete and accurate certifications. In order to exempt a person from the 24-month requirement, the agency must rely on the information provided by applicants concerning the person's intent to cease exporting within 6 months of the certification. Applicants who have been under a historic export quota also must acknowledge in the certification an understanding that the information provided concerning the applicant's intent to cease exporting unprocessed timber originating from private lands within 6 months is related to the enforcement of the program. This certification will enable the agency to ensure that the purchaser is in complete compliance with the objectives of the Act.

Applicants must be fully aware of and understand that providing interest or incomplete information in the certifications will subject them to the penalties and remedies provided in section 492 of the Act (16 U.S.C. 620d), that is, civil penalties, cancellation of contracts, and/or debarment. Incomplete or inaccurate certifications also will subject purchasers to the penalties found in the False Statements Act (18 U.S.C. 1001).

Section 223.190 Sourcing Area Procedure

Section 490(c) of the Act (16 U.S.C. 620b) states that the prohibitions described for persons who exported unprocessed private timber in direct or indirect substitution of unprocessed Federal timber shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands within a sourcing area west of the 100th meridian in the contiguous 48 States and approved by the Secretary. A sourcing area is the area of land from which a person expects to purchase timber originating from Federal lands as a source of raw materials for its manufacturing facility. This exception shall apply to a person who has not exported unprocessed timber originating from private lands within the sourcing area in the previous 24 months and does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect.

Waiver of the prohibition against exporting in the preceding 24-month period. Under the interim rule, the Secretary may waive the 24-month requirement for any person who certifies that the person will cease exporting unprocessed timber from private lands within the sourcing area by February 20, 1991, for a period of not less than 3 years. The certification must be received by the Regional Forester of the Forest Service Region in which the manufacturing facility being sourced is located by November 20, 1990.

In order to enforce the Act and the export program, applicants for the waiver of the prohibition against exporting in the preceding 24-month period are required to certify that they fully understand the requirements of the Act. Proper enforcement of the program is dependent upon complete and accurate certifications. In order to exempt a person from the 24-month requirement, the agency must rely on the information provided by applicants, concerning the person's intent to cease exporting within 6 months of the certification and to cease exporting for a period of 3 years from the date of the certification. The applicant also must acknowledge in the certification an understanding that the applicant's intent to cease exporting within 6 months relates to the enforcement of the Act. This certification will enable the agency to ensure that the purchaser is in complete compliance with the objectives of the Act.

The interim rule makes clear that applicants must be fully aware of and understand that providing incorrect or incomplete information in the certifications will subject them to the penalties and remedies provided in section 492 of the Act (U.S.C. 620d), that is, civil penalties, cancellation of contracts, and/or debarment. Incomplete or inaccurate certifications also will subject purchasers to the penalties found in the False Statements Act (18 U.S.C. 1001).

Sourcing area application procedures. Subsection 490(c) of the Act (16 U.S.C. 620b) states that the Secretary of Agriculture is to prescribe procedures to be used by a person applying for approval of a sourcing area. The procedures shall require, at a minimum, that the applicant provide information regarding the location of private lands from which the person has, within the previous year, harvested or otherwise acquired unprocessed timber that has been exported from the United States; and information regarding the location

of each timber manufacturing facility-owned or operated by the applicant within the proposed sourcing area boundaries from which the applicant proposes to process timber originating from Federal lands.

The Act also provides that the direct substitution prohibitions shall not apply to a person before December 20, 1990, which is 1 month after the procedures referred to above are prescribed. "Person," in this case, refers to a person applying for a sourcing area since the exemption is listed under subsection 490(c)(2) of the Act (16 U.S.C. 620b). A person applying for a sourcing area by December 20, 1990, will also be exempt from the direct substitution prohibition until the Secretary approves or disapproves the application.

The Act further provides that the Secretary shall either approve or disapprove each application not later than four (4) months after receipt of the application. For the purposes of complying with this rule, applicants may submit their applications to the Regional Forester of the Region in which the processing facility is located.

Under the Act, the Secretary shall provide the opportunity for a hearing and the approval or disapproval shall be on the record. Any sourcing area approval must be based on a determination by the Secretary that the area subject to the application includes the manufacturing facilities at which the applicant expects to process the Federal timber and that the area is geographically and economically separate from any area from which that person harvests for export any unprocessed timber originating from private lands. The Secretary shall also consider equally the timber purchasing patterns of the applicant on private and Federal lands with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns. To clarify the intent of the Act's use of the phrase "same local vicinity," the interim rule establishes the "same local vicinity" as normally being the manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located, but "same local vicinity" may include more distant communities, if manufacturing facilities in those communities are dependent on the same source of timber and have similar purchasing patterns. This interpretation is supported by the Conference Report accompanying the Act. The relative similarity of purchasing patterns will be determined by examining the location and similarity of timber being purchased and the similarity of products being produced.

The sourcing area boundaries must follow major natural and cultural features, including but not limited to prominent ridge systems, main roads or highways, rivers, political subdivisions, and not characterized by random lines. This is necessary to provide sourcing area boundaries that are readily identifiable on the ground and can be clearly displayed on map scales in general use.

Section 223.191 Sourcing Area Disapproval, Review Procedures

This section incorporates subsection 490(c)(4) of the Act (16 U.S.C. 620b) into the interim rule. The Act states that the approval or disapproval of a sourcing area application must be made by the approving official within 4 months of receipt of the application. Applications received on December 20, 1990, would require approval or disapproval by April 20, 1991, which would be at least 30 days prior to the publishing of a final rule. It would be impracticable to apply the sourcing area regulation without providing for the potential for disapproval. Section 223.191 repeats the language of the Act.

Section 223.192 Procedures for a Non-Manufacturer

Subsection 490(c)(2) of the Act (16 U.S.C. 620b) states that the procedures established by the Secretary shall, at a minimum, require that the applicant provide information regarding the location of private lands from which such person harvested or otherwise acquired unprocessed timber in the previous year which has been exported from the United States; and information regarding the location of each timber manufacturing facility-owned or operated by such person within the proposed sourcing area boundaries where the applicant proposes to process timber originating from Federal lands.

This subsection of the Act provides a process for the establishment of sourcing areas for a person who owns or operates a manufacturing facility. The subsection does not provide a means for a person who does not own or operate a manufacturing facility (a non-manufacturer) to obtain a sourcing area or to be exempt from the prohibition against purchasing Federal timber if the person has exported unprocessed timber originating from private lands within the previous 24-month period.

The stated purposes of the Act are to promote the conservation of forest resources, to take action essential for the acquisition and distribution of forest resources or products in short supply in the western United States, to ensure sufficient supplies of certain forest resources or products which are essential to the United States, and to continue to refine the existing Federal policy of restricting the export of unprocessed timber harvested from Federal lands in the western United States.

The failure to provide a non-manufacturer an opportunity to be exempt from the 24-month restriction or to obtain a sourcing area would in effect bar that person from competing for Federal timber until the 24-month period has passed. Such inability to purchase Federal timber would create a financial hardship for this segment of the timber industry and might cause some to go out of business with the resulting loss of employment and economic disruption. Further, if a non-manufacturer is unable to submit bids or to purchase Federal timber, there will be a reduction in the competition in some markets that would result in a reduction in receipts to the United States and State and County treasuries.

In order to close this gap, persons who do not own or operate a manufacturing facility may certify to the Regional Forester of the Region(s) in which they purchase National Forest System timber that they will cease exporting unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States by February 20, 1991, and, in fact, have ceased the export of unprocessed private timber from such lands. The applicable Regional Forester must receive the certification by November 20, 1990. This will provide a non-manufacturer with the opportunity to make the same business decisions as those persons owning or operating a manufacturing facility, that is, whether or not to continue the export of unprocessed private timber or whether to continue purchasing Federal timber. Since the non-manufacturer does not have a manufacturing facility, the non-manufacturer will not be able to establish a sourcing area.

In order to enforce the Act and the export program, a non-manufacturer is required to certify that he or she fully understands the requirements of the Act. Proper enforcement of the program is dependent upon complete and accurate certifications. In order to exempt a non-manufacturer from the 24-month requirement, the agency must rely on the information provided by applicants regarding intent to cease exporting within 6 months of the certification. The applicant also must acknowledge in the certification an understanding that the

information provided is related to the enforcement of the program. This certification will enable the agency to ensure that the non-manufacturer is in complete compliance with the objectives of the Act.

Applicants must be fully aware of and understand that providing incorrect or incomplete information in the certifications will subject them to the penalties and remedies provided in section 492 of the Act (16 U.S.C. 620d), that is, civil penalties, cancellation of contracts, and/or debarment. Incomplete or inaccurate certifications also will subject purchasers to the penalties found in the False Statements Act (18 U.S.C. 1001).

Section 223.193 Determination of Surplus Species

This section implements section 489 of the Act (16 U.S.C. 620a) and continues the prohibition on export of unprocessed timber originating from Federal lands, except for timber that has been determined by the Secretary to be surplus to the needs of timber manufacturing facilities in the United States. Section 489 of the Act (16 U.S.C. 620a) states that any surplus determination shall be made in regulations issued in accordance with section 553 of title 5, United States Code. Any such determination shall be reviewed at least once in every 3-year period. The Secretary shall publish notice of such review in the **Federal Register** and shall give the public an opportunity to comment on such review. This interim rule will provide for continuity between previous rules and the final rule for this Act by continuing the determination of surplus species until a new determination can be made.

Because of the short deadline imposed by the Act, those persons who receive notice of National Forest timber sale advertisements and who will be directly affected by this interim rule have received direct notice of the certification procedures contained in this rule by separate mailing.

Environmental Impact

This interim rule only limits the persons qualified to purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States. It will not affect the amount of timber to be sold, where the sales will be located, when they will be operated, the contract period, the contract size, resource protection requirements, or any aspect of on-the-ground contract performance. This rule does not alter the requirement that each timber sale be analyzed in compliance with the National Environmental Policy Act and its implementing regulations. As such, this rule will have no impact on the quality of the human environment, individually or cumulatively. Therefore, documentation of analysis of environmental effects of this rule in an environmental assessment or an environmental impact statement is not required.

Controlling Paperwork Burdens on the Public

The application procedures of §§ 223.187, 223.189, 223.190, and 223.192 of this interim rule contain new recordkeeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. The Office of Management and Budget assigned Control Number is 0596–0114. Reviewers who wish to comment on these information requirements should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the:

Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Impact

This interim rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this is not a major rule. The interim rule will not have an annual effect of $100 million or more on the economy, or substantially increase prices or costs for consumers, individual industries, Federal, State, or local governments of geographic regions. Furthermore, the interim rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This interim rule will not limit the amount of National Forest System timber to be offered for sale, restrict competition, or reduce market demand for such timber.

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. The interim rule imposes no additional requirements on small business timber sale purchasers or other small entities.

This interim rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the interim rule does not pose the risk of a taking of Constitutionally protected private property.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National Forests, Reporting requirements, Timber sales.

Therefore, for the reasons set foth in the preamble, part 223 of title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation of part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620h, unless otherwise noted.

Subpart B—Timber Sale Contracts

2. Revise § 223.48 to read as follows:

§ 223.48 Restrictions on export and substitution of unprocessed timber.

(a) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States and Alaska, awarded before August 20, 1990, shall include provisions implementing the Secretary's timber export and substitution regulations at Subpart D of this part in effect prior to that date.

(b) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States, awarded on or after August 20, 1990, shall include provisions implementing the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990, (16 U.S.C. 620 *et seq.*).

Subpart D—Timber Export and Substitution Restrictions

4. Add a new § 223.159 to subpart D to read as follows:

§ 223.159 Scope and applicability.

The rules of this subpart apply to all timber sale contracts awarded prior to August 20, 1990, the date of enactment of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*). In addition, the rules at § 223.161 shall remain in effect for all timber sale contracts in Alaska and the procedures for determining surplus species at § 223.163 shall remain in effect for all timber sales until superseded. The rules at § 223.162 shall remain in effect for all contracts awarded after the date of enactment and until such time as final rules are

issued to implement this Act. The provisions of Subpart F of this Part implementing the following shall apply to all new contracts awarded after August 20, 1990:

(a) Sourcing area application and approval procedures;

(b) Certification procedures;

(c) Continuation surplus species determinations;

(d) Sourcing area disapproval, review procedures; and

(e) Definitions.

5. Add a new subpart F (§§ 223.185 through 223.194) to read as follows:

Subpart F—Interim Rules to Implement the Forest Resources Conservation and Shortage Relief Act of 1990

Sec.

223.185 Scope and applicability.
223.186 Definitions.
223.187 Determination of unprocessed timber.
223.188 Prohibitions against exporting Federal timber.
223.189 Prohibitions against substitution.
223.190 Sourcing area procedures.
223.191 Sourcing area disapproval, review procedures.
223.192 Procedures for a non-manufacturer.
223.193 Determination of surplus species.
223.194 Information requirements.

Supart F—Interim Rules to Implement the Forest Resources Conservation and Shortage Act of 1990

§ 223.185 Scope and applicability.

The interim rules of this subpart apply to all timber sale contracts awarded on or after August 20, 1990, and implement provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) that became effective upon enactment or as otherwise specified in the Act.

§ 223.186 Definitions.

The following definitions apply to the provisions of this section:

Act means the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, 104 Stat. 714–726; 16 U.S.C. 620 *et seq.*).

Acquire means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction. The term "acquisition" means the act of acquiring. The terms "acquire" and "purchase" are synonymous and are used interchangeably in this interim rule.

Cants or *Flitches* are synonymous, and mean trees or portions of trees, sawn on one or more sides, intended for remanufacture into other products elsewhere.

Export means transporting or causing to be transported, either directly or through another party, unprocessed timber to a foreign country. Export occurs on the date that a person enters into an agreement to sell, trade, exchange, or otherwise convey such timber to a person for delivery to a foreign country. If that date cannot be established, export occurs when unprocessed timber is placed in an export facility for preparation, including but not limited to, sorting, bundling, and container loading, for shipment outside the United States, or when unprocessed timber is placed on board an ocean-going vessel, rail car, or other conveyance destined for a foreign country.

Federal lands means lands that are owned by the United States west of the 100th meridian in the contiguous 48 States, but which does not include any land the title to which is;

(a) Held in trust by the United States for the benefit of any Indian tribe or individual;

(b) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(c) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

Fiscal Year means the Federal fiscal year beginning on October 1st and ending on the following September 30th.

Non-manufacturer means a person who does not own or operate a manufacturing facility.

Person means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company, and business affiliates. Persons are affiliates of each other when either directly or indirectly, one person controls or has the power to control the other or a third party or parties controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships. Further guidelines on finding affiliation are found in the Small Business Administration regulation in 13 CFR 121.401.

Private lands means lands, located west of the 100th meridian in the contiguous 48 States, held or owned by a person. Such term does not include Federal lands or public lands, or any land the title to which is;

(a) Held in trust by the United States for the benefit of any Indian tribe or individual;

(b) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(c) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

Purchase means the same as acquire. The terms are used interchangeably.

Substitution means acquiring, either directly or indirectly, unprocessed timber from Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic or economic area.

Unprocessed timber means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use and intended for remanufacture.

§ 223.187 Determinations of unprocessed timber.

(a) Unprocessed timber, as defined in § 223.186 of this subpart, is intended for remanufacture and does not include timber processed into any one of the following:

(1) Lumber or construction timbers, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture. To determine whether such lumber or construction timbers meet this grade and intended use standard, the shipper of record must have in its possession for each shipment, and available for inspection upon the request of the Forest Service:

(i) An original copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard and,

(ii) An original certificate by the manufacturer that the material in the shipment has been manufactured for a specific order for end product use, not intended for remanufacture, with a copy of such order and specifications attached.

(2) Lumber, construction timbers, or cants for remanufacture, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches in thickness. To determine whether such lumber, timbers, or cants meet this grading standard, the shipper of record must have in its possession for each shipment and available for inspection upon the request of the Forest Service, an original copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard.

(3) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in paragraph (a)(2) of this section and are sawn on 4 sides,

with wane less than ¼ of any face, not exceeding 8¾ inches in thickness.

(4) Chips, pulp, or pulp products.

(5) Veneer or plywood.

(6) Poles, posts, or piling cut or treated with preservatives for use as such.

(7) Shakes or shingles.

(8) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp.

(9) Pulp logs or cull logs to be processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the log into chips.

(b) Unprocessed western red cedar timber does not include manufactured lumber authorized to be exported under license by the Department of Commerce and lumber from private lands processed to standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau, or timber processed into any of the following:

(1) Lumber of American Lumber Standards Grades of Number 3 dimension or better and/or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 Common or better. To determine whether such lumber meets these established standards and grades, the shipper of record must have in its possession for each shipment, and available for inspection upon the request of the Forest Service, an original copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard. Export restrictions governing western red cedar products are in section 7(i) of the Export Administration Act of 1979 as amended (50 U.S.C. appendix 2406(i)) and implementing regulations at 15 CFR 777.7.

(2) Chips, pulp, and pulp products.

(3) Veneer and plywood;

(4) Poles, posts, piling cut or treated with preservatives for use as such and not intended to be further processed; or

(5) Shakes and shingles.

§ 223.188 Prohibitions against exporting Federal timber.

No person who aquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States. This prohibition does not apply to specific quantities of grades and species of such unprocessed Federal timber as the Secretary of Agriculture may determine to be surplus to domestic manufacturing needs.

§ 223.189 Prohibitions against substitution.

(a) *Direct substitution prohibition.* Except as otherwise provided by this section:

(1) No person may purchase unprocessed timber originating from Federal lands directly from a department or agency of the United States if such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(2) No person may purchase unprocessed timber originating from Federal lands if such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.

(b) *Exemptions.* (1) Pursuant to subsection 490(c) of the Act (16 U.S.C. 620b), all persons who apply for a sourcing area by December 20, 1990, in accordance with § 223.190 of this subpart, are exempt from the prohibition against substitution, in accordance with § 223.189(a) of this subpart, until such time that the approving official approves or disapproves the application.

(2) Pursuant to section 490(a) of the Act (16 U.S.C. 620b), an exemption to the prohibition in § 223.189(a)(2) of this subpart is provided to:

(i) A person with a historic export quota who submits a certification in accordance with § 223.189 (c) and (d) of this subpart; and

(ii) A non-manufacturer who submits a certification in accordance with § 223.192 of this subpart.

(3) Pursuant to subsection 490(c) of the Act (16 U.S.C. 620b), the prohibition against direct substitution does not apply to a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, receives a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months, in accordance with § 223.189 (f) and (g) of this subpart.

(c) *Historic export quota exemption.* The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands, within the preceding 24-month period, shall not apply to a person with a historic export quota approved by the Secretary and who has been exporting unprocessed private timber in accordance with the log export and substitution regulations of the Secretary of Agriculture at 36 CFR Part 233, subpart D, in effect before August 20, 1990, if:

(1) That person certifies in writing to the Regional Forester of the Region administering the historic export quota, on or before November 20, 1990, that the person will cease exporting unprocessed timber originating from private lands on or before February 20, 1991, and

(2) The exporting does cease in accordance with such certification.

(d) *Application for historic export quota exemption.* To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber based on an approved historic export quota described in preceding paragraph (c), a person must apply in writing to the applicable Regional Forester on or before November 20, 1990. The certificate must be notarized. The application shall be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

I have purchased, under an historic export quota approved by the Secretary of Agriculture, unprocessed timber originating from Federal lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months in direct substitution for exported unprocessed timber originating from private lands. I desire to purchase directly from a department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. No. 101-382, August 20, 1990, 16 U.S.C. 620 *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from lands west of the 100th meridian in the 48 contiguous States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of

this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.

(3) The certification must be signed by the person making such certification or, in the case of a corporation, by its chief executive officer.

(e) *Indirect substitution prohibition.* No person may purchase from any other person unprocessed timber originating from Federal lands if such person would be prohibited by paragraph (a) of this section from purchasing such timber directly from a department or agency of the United States. The prohibition in this paragraph does not apply to the following:

(1) To a person who purchases unprocessed timber originating from National Forest System (NFS) lands located within the State of Washington, until such time that the proportionate shares of the exempt volume limit established by the Act are assigned by the Regional Forester of Region 6, at which time, the prohibitions shall apply to a person who acquires amounts of such unprocessed NFS timber exceeding its assigned share.

(2) To the acquisition of unprocessed western red cedar, which is domestically processed into finished products.

(3) To a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, receives a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months in accordance with § 223.189 (f) and (g) of this subpart.

(f) *Waiver within a sourcing area.* The prohibitions against direct and indirect acquisition of unprocessed timber originating from Federal lands do not apply if a person acquires such timber from within an approved sourcing area located west of the 100th meridian in the 48 contiguous States, and has not exported unprocessed timber originating from private lands located within the approved sourcing area during the preceding 24 months and during the period the sourcing area is in effect, does not export such private timber from within the approved sourcing area. The applicable Regional Forester may waive, in writing, the prohibition against export within the preceding 24-month period for any person who certifies in writing, on or before November 20, 1990, that on or before February 20, 1991, that person will cease exporting unprocessed timber originating from private lands within the approved sourcing area for a period of not less than three (3) years.

(g) *Application for waiver within a sourcing area.* To obtain a waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber described in paragraph (f) of this section, a person must submit a request for waiver, in writing, to the Regional Forester of the region in which the manufacturing facility being sourced is located, which must be received by the Regional Forester on or before November 20, 1990; and which must be signed by the person making such request or, in the case of a corporation, by its chief executive officer. The request for waiver must be notarized. The request shall be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the waiver request, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification statement which reads as follows:

I have engaged in exporting of unprocessed timber originating from private land located within the sourcing area for which I am applying. I desire to purchase directly from a department or agency of the United States unprocessed timber originating from Federal lands located within the desired sourcing area. I hereby waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101-382, August 20, 1990, 16 U.S.C. 620 *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from within the desired sourcing area by February 20, 1991, and will not resume such exporting for a period of not less than three (3) years. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of section 492 of this Act (16 U.S.C. 620d) and the False Statements Act ((18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.

§ 223.190 Sourcing area procedures.

(a) Subject to the restrictions described in § 223.189 of this subpart and, except as provided in paragraph (b) of this section, any person who owns or operates a manufacturing facility, may apply for a sourcing area exception to the substitution prohibitions in accordance with the procedures of this section. The direct substitution prohibitions shall not apply as follows:

(1) To a person applying for a sourcing area before December 20, 1990; and until such sourcing area application is approved or disapproved by the Secretary.

(2) [Reserved]

(b) As provided in the Act, a person who has requested an exemption or waiver of the prohibition against export within the preceding 24-month period, pursuant to § 223.189 of this subpart, must apply for the desired sourcing area on or before December 20, 1990.

(c) Sourcing area applications shall include:

(1) A map of sufficient scale and detail to clearly show:

(i) The applicant's desired sourcing area boundary. This boundary will include both the private and Federal lands from which the applicant intends to acquire unprocessed timber for sourcing its manufacturing facilities.

(ii) The location of the timber manufacturing facilities owned or operated by the applicant within the proposed sourcing area where the person intends to process timber originating from Federal land;

(iii) The location of private lands within and outside the desired sourcing area where the person has, within the 12 months immediately preceding the date of the application, acquired unprocessed timber originating from private land which was exported, sold, traded, exchanged, or otherwise conveyed to another person for the purpose of exporting such timber;

(2) A list of other persons with timber manufacturing facilities located within the same general vicinity as the applicant's facilities;

(3) Any other information the applicant may believe is appropriate to support approval of the requested sourcing area; and

(4) A statement signed by the person certifying under the penalties provided in section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001) that the information provided in support of the application is true, complete, and accurate to the best of the applicant's knowledge. The statement shall read as follows:

I certify under penalties of 16 U.S.C. 620d and 18 U.S.C. 1001, that the information provided in support of this application, is true, complete, and accurate to the best of my knowledge concerning my timber purchasing and export patterns. I certify that the

information provided concerning my timber purchasing and export patterns fully and accurately reflects to the best of my knowledge, the boundaries of the sourcing area for which I am applying. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) and fully understand, that, if this application is approved, exporting unprocessed private timber originating from within the approved sourcing area, or if this application is denied, failure to stop purchasing Federal timber, from within the proposed sourcing area, except as provided under the Act, within the time period and amounts provided by the Act, will be a violation of section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.SC. 1001), and may subject me to the penalties and remedies provided for such violation.

(d) Applications are not confidential information. However, if a person does submit confidential information, it should be marked as confidential and will be afforded the rights and protection provided under the Freedom of Information Act.

(e) Application for a sourcing area shall be made to the Forest Service Regional Forester of the region in which the manufacturing facility being sourced is located. Where the sourcing area application will cover purchases from more than one agency, application is to be made to the agency from which the applicant expects to purchase the preponderance of the Federal timber. The lead agency shall make the decision on consultation with, and upon co-signature of, the other agencies. Two complete copies of the application must be sent to each agency concerned.

(f) Sourcing area applications must be signed by the person making the request, or in the case of a corporation, by its chief executive officer, and must be notarized. The application shall be on company letterhead, and in the case of a corporation, with its corporate seal affixed.

(g) For each person submitting an application, the Regional Forester or other such approving official to whom such authority has been delegated, shall on the record and after an opportunity for a hearing, approve or disappove the proposed sourcing area.

(h) The application review process is as follows:

(1) Upon receipt of application, the approving official shall notify other parties of the application, and invite written comments, to be received no later than 30 days from date of notice. Notification will consist of publication of a notice in newspapers of general circulation in the area included in the sourcing area application. Additional notification will be made through agency mailing lists.

(2) After the comment period, the applicant and other parties who submitted written comments will be allowed 10 working days to review the written comments and request a hearing before the approving official.

(3) The approving official shall schedule a hearing, if one is requested, within 30 days after the period for reviewing written comments lapses, and shall notify all parties who submitted written comments of the date, place and time.

(4) The applicant will be notified of the approving official's decision on the application within four (4) months of receipt of the application.

(5) The following tests must be met for sourcing area approval:

(i) The approving official must find that the proposed sourcing area is geographically and economically separate from any area that the applicant harvests or expects to harvest for export any unprocessed timber originating from private lands. In making such finding, the approving official shall consider the timber purchasing patterns of the applicant on private and Federal lands equally with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns.

(ii) The same local vicinity for consideration will normally be manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located, but may include more distant communities if manufacturing facilities in those communities are dependent on the same source of timber and have similar purchasing patterns.

(iii) The relative similarity of purchasing patterns of other mills shall be determined by considering the location and similarity of unprocessed timber being acquired and the similarity of products being produced by those facilities.

(iv) Lines defining the geographic area shall be based on major natural and cultural features, including, but not limited to prominent ridge systems, main roads or highways, rivers, political subdivisions, and not characterized by random lines.

§ 223.191 Sourcing area disapproval, review procedures.

(a) Notwithstanding any other provision of law, in the event the sourcing area application is disapproved, the applicant may purchase in the 9-month period after receiving the application disapproval, unprocessed timber originating from Federal lands in the area designated as a sourcing area in the applicant's application, in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed Federal timber in such area during the five (5) full fiscal years immediately prior to the date of the submission of the application. In the 6-month period immediately following the 9-month period, such person may purchase not more than 25 percent of such annual average, after which time the prohibitions against direct substitution, described in § 223.189 of this Subpart shall apply. However, that person may continue to purchase unprocessed timber originating from Federal lands within the applied-for sourcing area without being subject to the phase-out of Federal timber purchasing procedures described in this section, if that person certifies to the Regional Forester or the approving official to whom such authority has been delegated, within 90 days after receiving the disapproval decision, that the applicant shall, within 15 months of such disapproval decision, cease the export of unprocessed timber originating from private lands from the geographic area determined by the approving official for which the application would have been approved. During the 15-month period described in this paragraph, however, such person's purchases may not:

(1) Exceed 125 percent of the person's annual average purchases of unprocessed timber originating from Federal lands within the area subject to the person's sourcing area application during the five (5) full fiscal years immediately prior to submission of the application; and,

(2) Export unprocessed timber originating from private lands in the geographic area determined by the approving official for which the application would have been approved, in amounts that exceed 125 percent of the annual average of that person's exports of unprocessed timber from such private land during the five (5) full years immediately prior to submission of the application.

(b) Sourcing area determinations will be reviewed not less than every five (5) years.

§ 223.192 Procedures for a non-manufacturer.

(a) Persons who do not own or operate a manufacturing facility (non-manufacturer) are not eligible to apply for or be granted a sourcing area.

(b) The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber

originating from private lands within the preceding 24-month period, if the person certifies in writing to the Regional Forester of the region(s) in which they purchase National Forest System timber by November 20, 1990, that the person will cease exporting unprocessed timber originating from private lands by February 20, 1991, for a period of 3 years and the exporting does cease in accordance with such certification.

(c) To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber described in § 223.189 (a) and (b) of this subpart, a person must apply in writing to the applicable Regional Forester on or before November 20, 1990. The application shall be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

I have engaged in the exporting of unprocessed timber originating from private lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months. I desire to purchase directly from a department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. No. 101-382, August 20, 1990, 16 U.S.C. 620 *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from west of the 100th meridian in the contiguous 48 States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.

(3) This certification must be signed by the person making such certification or, in the case of a corporation, by its chief executive officer. The certification must be notarized.

§ 233.193 Determination of surplus species.

Alaska yellow-cedar and Port Orford-cedar, those species currently found by the Secretary of Agriculture to be surplus to domestic processing needs pursuant to § 223.163 of this part, shall continue in that status, until such time as new procedures for determining surplus species under the Act are issued and determinations made.

§ 223.194 Information requirements.

(a) The application procedures in §§ 223.187, 223.189, 223.190, and 223.192 of this subpart constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 056-0114.

(b) Public reporting burden for this collection of information is estimated to average 2.4 hours 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 Chief (2400), Forest Service, USDA, P.O Box 96090, Washington, DC 20090-6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: November 16, 1990.

Jack C. Parnell,

Acting Secretary.

[FR Doc. 90-27476 Filed 11-19-90; 8:45 am]

BILLING CODE 3410-11-M

federal register

Tuesday
November 20, 1990

Part VIII

The President

Proclamation 6233—National Military Families Recognition Day, 1990

Executive Order 12735—Chemical and Biological Weapons Proliferation

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 1990

Presidential Documents

Title 3—

The President

Proclamation 6233 of November 16, 1990

National Military Families Recognition Day, 1990

By the President of the United States of America

A Proclamation

A great portion of our Nation's military strength is derived from our proud and courageous military families. Each of us gains untold strength and inspiration through our loved ones; for the men and women who serve in the United States Armed Forces, however, the love and support of family are indispensable when striving to endure the risks and sacrifices that are a frequent part of military life.

Through the steadfast physical and emotional support of their loved ones, members of our Armed Forces find much of the personal strength and motivation needed to complete arduous and sometimes hazardous assignments. Service members on duty far from home are ever grateful for the thoughts, prayers, and letters of their loved ones. Like millions of their fellow Americans around the world, the members of the Armed Forces are also uplifted and inspired by the extraordinary patriotism and perseverance of their families.

Our Nation's military families not only provide invaluable support to their loved ones in the Armed Forces but also frequently share in the sacrifices they must make in the line of duty. Spouses, parents, children, and siblings must often cope with long hours of separation and worry. Frequent moves, which can be particularly hard on youngsters, are a fact of military life. Those moves can take a family across the country or even around the world, where parents and children must adjust to cultural differences as well as new jobs and new schools. Nevertheless, despite these and other challenges, America's military families have always displayed remarkable faith, resourcefulness, and determination. As representatives of the United States around the world, they have served our country well and with pride, and all of us can be grateful for their example.

The Nation's military services have long acknowledged the importance of families and have thus established special programs and support systems to assist the close relatives of military personnel. Recently the families of those service men and women taking part in Operation Desert Shield have also received generous support through individual volunteers, local community groups, and private industry. Patriotic Americans across the country and around the world have demonstrated their support and rendered assistance to military families through countless heartwarming gestures. This week we reaffirm the importance of such generous efforts and unite in offering a heartfelt salute to all of our Nation's military families.

The Congress, by House Joint Resolution 566, has designated November 19, 1990, as "National Military Families Recognition Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 19, 1990, as National Military Families Recognition Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of U.S. military families throughout the world. I also urge the people of the United States to pause in their homes, churches, synagogues, and other suitable places on this day to

pray in a special manner for those military families whose loved ones are stationed in the Persian Gulf region.

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

George Bush

[FR Doc. 90-27536
Filed 11-19-90; 11:40 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12735 of November 16, 1990

Chemical and Biological Weapons Proliferation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and section 301 of title 3 of the United States Code,

I, GEORGE BUSH, President of the United States of America, find that proliferation of chemical and biological weapons constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States and hereby declare a national emergency to deal with that threat.

Accordingly, I hereby order:

Section 1. *International Negotiations.* It is the policy of the United States to lead and seek multilaterally coordinated efforts with other countries to control the proliferation of chemical and biological weapons. The Secretary of State shall accordingly ensure that the early achievement of a comprehensive global convention to prohibit the production and stockpiling of chemical weapons, with adequate provisions for verification, shall be a top priority of the foreign policy of the United States, and the Secretary of State shall cooperate in and lead multilateral efforts to stop the proliferation of chemical weapons.

Sec. 2. *Imposition of Controls.* As provided herein, the Secretary of State and the Secretary of Commerce shall use their authorities, including the Arms Export Control Act and Executive Order No. 12730, respectively, to control any exports that either Secretary determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this order.

Sec. 3. *Department of Commerce Controls.* (a) The Secretary of Commerce shall prohibit the export of any goods, technology, or services subject to his export jurisdiction that the Secretary of Commerce and the Secretary of State determine, in accordance with regulations issued pursuant to this order, would assist a foreign country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons. The Secretary of Commerce and the Secretary of State shall develop an initial list of such goods, technology, and services within 90 days of this order. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this section.

(b) Subsection (a) will not apply to exports if their destination is a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of chemical or biological weapons-related goods (including delivery systems) and technology, or maintains domestic export controls comparable to controls that are imposed by the United States with respect to such goods and technology or that are otherwise deemed adequate by the Secretary of State.

(c) The Secretary of Commerce shall require validated licenses to implement this order and shall coordinate any license applications with the Secretary of State and the Secretary of Defense.

Sec. 4. *Sanctions Against Foreign Persons.* (a) Sanctions shall be imposed on foreign persons with respect to chemical and biological weapons proliferation. as specified in subsections (b)(1) through (b)(5).

(b)(1) Sanctions shall be imposed on a foreign person if the Secretary of State determines that the foreign person on or after the effective date of this order knowingly and materially contributed to the efforts of a foreign country referred to in subsection (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) The countries referred to in subsection (1) are those that the Secretary of State determines have either used chemical or biological weapons in violation of international law or have made substantial preparations to do so on or after the effective date of this order.

(3) No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods or services from any foreign person referred to in subsection (1). The Sectretary of the Treasury shall prohibit the importation into the United States of products produced by that foreign person.

(4) Sanctions imposed pursuant to this section may be terminated or not imposed against foreign persons if the Secretary of State determines that there is reliable evidence that the foreign person concerned has ceased all activities referred to in subsection (1).

(5) The Secretary of State and the Secretary of the Treasury may provide appropriate exemptions for procurement contracts necessary to meet U.S. operational military requirements or requirements under defense production agreements, sole source suppliers, spare parts, components, routine servicing and maintenance of products, and medical and humanitarian items. They may provide exemptions for contracts in existence on the date of this order under appropriate circumstances.

Sec. 5. *Sanctions Against Foreign Countries.* (a) Sanctions shall be imposed on foreign countries with respect to chemical and biological weapons proliferation, as specified in subsections (b) and (c).

(b) The Secretary of State shall determine whether any foreign country has, on or after the effective date of this order, (1) used chemical or biological weapons in violation of international law; or (2) made substantial preparations to use chemical or biological weapons in violation of international law; or (3) developed, produced, or stockpiled chemical or biological weapons in violation of international law.

(c) The following sanctions shall be imposed on any foreign country identified in subsection (b)(1) unless the Secretary of State determines that any individual sanction should not be applied due to significant foreign policy or national security reasons. The sanctions specified in this section may be made applicable to the countries identified in subections (b)(2) or (b)(3) when the Secretary of State determines that such action will further the objectives of this order pertaining to proliferation. The sanctions specified in subsection (c)(2) below shall be imposed with the concurrence of the Secretary of the Treasury.

(1) *Foreign Assistance.* No assistance shall be provided to that country under the Foreign Assistance Act of 1961 or the Arms Export Control Act other than assistance that is intended to benefit the people of that country directly and that is not channeled through governmental agencies or entities of that country.

(2) *Multilateral Development Bank Assistance.* The United States shall oppose any loan or financial or technical assistance to that country by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d).

(3) *Denial of Credit or Other Financial Assistance.* The United States shall deny to that country any credit or financial assistance by any department, agency, or instrumentality of the United States Government.

(4) *Prohibition on Arms Sales.* The United States Government shall not, under the Arms Export Control Act, sell to that country any defense articles or defense services or issue any license for the export of items on the United States Munitions List.

(5) *Exports of National Security-Sensitive Goods and Technology.* No exports shall be permitted of any goods or technologies controlled for national security reasons under Export Administration Regulations.

(6) *Further Export Restrictions.* The Secretary of Commerce shall prohibit or otherwise substantially restrict exports to that country of goods, technology, and services (excluding agricultural commodities and products otherwise subject to control).

(7) *Import Restrictions.* Restrictions shall be imposed on the importation into the United States of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of that country.

(8) *Landing Rights.* At the earliest practicable date, the Secretary of State shall terminate, in a manner consistent with international law, the authority of any air carrier that is controlled in fact by the government of that country to engage in air transportation (as defined in section 101(10) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(10)).

Sec. 6. *Duration.* Any sanctions imposed pursuant to sections 4 or 5 shall remain in force until the Secretary of State determines that lifting any sanction is in the foreign policy or national security interests of the United States or, as to sanctions under section 4, until the Secretary has made the determination under section 4(b)(4).

Sec. 7. *Implementation.* The Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce are hereby authorized and directed to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this order. These actions, and in particular those in sections 4 and 5, shall be made in consultation with the Secretary of Defense and, as appropriate, other agency heads. The Secretary concerned may redelegate any of these functions to other officers in agencies of the Federal Government. All heads of departments and agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order, including the suspension or termination of licenses or other authorizations.

Sec. 8. *Judicial Review.* This order is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or any other person.

Sec. 9. *Effective Date.* This order is effective immediately.

This order shall be transmitted to the Congress and published in the **Federal Register.**

George Bush

THE WHITE HOUSE,
November 16, 1990.

[FR Doc. 90-27495
Filed 11-19-90; 9:49 am]
Billing code: 3195-01-M

Reader Aids

Federal Register

Vol. 55, No. 224

Tuesday, November 20, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

46033-46186.....1
46187-46492.....2
46493-46640.....5
46641-46786.....6
46787-46932.....7
46933-47044.....8
47045-47300.....9
47301-47454.....13
47455-47728.....14
47729-47838.....15
47839-48092.....16
48093-48214.....19
48215-48590.....20

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

101.....46037

Proclamations:

2351 (Modified by Proc. 6228).....47835
6219.....46033
6220.....46035
6221.....46783
6222.....46785
6223.....47447
6224.....47725
6225.....47727
6226.....47729
6227.....47731
6228.....47835
6229.....48093
6230.....48095
6231.....48097
6232.....48215
6233.....48585

Executive Orders:

12170 (See Notice of Nov. 9, 1990).....47453
12677 (See Memorandum of Aug. 17, 1990).....46491
12722 (See EO 12734).....48099
12727 (See EO 12733).....47731
12732.....46489
12733.....47837
12734.....48099
12735.....48587

Administrative Orders:

Presidential Determinations:

No. 91-2 of Oct. 10, 1990.....46933
No. 91-4 of Oct. 25, 1990.....46935
No. 91-5 of Oct. 25, 1990.....46937
No. 91-6 of Oct. 30, 1990.....47733
No. 91-7 of Oct. 30, 1990.....47735

Memorandums:

August 17, 1990.....46491

Notices:

Nov. 9, 1990.....47453

5 CFR

532.....46140
1800.....47839
1810.....47839
1820.....47839
1830.....47839
1840.....47839

7 CFR

52.....48101
301.....47737, 47738
800.....46131
907.....46641, 48102
908.....46641
910.....46493, 47301, 48104
932.....46037
944.....46037
966.....47045
984.....47840
1530.....47740
1910.....46187

Proposed Rules:

17.....47061
51.....46070
246.....46285
319.....47884
360.....47776
910.....48111
927.....46071
971.....46072
989.....47063
1001.....48112
1002.....48112
1004.....48112
1005.....48112
1006.....48112
1007.....48112
1011.....48112
1012.....48112
1013.....48112
1030.....48112
1032.....48112
1033.....48112
1036.....48112
1040.....48112
1044.....48112
1046.....48112
1049.....48112
1050.....48112
1064.....48112
1065.....48112
1068.....48112
1075.....48112
1076.....48112
1079.....48112
1093.....48112
1094.....48112
1096.....48112
1097.....48112
1098.....48112
1099.....48112
1106.....48112
1108.....48112
1120.....48112
1124.....48112
1126.....48112
1131.....48112
1132.....48112
1134.....48112
1135.....48112
1137.....48112
1138.....48112

1139.....48112
1205.....48242

9 CFR

77.....47303
92.....46039
114.....46188
301.....48208
312.....47841
329.....47841
381.....47841

10 CFR

0.....47740
1.....47740
436.....48217

Proposed Rules:

Ch. I.....46217
35.....47481
1021.....46444

12 CFR

207.....46040
210.....47428
220.....46040
221.....46040
224.....46040
225.....47741, 47843
360.....46495
382.....46495
383.....46495
384.....46495
385.....46495
386.....46495
387.....46495
388.....46495
389.....46495
390.....46495
391.....46495
392.....46495
393.....46495
394.....46495
395.....46495
396.....46495
745.....47455

Proposed Rules:

1613.....47481

13 CFR

107.....46190
121.....48106

Proposed Rules:

107.....46217

14 CFR

21.....46191, 47455, 48223
23.....46888, 46028, 47455, 48223
25.....46191
39.....46198-46201, 46497-46502, 46648-46657, 46787, 47028, 47046, 47047, 47304-47305, 47846-47848, 48225-48228
71.....46203, 46924, 46939, 47307
75.....46940
91.....47028, 47298, 47309
135.....47028
139.....48212

Proposed Rules:

Ch. I.....46826, 46956, 47339, 47483
21.....47065
25.....47065
39.....46217-46220, 46524-46528, 46671-46683, 46826, 46956, 47067-47071, 47339, 47885-47889, 48129-48133, 48243
71.....46132, 46221, 47073, 47483
75.....47341

15 CFR

25.....47851
30.....47048
772.....46503
773.....47050
774.....46503
775.....46503
786.....47048
787.....46503

Proposed Rules:

400.....48446

16 CFR

305.....48229

17 CFR

Proposed Rules:

200.....46288
210.....46288
229.....46288
230.....46288
239.....46288
240.....46288
249.....46288
260.....46288
269.....46288

18 CFR

2.....47457, 47863
11.....47309
35.....47311
271.....46660, 47743
284.....47457-47462
382.....47311

19 CFR

141.....47051

20 CFR

404.....46131
422.....46661

21 CFR

5.....47052
73.....46044
133.....48107
178.....47054, 47322
310.....46914
312.....47034
314.....47034
320.....47034
514.....46045
520.....46942
556.....46942
558.....46513, 48436
630.....47873
872.....48436
874.....48436
878.....48436
884.....48436
886.....48436
888.....48436
892.....48436

Proposed Rules:

201.....46134
808.....47165

22 CFR

514.....46943

Proposed Rules:

514.....46073

24 CFR

Proposed Rules:

200.....46632

26 CFR

1.....48107
43.....46667

Proposed Rules:

1.....46529, 48135
43.....46132

27 CFR

9.....47744-47747
19.....47604
24.....47604
25.....47604
70.....47604
71.....47323
170.....47604
179.....47604
194.....47604
197.....47604
250.....47604
270.....47604
275.....47604
285.....47604
290.....47604
296.....47604

28 CFR

551.....47055

29 CFR

522.....46466, 47028
1910.....46052, 46948
1926.....47660
2619.....47749
2676.....47750

Proposed Rules:

1910.....46074, 46958, 47074, 47487
1915.....47487
1917.....47487
1918.....47487
1926.....46958, 47487
1928.....47487

30 CFR

250.....46203, 47751
913.....46203
914.....46054
917.....46054
925.....46888

Proposed Rules:

46.....46400
56.....46400
57.....46400
77.....46400
701.....47430
816.....47430
817.....47430
913.....47890
920.....47892
925.....46076
926.....48135
935.....47342
946.....48136

32 CFR

199.....46667
286.....46950, 48231
589.....47042
720.....47876

Proposed Rules:

169a.....46959

33 CFR

100.....47326, 48231
117.....47753, 48232
165.....46204, 47327, 47470

Proposed Rules:

100.....47489, 47490
110.....47075, 48244
117.....47776
161.....47077

34 CFR

Proposed Rules:

674.....47438
675.....47438
676.....47438
682.....48324

36 CFR

223.....48572

Proposed Rules:

1228.....46828
1253.....47078
1254.....47078
1280.....47078

37 CFR

1.....46951

38 CFR

Proposed Rules:

4.....46959

39 CFR

Proposed Rules:

111.....46078

40 CFR

52.....46205, 46206, 46788
60.....47471, 48208, 48233
61.....48233, 48406
82.....47753
86.....46622
122.....47990
123.....47990
124.....47990
180.....47474, 47475
261.....46354, 47328, 47330
271.....46354
302.....46354
721.....46766
761.....46790

Proposed Rules:

22.....46470
52.....46530, 46684, 46829, 47491, 47894, 48246
171.....46890
261.....46829, 47493, 48248
503.....47210
721.....47286
761.....46470

41 CFR

301-8.....46064

42 CFR

412.....46064
413.....46064

Proposed Rules:

405.....46685
408.....46222
412.....46887

413.....46689, 46887

43 CFR

Public Land Orders:
6808.....47165
6809.....46887
6814.....46668
Proposed Rules:
4.....46132, 46530, 47831

44 CFR

64.....46208, 48234–48238
65.....46210
67.....46211
Proposed Rules:
67.....46225, 48257

45 CFR

1214.....47755
Proposed Rules:
303.....47777

46 CFR

64.....47476
98.....47476
310.....46951

47 CFR

1.....46513
15.....46790
21.....46513
22.....46952, 47335
43.....46513
73.....46212, 46213, 46792–46794, 346954, 47336, 47477, 47764, 47765, 47879, 47880, 48239–48241
74.....46513
68.....46065
78.....46513
80.....46514
Proposed Rules:
1.....46834
73.....46078, 46230–46233, 46836–46839, 46960, 46961, 47342–47346, 47494–47496, 47779, 47780, 47895, 47896, 48257–48259
74.....48260
90.....46834

48 CFR

525.....46068
552.....46068
1804.....47477
1806.....47477
1810.....47477
1813.....47477
1815.....47477
1819.....47477
1837.....47477
1842.....47477
1843.....47477
1852.....47477
1853.....47477
1870.....47477
Ch. 99.....47055
Proposed Rules:
15.....46930
245.....47896
Ch. 53.....46839

49 CFR

1.....47165
40.....46669
171.....46794
172.....46794
571.....46669
575.....47765
1011.....47336
1043.....47337
1044.....47337
1118.....47336
1132.....47336
1145.....47337
1162.....47336
1167.....47337
1171.....47337
Proposed Rules:
171.....46839
172.....46839
175.....46839
391.....46080
552.....48261
531.....48137
553.....47028
571.....46961, 48262

50 CFR

216.....47880
227.....46515
371.....47058
641.....46955
646.....46213, 47831
647.....47059
669.....46214
672.....47883
674.....47773
675.....47883, 48109
Proposed Rules:
17.....46080, 46963, 47081, 47347
21.....47498
33.....47350
60.....46968
611.....46082, 46841, 47897
652.....47781
663.....46841
672.....47897
675.....46082

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 15, 1990

Public Laws

are now available for the 101st Congress, 2nd Session, 1990

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 101st Congress, 2nd Session, 1990.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*6216

Charge your order. It's easy!

☐ **YES,** please send me ___ ___ subscriptions to **PUBLIC LAWS** for the 101st Congress, 2nd Session, 1990 for $107 per subscription.

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

1/90

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371