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Monday
November 30, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Albuquerque, NM, see announcement on the inside cover of this issue.

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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.

ALBUQUERQUE, NM

WHEN: December 8, at 9:00 am
WHERE: University of New Mexico
Continuing Education Bldg., Room 1
1634 University Blvd., NE
Albuquerque, NM
RESERVATIONS: Julie Stone
505–768–3532

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 735

RIN 3206-AE93

Employee Responsibilities and Conduct

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is reissuing certain uniform standards of conduct regulations for officers and employees of the executive branch, complementing the uniform standards of ethical conduct which have been issued by the Office of Government Ethics (OGE). The OPM regulation will preserve the executive branch-wide applicability of certain of its provisions which are not included in OGE's final regulation. The OPM regulation provides for restrictions on certain gambling activities, conduct prejudicial to the Government, and the special preparation of persons for civil service and foreign service examinations.

EFFECTIVE DATE: February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Stuart D. Rick, Associate General Counsel, Office of Personnel Management, telephone (202) 606–1920.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics (OGE) has published as a final rule "Standards of Ethical Conduct for Employees of the Executive Branch." See 57 FR 35006–35067 (August 7, 1992). The OGE regulation implements Executive Order 12674 (as modified by Executive Order 12731), by setting forth uniform rules, to be codified at 5 CFR part 2635, for all executive branch employees. Thus, when OGE's regulation goes into effect on February 3, 1993, it will supersede each agency's internal standards of conduct which are based upon model standards of conduct in part 735 of OPM's regulations in this title, and will render most of current part 735 obsolete.

Section 403 of Executive Order 12674, together with 5 U.S.C. 7301, authorizes OPM to issue regulations covering areas of conduct that OGE's regulations do not cover. The OGE's regulations do not include the provision currently at 5 CFR 735.208, which provides that employees generally shall not participate in any gambling, betting, or lotteries while on Government-owned or leased property, or while on duty for the Government. In addition, OGE's regulations do not include the provision currently at 5 CFR 735.209, which provides that employees generally shall not engage in certain types of conduct prejudicial to the Government. Also, OGE's regulations do not specifically address the provision currently at 5 CFR 735.203(c), which restricts employees with respect to the preparation of a person or class of persons for an examination of OPM or the Board of Examiners for the Foreign Service.

On April 6, 1992, OPM published for comment a proposed rule which would preserve the general applicability of these three provisions in the executive branch. See 57 FR 11587–11588. The OPM proposed to republish the provisions in 5 CFR part 735, together with certain changes to their terms and new language in the part which would make the provisions in the part applicable to all employees in the executive branch and enforceable by their employing agencies.

Comments on the proposed rule were received by OPM from four sources: An Inspector General, two departments, and the General Counsel of a Federal employee labor organization.

The Inspector General supported the standards of conduct in OPM's proposed rule, he said, because they "will promote both government efficiency and public confidence" and they "meaningfully complement the OGE standards."

Both departments submitted comments on the "Gambling" standard in § 735.201, as proposed. One department recommended that § 735.201 be reworded to provide that employees shall neither participate nor "conduct" a gambling activity while on Government-owned or leased property or while on duty for the Government. The other department stated that some of its employees who do not have law enforcement duties nevertheless do have responsibilities in certain gaming activities; it recommended therefore that the exception in § 735.202(b)(1) be broadened to permit gambling activities necessitated by an employee's "official," rather than "law enforcement," duties. Both of these recommendations are being adopted in the final rule.

The General Counsel of a Federal employee labor organization recommended two changes to the "Safeguarding the examination process; standard in proposed § 735.202, that would leave the section the same as the provision on which it is based. In response to these recommendations, OPM is making the terms of § 735.202(a) more specific and more consistent with the terms of the provision from which it was drawn. However, OPM is not retaining in § 735.202(b) that portion of the current rule which states that an agency head can give written authorization for the use of nonpublic information to prepare a person or class of persons for an examination of OPM or the Board of Examiners for the Foreign Service. In order to promote uniformity, only the Director of OPM (or his or her designee) or the Director General of the Foreign Service (or his or her designee) can give such authorizations. In response to a comment on § 735.202(b) submitted by one of the departments, OPM is adding the phrase "as applicable" to the end of paragraph (2) of that section to clarify that it is the Director of OPM who gives such authorizations for OPM examinations, and the Director General of the Foreign Service who gives such authorizations for an examination of the Board of Examiners for the Foreign Service.

As proposed, this amendment of OPM's regulations would have redesignated § 735.106 as 735.413. Section 735.106 of 5 CFR part 735 concerns confidential financial disclosure reports. This section, together with all of subpart D, were removed from part 735 on October 5, 1992, the effective date of OGE's confidential financial disclosure regulations in subpart I of 5 CFR part 2634. Also on that date, § 735.107 of 5 CFR part 735 was redesignated as § 735.106. See 57 FR 11800–11830 (April 7, 1992), which OPM co-signed to remove and

redesignate the specified provisions of 5 CFR part 735.

Executive Order 12291, Federal Regulation

As Acting Director of the Office of Personnel Management, I have determined that this is not a major rule as defined in section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Acting Director of the Office of Personnel Management, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

As Acting Director of the Office of Personnel Management, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 735

Conflict of interests; Government employees.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 735 as follows:

PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority for part 735 is revised to read as follows:

Authority: 5 U.S.C. 7301; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

735.101 Definitions.
735.102 Disciplinary action.
735.103 Other regulations pertaining to conduct.

Subpart A—General Provisions

§ 735.101 Definitions.

In this part:

Agency means an Executive agency (other than the General Accounting Office) as defined by 5 U.S.C. 105, the Postal Service, and the Postal Rate Commission.

Employee means any officer or employee of an agency, including a special Government employee, but does not include a member of the uniformed services.

Special Government employee means a "special Government employee," as defined in 18 U.S.C. 202, who is employed in the executive branch, but does not include a member of the uniformed services.

Uniformed services has the meaning given that term by 5 U.S.C. 2101(3).

§ 735.102 Disciplinary action.

An employee's violation of any of the regulations in subpart B of this part may be cause for disciplinary action by the employee's agency, which may be in addition to any penalty prescribed by law.

§ 735.103 Other regulations pertaining to conduct.

In addition to the standards of conduct in subpart B of this part, an employee shall comply with the standards of ethical conduct in 5 CFR part 2635, as well as any supplemental regulation issued by the employee's agency under 5 CFR 2635.105. An employee's violation of those regulations may be cause for the employee's agency to take disciplinary action, or corrective action as that term is used in 5 CFR part 2635. Such disciplinary action or corrective action may be in addition to any penalty prescribed by law.

3. Subpart B is revised to read as follows:

Subpart B—Standards of Conduct

735.201 Gambling.
735.202 Safeguarding the examination process.
735.203 Conduct prejudicial to the Government.

Subpart B—Standards of Conduct

§ 735.201 Gambling.

(a) While on Government-owned or leased property or while on duty for the Government, an employee shall not conduct, or participate in, any gambling activity including the operation of a gambling device, conducting a lottery or pool, a game for money or property, or selling or purchasing a numbers slip or ticket.

(b) This section does not preclude activities:

(1) Necessitated by an employee's official duties; or

(2) Under section 7 of Executive Order 12353 and similar agency-approved activities.

§ 735.202 Safeguarding the examination process.

(a) An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing for the purpose of the preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service that depends on information obtained as a result of the employee's Government employment.

(b) This section does not preclude the preparation described in paragraph (a) of this section if:

(1) The information upon which the preparation is based has been made available to the general public or will be made available on request; or

(2) Such preparation is authorized in writing by the Director of the Office of Personnel Management or his or her designee, or by the Director General of the Foreign Service of his or her designee, as applicable.

§ 735.203 Conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§§ 735.301-735.306 [Removed]

4. Subpart C, consisting of §§ 735.301 through 735.306, is removed.

[FR Doc. 92-28879 Filed 11-27-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-160-2]

Importation of Cherimoyas From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the fruits and vegetables to allow the importation of cherimoyas from certain provinces of Chile, subject to APHIS inspection and completion of either an APHIS prescribed methyl bromide treatment or an APHIS prescribed soapy water and wax treatment. This action is warranted because there is no significant pest risk associated with the importation of cherimoyas from Chile under these circumstances. This action relieves restrictions on the importation of cherimoyas from Chile without

presenting a significant risk of introducing injurious insects into the United States.

EFFECTIVE DATE: November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6799.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56-8 (referred to below as the regulations), prohibit or restrict the importation of fruits and vegetables into the United States to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

Prior to the effective date of this final rule, the regulations in § 319.56 did not provide for the importation of cherimoyas from Chile. Both the Chile false red mite of grapes (*Brevipalpus chilensis*) and the Mediterranean fruit fly (Medfly) are known to attack cherimoyas in Chile. These are considered potentially destructive pests by the Animal and Plant Health Inspection Service (APHIS), and neither pest is present in the United States.

The plant protection service of Chile (Servicio Agricola Y Ganadero (SAG)) requested that we consider allowing the importation of cherimoyas from Chile. In a document published in the Federal Register on August 20, 1992 (57 FR 37732-37734, Docket No. 91-160-1), we proposed to amend the regulations to allow cherimoyas from Chile to be imported into the United States under certain conditions to prevent the introduction into the United States of the Chile false red mite and Medfly.

Comments on the proposed rule were required to be received on or before September 21, 1992. We received four comments. Two comments were in favor of the proposed rule. The other two comments are discussed below.

One commentor requested an extension of the comment period in order to determine if there are any pests that attack cherimoyas which could threaten limes and avocados in Florida. We do not believe that further pest risk analysis is necessary. Prior to the publication of the proposed rule, APHIS conducted a pest risk analysis and determined that only the Chile false red mite of grapes and the Mediterranean fruit fly attack cherimoyas in Chile. APHIS believes that the precautions in the proposed rule are adequate to prevent the introduction of these pests into the United States.

One commentor did not object to the proposed rule, assuming the adoption of the following suggestions: (1) The burden of treatment of the cherimoyas should be in Chile and not be an option upon arrival; and (2) the cherimoyas should be subject to inspection by the U.S. Department of Agriculture before departure from Chile and again, at least intermittently, upon arrival in the United States. In response to the first suggestion: It is our understanding that all shipments of cherimoyas will be treated and precleared in Chile before shipment to the United States. Treatment and preclearance in Chile will speed importation of the fruit for the Chileans. Also, the treatment with soapy water and wax is generally the preferred treatment option, and is not available at U.S. ports. However, we still believe it is reasonable to allow treatment in the U.S. as an alternative, in the event that, for some reason, the fruit cannot be treated in Chile (for example, if the treatment facilities in Chile malfunction). Delaying treatment until the cherimoyas arrive at a U.S. port would not increase the risk of introducing the Chile false red mite of grapes into the United States, because precautions are taken at the port of arrival in the U.S. to prevent any pests that may be on the fruit from escaping before treatment is applied. In response to the second suggestion: As stated in the proposed rule, the cherimoyas from Chile must be inspected by an APHIS inspector, either in Chile or at the port of arrival in the U.S. APHIS reserves the right to reinspect precleared fruit at the port of arrival in accordance with the regulations in § 319.56-6. We believe this amount of APHIS oversight is adequate to ensure that the cherimoyas are not carrying any plant pests and that the cherimoyas are moving in accordance with the regulations. For these reasons, we are not making any changes to the regulations based on this comment.

Therefore, based on the rationale set forth in the proposal and in this document, we are adopting the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. This rule relieves restrictions on the importation of cherimoyas from Chile. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for cherimoyas from Chile is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of APHIS has determined that this rule should be effective upon publication in the Federal Register.

Executive Order 12291 and Regulatory Flexibility Act

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

In the United States, cherimoyas are grown almost entirely in Southern California. The season for cherimoyas grown in the United States begins in mid-November and ends in May or June. The growing/shipping season for cherimoyas from Chile is September through November. The mature fruits are picked as they become ripe and must reach consumers within 2 weeks of harvest, as they are perishable.

The short-term impact on U.S. consumers and producers of importing cherimoyas from Chile will depend on the marketing strategy pursued by the Chilean importers. If large quantities of fruits are imported at once, prices could fall slightly for domestic growers, packers, and consumers. If importers test the U.S. market by first shipping moderate quantities, then the impact on prices will be even less severe. In any event, the decline in prices will not be long-lasting because: (1) The supply of imports will overlap by a month at most with domestically-produced fruits; and (2) cherimoyas cannot be stored for an extended length of time.

The longer term impact for U.S. producers and packers will be beneficial. Imports will bring cherimoyas on the U.S. market 2 months ahead of the domestic season, thereby engendering increased demand. This increased demand could result in

increased prices for the producers when the U.S. crop reaches the market.

Substitute fruits whose markets might be affected by the importation of cherimoyas would likely be other exotic species, such as sugar apples and atemoyas (a cherimoya-sugar apple hybrid). However, the sugar apple and atemoya markets are small, and consumption is almost entirely within Florida and Hawaii, where they are grown.

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

Executive Order 12778

This final rule will allow cherimoyas to be imported into the United States from certain provinces of Chile. State and local laws, regulations, and policies regarding cherimoyas imported under this rule will be preempted while the fruit is in foreign commerce. Fresh cherimoyas are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of cherimoyas under the conditions specified in this rule will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator, Animal and Plant Health Inspection Service, has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **"FOR FURTHER INFORMATION CONTACT."**

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, the regulations in 7 CFR part 319 are amended to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In Subpart—Fruits and Vegetables to Part 319, a new § 319.56–2z is added to read as follows:

§ 319.56–2z Administrative instructions governing the entry of cherimoyas from Chile.

Cherimoyas may be imported into the United States from Chile only under the following conditions:

(a) *Treatment.* The cherimoyas must be treated, under the supervision of an inspector, either in Chile or in the United States, for the Chile false red mite of grapes (*Brevipalpus chilensis*) in accordance with one of the following procedures:

(1) *Fumigation.* The cherimoyas must be fumigated with methyl bromide at normal atmospheric pressure. The fumigation must be done in a fumigation chamber that has been approved for that purpose by the Animal and Plant Health Inspection Service, or under tarpaulins, according to the schedule below. The treatment period must be 2 hours.

Temperature (°F.)	Dosage—pounds of methyl bromide per 1,000 cu. ft.
80–89 (inclusive)	1½
70–79 (inclusive)	2
60–69 (inclusive)	2½
50–59 (inclusive)	3

(2) *Soapy water and wax.* The cherimoyas must be immersed in a soapy water bath consisting of 1 part soap solution (such as Deterfrut) to 3,000 parts water for a minimum of 20 seconds, followed by a pressure shower rinse to remove soapy excess, and then followed by immersion for a minimum of 20 seconds in an undiluted wax coating (such as Johnson Wax Primafresh 31 Kosher fruit coating).

(b) *APHIS inspection.* Cherimoyas from Chile are subject to inspection under the direction of an inspector, either in Chile or at the port of arrival in the United States. Imported cherimoyas inspected in Chile are subject to reinspection at the port of arrival as provided for in § 319.56–6.

(c) *Trust Fund Agreement.* Cherimoyas that are treated or inspected in Chile may be imported into the United States only if the plant protection service of Chile (Servicio Agricola Y Ganadero, referred to in this section as SAG) has entered into a trust fund agreement with APHIS. This agreement requires SAG to pay in advance of each shipping season all costs that APHIS estimates it will incur in providing inspection services in Chile during that shipping season. These costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement requires SAG to deposit a certified or cashier's check with APHIS for the amount of these costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires SAG to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more cherimoyas will be treated or inspected in Chile. After a final audit at the conclusions of each shipping season, any overpayment of funds would be returned to SAG, or held on account until needed, at SAG's option.

(d) *Costs for services in the United States.* All costs of treatment and

required safeguards and supervision, other than the services of the supervising inspector during regularly assigned hours of duty and at the usual place of duty, shall be borne by the owner of the fruits or a representative of the owner.

(e) *Limitation of origin.* The cherimoyas must have been grown in a province of Chile that is free from the Mediterranean fruit fly (see § 319.56-2(j)).

(f) *Ports of entry.* Cherimoyas from Chile may be imported through all ports staffed by an inspector.[1]

(g) *Department not responsible for damage.* The treatments prescribed in paragraph (a) of this section are judged from experimental tests to be safe for use with cherimoyas from Chile. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment or by compliance with requirements under paragraph (a) of this section.

Done in Washington, DC, this 23rd day of November 1992

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-28898 filed 11-27-92; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Mutual Consent Cancellation Criteria

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations effective for the 1993 crop year only, to provide for mutual consent cancellation of crop insurance contracts which were obtained in the belief that it was a requirement for disaster payment eligibility under the provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-124) and the Dire Emergency Supplemental Appropriations Act of 1992 (Pub. L. 102-229).

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254-8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1997.

James E. Cason, Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

James E. Cason also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities served by this totally voluntary crop insurance program because this action does not require significant actions on the part of the enterprise. This action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection. Further, this action requires of the reinsured company or sales and service contractor what is considered normal and customary in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC will allow certain 1993 crop insurance policies to be cancelled when producers have applied for crop insurance believing that they were required to obtain crop insurance in order to participate in the Commodity Credit Corporation disaster payment program but subsequently determine that crop insurance was not a prerequisite. FCIC will require its agents and private sector crop insurance companies to enter into mutual consent cancellations of the crop insurance contract under the certain conditions. This cancellation procedure is designed to provide relief for those producers who agreed to obtain crop insurance for 1993 under the mistaken belief that situation did not qualify them for exemption under section 2247. Due to time constraints in signing up for disaster assistance, good cause is shown for expedited review and publication of this rule.

James E. Cason, Manager, has determined that this mutual consent provision for cancellation of insurance under certain circumstances should be implemented as quickly as possible to respond to the needs of the affected policyholders.

This rule will be scheduled for review so that any amendment made necessary by such public comment may be published as quickly as possible.

Written comments received pursuant to this rule will be made available for public inspection and copying in suite 500, 2101 L Street NW., Washington D.C. during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

General administrative regulations; Crop insurance, Mutual consent cancellations criteria.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR part 400) effective for the 1993 crop year only as follows:

1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 400 is amended by adding subpart C to read as follows:

[1] Information concerning ports staffed by inspectors may be obtained by contacting the Administrator, c/o Port Operations, PPQ, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart C—General Administrative Regulations; Mutual Consent Cancellation

400.27 Applicability.
400.28 Mutual consent criteria.
400.29 OMB control numbers.
400.30–400.36 [Reserved]

Subpart C—General Administrative Regulations; Mutual Consent Cancellation

§ 400.27 Applicability.

Notwithstanding any provisions of the crop insurance policy to the contrary, the mutual consent provision contained herein shall be applicable to all new crop insurance policies issued by the Corporation (7 CFR part 401 *et seq.*), or by a company reinsured by the corporation, effective for the 1993 crop year only if those policies meet the requirements of § 400.28 of this part and if the crop insured is the same as the crop for which a disaster payment application (CCC 441) was filed for the 1992 crop year.

§ 400.28 Mutual consent criteria.

(a) An insured may request policy cancellation for the crop for which the insured filed a CCC 441 for the 1992 crop year if written documentation is provided, signed by an authorized ASCS official, certifying the cancellation is based on one of the following conditions:

(1) Insurance was not a condition of eligibility for disaster payment, based on one or more of the statutory criteria; or

(2) the producer withdrew his application for disaster payments with prejudice or it was rejected by Commodity Credit Corporation;

(b) Cancellation requests must be received in writing no later than three weeks after the date:

(1) the disaster payment check is issued; or

(2) the producer is notified that an application for disaster payment has been rejected; or

(3) the producer withdraws from the disaster payment program.

(c) Carry over policies and crop insurance applications dated before September 2, 1992 are not eligible for mutual consent cancellations.

§ 400.29 OMB control numbers.

Office of Management and Budget control numbers (OMB) are contained in the subpart H to part 400 in title 7 CFR.

§§ 400.30–400.36 [Reserved]

Done in Washington, DC, on October 13, 1992.

Jane A. Wittmeyer,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 92–28988 Filed 11–27–92; 8:45 am]

BILLING CODE 3410–08–M

Federal Grain Inspection Service

7 CFR Part 800

General Regulations; Elimination of Mandatory Reporting Requirements

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is amending the regulations under the United States Grain Standards Act (USGSA) to discontinue the mandatory reporting requirements for the individual components broken corn (BC), broken kernels (BN), and foreign material (FM) on each certificate for grade representing nonexport inspections of corn and sorghum. This information will continue to be available on a request basis.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, Room 0632 South Building, Box 96454, Washington, DC 20090–6454, telephone (202) 720–0292, FAX (202) 720–4628.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will 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.*) because most users of the official inspection and weighing services and those entities that perform those services do not meet the requirements for small entities.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in the rule being amended have been previously approved by OMB under control number 0580–0013.

Final Action

On March 23, 1990, FGIS proposed in the **Federal Register** (55 FR 10784) to revise the regulations under the USGSA by eliminating the mandatory reporting requirement for the individual components, BC, BN, and FM on each certificate for grade representing nonexport inspections of corn and sorghum. Upon request, however, the information would continue to be reported in order to satisfy market information needs.

FGIS received a total of 5 comments during the 60 day comment period: 2 from official inspection agencies; 2 from university professors; and 1 from a trade association. Three commentors supported the proposal in total. The two remaining commentors, while not entirely opposed to the proposal, expressed concern with its timing and the potential impact such a change would have on the ongoing BCFM study that is being jointly conducted by the University of Illinois and Iowa State University.

One official inspection agency who supported the proposal described the reporting requirement as time consuming and costly. In addition, the commentor stated that other official personnel would be pleased if the requirement was eliminated. A second inspection agency representative commented that since the reporting requirement was implemented, their agency has graded approximately 15,000 corn samples. Only one request has been received for information concerning the individual component BC and FM. A major grain trade association also commented in favor of FGIS' proposal to eliminate the reporting requirement.

The two commentors who expressed concerns regarding the proposal indicated that this action could be interpreted as a conclusion in advance of the BCFM study results and could possibly be construed as a preformed position about the BCFM study. Both commentors suggested that FGIS delay the decision to eliminate the reporting requirement until after the BCFM study is completed. FGIS disagrees with these comments and believes the reporting requirement to be an issue essentially distinct from the BCFM study.

One of the principle objectives for providing the individual component results on the certificate was to inform the corn and sorghum industry as to the level of FM currently in BCFM and BNFM. It was anticipated that this information would facilitate grain marketing because grain merchants could base pricing and quality requirements on the actual amount of FM. Since implementation, the available information indicates that the market has not used the component information (BC, BN, and FM) for merchandising. Price adjustments are generally based on the present factor information (BCFM or BNFM), not the results of the individual components. Accordingly, FGIS believes that this requirement does not facilitate the marketing of grain and is not needed.

While FGIS intends to discontinue the mandatory reporting of the individual components BC, BN, and FM on each certificate for grade representing nonexport inspections of corn and sorghum, individual BC, BN, and FM information will continue to be available upon the request of an applicant for inspection.

FGIS is eliminating the mandatory BC, BN, and FM reporting requirement by deleting paragraph (b) of section 800.162 and redesignating and revising paragraph (c) of that section. Also, conforming and clarifying changes are made to that section. Under section 800.162(a)(7), this information will be reported on a request basis for nonexport inspection of corn and sorghum.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

PART 800—GENERAL REGULATIONS

For the reasons set forth in the preamble, 7 CFR part 800 is amended as follows:

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended. (7 U.S.C. 71 *et seq.*).

2. Section 800.162(b) is removed; and paragraph (c) is redesignated as paragraph (b) and revised to read as follows:

§ 800.162 Certification of grade; special requirements.

* * * * *

(b) *Cargo shipments.* Each official certificate for grade representing a cargo shipment shall show, in addition to the requirements of paragraph (a) of this section, the results of all official grade factors defined in the Official United States Standards for Grain for the type of grain being inspected.

Dated: November 3, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92–28900 Filed 11–27–92; 8:45 am]

BILLING CODE 3410-EN-M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 92–101–2]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final.

SUMMARY: We are affirming as final and without change an interim rule that amended the regulations concerning the interstate movement of cattle and bison because of tuberculosis by lowering the designation of Pennsylvania from an accredited-free State to a modified accredited State. We have determined that Pennsylvania no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as a modified accredited State. The interim rule was necessary to prevent the spread of tuberculosis in cattle and bison.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on August 20, 1992 (57 FR 37686–37687, Docket No. 92–101–1), we amended the tuberculosis regulations in 9 CFR part 77 by removing Pennsylvania from the list of accredited-free States in § 77.1 and adding it to the list of modified accredited States in that section.

Comments on the interim rule were required to be received on or before October 19, 1992. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12291, 12372, and 12778, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

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

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Acordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 77.1 and that was published at 57 FR 37686–37687 on August 20, 1992.

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

Done in Washington, DC, this 23rd day of November 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–28896 Filed 11–27–92; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket No. 92–105–2]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final.

SUMMARY: We are affirming as final and without change an interim rule that amended the regulations concerning the interstate movement of cattle because of brucellosis by changing the classification of Illinois and Indiana from Class A to Class Free. We have determined that Illinois and Indiana meet the standards for Class Free status. The interim rule was necessary to relieve certain restrictions on the

interstate movement of cattle from both States.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4918.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on August 20, 1992 (57 FR 37687-37688, Docket No. 92-105-1), we amended the brucellosis regulations in 9 CFR part 78 by removing Illinois and Indiana from the list of Class A States in § 78.41(b) and adding them to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before October 19, 1992. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12291, 12372, and 12778, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

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

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78.41 and that was published at 57 FR 37687-37688 on August 20, 1992.

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

Done in Washington, DC, this 23rd day of November 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-28897 Filed 11-27-92; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 89-025F]

RIN 0583-AA43

Additional Curing Methods for Destroying Trichinae; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Food Safety and Inspection Service is correcting an error in its final regulation for additional curing methods for destroying trichinae, which was published on Monday, June 22, 1992 (57 FR 27870).

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT: Alfred Liepold, Acting Director, Processed Products Inspection Division, Science & Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 720-3840.

SUPPLEMENTARY INFORMATION: On June 22, 1992, the Food Safety and Inspection Service published a final rule (57 FR 27870) which amended § 18.10 of the Federal meat inspection regulations (9 CFR 318.10) that prescribes the treatment of pork and products containing pork to destroy trichinae. There is an error that will be corrected as follows:

On page 27876, in the second column, section 318.10(c)(3)(i) Method No. 5(C)(i), "One sample shall be taken for each 5 or more hams;" is corrected to read "One sample shall be taken from each of 5 or more hams;"

Dated: November 23, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92-28939 Filed 11-27-92; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

10 CFR Part 1024

Financial Assistance Appeals Board; Procedures for Financial Assistance Appeals

AGENCY: Department of Energy Financial Assistance Appeals Board.

ACTION: Final rule.

SUMMARY: The Department of Energy Financial Assistance Appeals Board today publishes a final rule amending its Rules of Procedure codified at 10 CFR part 1024. The rule corrects an inconsistency in the time specified for filing notices of appeal by conforming the language in 10 CFR 1024.3(c) with that of 1024.4 Rule 1(a). The change makes it clear that a notice of appeal must be filed within 60 days after "receipt" of a final decision.

EFFECTIVE DATE: This rule will take effect on December 30, 1992.

FOR FURTHER INFORMATION CONTACT: C. Joseph Carroll, Department of Energy, Financial Assistance Appeals Board (BC-1), room 1006, Webb Building, 4040 N. Fairfax Drive, Arlington, VA 22203, (703) 235-2700.

SUPPLEMENTARY INFORMATION:

I. Analysis of Final Rule
A. Background
B. Discussion of Public Comments
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under Regulatory Flexibility Act
C. Review Under Paperwork Reduction Act
D. Review Under National Environmental Policy Act
E. Review Under Executive Order 12612

I. Analysis of Final Rule

A. Background

The rule is a technical amendment which corrects a prior inconsistency between two provisions of the rules of procedure governing the filing of notices of appeal before the Energy Financial Assistance Appeals Board. One provision, 10 CFR 1024.3(c), provided that a financial assistance recipient must appeal within 60 days after "issuance" of a final decision. The other provision, 10 CFR 1024.4 Rule 1(a), required that a notice of appeal be filed with the Board within 60 days after "receipt" of a final decision. The rule resolves the inconsistency by conforming 10 CFR 1024.3(c) with 10 CFR 1024.4 Rule 1(a), thus providing in both sections that a notice of appeal must be filed within 60 days after receipt of a final decision.

B. Discussion of Public Comments

Only one entity, the U.S. Small Business Administration (SBA), submitted comments in response to the publication of the proposed rule. The SBA's comments did not address the substantive merits of the proposed rule, but were strictly limited to perceived procedural inadequacies in the Notice of Proposed Rulemaking (NOPR) published in the **Federal Register** on January 29, 1992 (57 FR 3364).

The SBA maintains that the NOPR did not comply with the requirements of the Regulatory Flexibility Act (RFA) in two respects: (1) Certification that the proposed rule will not significantly

impact substantial numbers of small entities was not made specifically by the Secretary, and (2) the reasoning behind the certification was not explicitly stated.

With regard to the SBA's first comment, the Secretary's duty to certify under the RFA is a delegable duty; he need not personally certify every NOPR and final rule that is promulgated, but may, as is the case here, delegate his authority to certify to others. See 42 U.S.C. 7252. It is true that in the NOPR the precise word "certify" was not used. This oversight has been remedied in this final rule.

As to the second comment, this final rule contains a brief explanation of the reasoning relied upon in reaching the decision to certify.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive Order, entitled "Federal Regulations," requires that a regulatory impact analysis be prepared prior to the promulgation of a "major rule." The DOE has concluded that this action is not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based industries to compete in domestic or export markets.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This final rule is merely a technical amendment which corrects a prior inconsistency within the Board's procedural rules. Any marginal impact on small entities would be a favorable one since the rule makes clear that financial assistance recipients have 60 days from the receipt (not from the issuance) of a final decision within which to file an appeal. The DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities; therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The DOE has determined that this final rule is exempt from the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) by virtue of 44 U.S.C. 3518(c)(1)(B), which provides that the Paperwork Reduction Act does not apply to the collection of information during the conduct of an administrative action involving an agency against specific individuals or entities.

D. Review Under the National Environmental Policy Act

The DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), or the Council on Environmental Quality Regulations (40 CFR parts 1500-08), and the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environment assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

List of Subjects in 10 CFR Part 1024

Administrative practice and procedure, Grant programs—energy, Loan programs—energy.

Issued in Washington, DC on November 18, 1992.

E. Barclay Van Doren,

Chairman, Financial Assistance Appeals Board.

For the reasons set forth in the Preamble, part 1024 of title 10 of the Code of Federal Regulations is amended as set forth below:

PART 1024—PROCEDURES FOR FINANCIAL ASSISTANCE APPEALS

1. The authority citation for part 1024 continues to read as follows:

Authority: Dept. of Energy Organization Act, Pub. L. 95-91, 91 Stat. 577 (42 U.S.C. 7101, et seq.); E.O. 10789; Pub. L. 95-224, 92 Stat. 3 (41 U.S.C. 501-509).

2. In § 1024.3, paragraph (c) is revised to read as follows:

§ 1024.3 General.

* * * * *

(c) In order that a right to appeal may be exercised in a timely manner, a financial assistance recipient must appeal, in writing, within 60 days after receipt of a "final decision" on the matter by a financial assistance or contracting officer.

* * * * *

[FR Doc. 92-28964 Filed 11-27-92; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-0781]

Reserve Requirements of Depository Institutions; Reserve Requirement Ratios

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to increase the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $42.2 million to $46.8 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board has increased from $3.6 million to $3.8 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also leaving unchanged at $44.8 million the deposit cutoff level that is used in conjunction with the reservable liabilities exemption amount to determine the frequency of deposit reporting.

DATES: *Effective date:* December 15, 1992.

Compliance dates: For depository institutions that report weekly, the low

reserve tranche adjustment and the reservable liabilities exemption adjustment will be effective on the reserve computation period that begins Tuesday, December 22, 1992, and on the corresponding reserve maintenance period that begins Thursday, December 24, 1992. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will be effective on the reserve computation period that begins Tuesday, December 15, 1992, and on the corresponding reserve maintenance period that begins Thursday, January 14, 1993. For all depository institutions, the deposit cutoff level will be used to screen institutions in the second quarter of 1993 to determine the reporting frequency for the twelve month period that begins in September 1993.

FOR FURTHER INFORMATION CONTACT: Patrick J. McDivitt, Attorney (202/452-3818), Legal Division, or June O'Brien, Economist (202/452-3790), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for total transaction accounts of $25 million or less and at 12 percent on total transaction accounts above $25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage change in total transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on transaction accounts is $42.2 million. The increase in the total of net transaction accounts of all depository institutions from June 30, 1991, to June 30, 1992 was 13.6 percent (from $612.6 billion to $696.2 billion). In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR part 204) to increase the low reserve tranche for transaction accounts for 1993 by $4.6 million to $46.8 million.

Section 19(b)(11)(A) of the Federal Reserve Act provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Section 19(b)(11)(A) permits each depository institution, in accordance with the rules and regulations of the Board, to designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)) provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions from June 30, 1991, to June 30, 1992, increased by 6.9 percent (from $1,298.5 billion to $1,387.6 billion). Under section 19(b)(11)(B), the reservable liabilities exemption amount will be increased by $0.2 million. Consequently, the reservable liabilities exemption amount for 1993 will increase to $3.8 million.

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 1991 to June 30, 1992 is to increase the low reserve tranche to $46.8 million, to apply a zero percent reserve requirement on the first $3.8 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective on the reserve computation period beginning Tuesday, December 22, 1992, and on the corresponding reserve maintenance period beginning Thursday, December 24, 1992. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective on the computation period beginning Tuesday, December 15, 1992, and on the reserve maintenance period beginning Thursday, January 14, 1993. In addition, all institutions currently submitting Form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established a deposit reporting cutoff level to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1988 the Board set the cutoff level at $40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.[2] The current reporting cutoff level is $44.8 million.

From June 30, 1991, to June 30, 1992, total deposits fell 0.1 percent, from $3,794.0 billion to $3,790.2 billion. This results in no change in the deposit cutoff level that determines the frequency of reporting. Consequently, the deposit cutoff level will remain at $44.8 million. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $3.6 million to $3.8 million. Institutions with total deposits below $3.8 million are excused from reporting if their deposits can be estimated from other data sources. The $44.8 million cutoff level for weekly versus quarterly FR 2900 reporting and for quarterly FR 2910q versus annual FR 2910a reporting, and the $3.8 million level threshold for reporting will be used in the second quarter 1993 deposits report screening process, and the adjustments will be made when the new deposit reporting

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and eurocurrency liabilities is zero percent.

[2] "Total deposits" as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

panels are implemented in September 1993.

All U.S. branches and agencies of foreign banks and all Edge and Agreement Corporations, regardless of size, are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). All other institutions that have reservable liabilities in excess of the exemption level prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and total deposits at least equal to the deposit cutoff level ($44.8 million) are also required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). However, nonexempt institutions with total deposits less than the deposit cutoff level ($44.8 million), may file the FR 2900 quarterly for the twelve month period starting September 1993. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reservable liabilities at or below the exemption level ($3.8 million) (known as "exempt institutions") must file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) if their total deposits are not below the deposit cutoff level ($44.8 million). Exempt institutions with total deposits less than the deposit cutoff level but more than the exemption amount must file the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount ($3.8 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

Notice and public participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. The amendments also reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice and pub' c participation are unnecessary and contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the amendments relieve a restriction on depository institutions, and for this reason there is good cause to determine, and the Board so determines, that such notice is not necessary.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular effect on other small entities.

List of Subjects in 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for part 204 is revised to read as follows:

Authority: Sections 11(a), 11(c), 19, 25, 25A of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn St-Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. In § 204.9 paragraph (a) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts [1]	
$0 to $46.8 million	3 percent of amount.
over $46.8 million	$1,404,000 plus 10 percent of amount over $46.8 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent

[1] Dollar amounts do not reflect the adjustment to be made by the next paragraph.

(a)(2) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section not in excess of $3.8 million determined in accordance with § 204.3(a)(3) of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 23, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-28912 Filed 11-27-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8439]

RIN 1545-AH22

Treatment of Transactions Between Partners and Partnerships; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8439), which were published Wednesday, September 30, 1992 (57 FR 44974). The final regulations relate to the treatment of transactions between partners and partnerships and, in some instances between partners themselves under section 707 of the Internal Revenue Code.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Susan Edlavitch or J. Scott Hargis at (202) 622-3050 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections add new regulations § 1.707–0 and §§ 1.707–2 through 1.707–9 to the Income Tax Regulations (26 CFR part 1) under section 707(a)(2) of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8439), which were the subject of FR Doc. 92–23728, is corrected as follows:

§ 1.707–4 [Corrected]

Paragraph 1. On page 44982, column one, in § 1.707–4, paragraph (a)(3)(ii), last line of that column, the language "percent of the highest applicable federal" is corrected to read "percent of the highest applicable Federal".

Par. 2. On page 44982, column two, in § 1.707–4, paragraph (a)(4), paragraph (i) of *Example 1,* third line from the bottom of the paragraph, the language "applicable federal rate in effect at the time of" is corrected to read "applicable Federal rate in effect at the time of".

Par. 3. On page 44982, column 3, in § 1.707–4, paragraph (a)(4), paragraph (ii) of *Example 2,* third line from the bottom of the paragraph, the language "federal rate in effect at the time the" is corrected to read "Federal rate in effect at the time the".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–28854 Filed 11–27–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 64

[AG Order No. 1636–92]

Designation of Officers and Employees of the United States for Coverage Under Section 1114 of Title 18 of the United States Code

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Part 64 of title 28, Code of Federal Regulations, designates categories of federal officers and employees who, in addition to those already designated by statute, warrant the protective coverage of federal criminal law. This designation confers federal jurisdiction to prosecute the killing, attempted killing, kidnaping, forcible assault, intimidation or interference with any of the federal officers or employees designated by this regulation while they are engaged in or on account of the performance of their official duties. This order adds to the list of covered federal officers and employees certain specified personnel. The order also makes various technical changes and rearranges the various designated officials in a more logical sequence. In addition, duplicative designations have been deleted.

DATES: This interim rule is effective November 30, 1992. Written comments must be submitted on or before December 30, 1992.

ADDRESSES: Please submit written comments to: Mary Incontro, Deputy Chief, or Stephen M. Weglian, Attorney, Terrorism and Violent Crime Section, Criminal Division, Department of Justice, room 2515, 10th and Constitution Avenue, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Mary Incontro, Deputy Chief, or Stephen M. Weglian, Attorney, Terrorism and Violent Crime Section, Criminal Division, Department of Justice, Washington, DC 20530, telephone (202) 514–0849.

SUPPLEMENTARY INFORMATION: Part K of chapter X of the Comprehensive Crime Control Act of 1984, Public Law 98–473, tit. II, § 1012, 98 Stat. 1976, 2142 (1984), amended 18 U.S.C. 1114, which prohibits the killing of designated federal employees, to authorize the Attorney General to add by regulation other federal personnel who will be protected by this section. The categories of federal officers and employees covered by section 1114 are also protected, while engaged in or on account of the performance of their official duties, from a conspiracy to kill, 18 U.S.C. 1117; kidnaping, 18 U.S.C. 1201(a)(5); forcible assault, interference, or intimidation, 18 U.S.C. 111; and threat of assault, kidnap or murder with intent to impede, intimidate, or retaliate against such officer or employee, 18 U.S.C. 115.

In order to implement this legislation initially, the Department conducted a survey of all federal agencies to determine which federal employees, other than those already listed in 18 U.S.C. 1114, should be protected under the statute. The result of this survey was the promulgation of Attorney General Order No. 177–87, 52 FR 4767, February 17, 1987, creating 28 CFR part 64. Section 64.1 states the purpose of the regulation. Section 64.2 originally listed 21 categories of federal employees who were considered appropriate for coverage under section 1114 and the other statutory provisions. Consistent with the purpose and legislative history of section 1114, these categories of federal employees were selected because their jobs involve inspection, investigative or other law enforcement responsibility or their work involves a substantial degree of physical danger from the public that may not be adequately addressed by available state or local law enforcement resources. Part 64 has been amended three times to add additional categories of personnel (Attorney General Order No. 1326–89, 54 FR 9043, March 3, 1989; Attorney General Order No. 1394–90, 55 FR 3945, February 6, 1990; Attorney General Order No. 1508–91, 56 FR 32327, July 16, 1991).

Personnel of the Office of Inspector General of a "designated Federal entity," as defined by section 8E of the Inspector General Act of 1978, 5 U.S.C. app. 3 section 8E, and of the Merit Systems Protection Board and the Selective Service System have similar statutory responsibilities, duties, and authorities as Inspector General personnel in the agencies already covered by the regulation. Agencies include as a "designated Federal entity," which are not presently covered under the regulation, are ACTION, Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian

Institution, the United States International Trade Commission, and the United States Postal Service. Accordingly, Inspector General personnel at these federal entities have been added by revised paragraph (h). Specific references to Offices of Inspector General of the Tennessee Valley Authority, the Federal Emergency Management Agency, the United States Information Agency, and the Departments of Energy, Health and Human Services, the Treasury and Justice have been deleted, since the Tennessee Valley Authority is a "designated Federal entity," while the remainder are "establishments" as defined by section 11 of the Inspector General Act of 1978, as amended, 5 U.S.C. app. 3 section 11.

Attorneys, accountants, investigators, administrative judges and other employees of the U.S. Securities and Exchange Commission carry out the civil and criminal enforcement of federal securities laws. There have been several recent threats of physical violence against such employees in connection with their investigation of potential securities law violations. Accordingly, the Commission's law enforcement personnel have been added by paragraph (w).

The biologists and technicians of the U.S. Fish and Wildlife Service are involved in a long-term federal/state effort to control sea lamprey in the Great Lakes and the Lake Champlain Basin. Individuals attempting to block the sea lamprey project have in the past physically attacked state personnel and sabotaged and vandalized state property involved in the similar projects. Accordingly, these U.S. Fish and Wildlife Service personnel have been added by paragraph (q).

Officers and employees of the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the National Highway Traffic Safety Administration, the Research and Special Programs Administration, and the Saint Lawrence Seaway Development Corporation who are assigned to perform or assist in performing investigative, inspection or law enforcement functions on behalf of the Department of Transportation are frequently required to enter private property pursuant to various federal safety and environmental statutes. In recent years, these Department of Transportation officers and employees have been threatened and assaulted while conducting their safety inspections. Accordingly, they have been added by paragraph (z).

Finally, the establishment by statute of the positions of United States Trustees and Assistant United States Trustees (*see* 28 U.S.C. 581–589a) has created a number of additional Department of Justice officials who, because of their public office, are potentially exposed to violent attack. In fact, a threat of physical violence against personnel in an office of a United States Trustee was made in the fall of 1991. Because the attorneys working for the United States Trustee System are protected by 28 CFR 64.2(c), in their capacity as attorneys of the Department of Justice, it is appropriate that their supervisors, who have the same law enforcement responsibilities and are subject to even greater public exposure, be provided the same protection. The bankruptcy analysts and other officers and employees of the United States Trustee System who have contact with creditors and debtors, perform audit functions, or perform other investigative or enforcement functions in administering the bankruptcy laws have similar exposure to the public and, hence, are also deserving of protection. Accordingly, these officials, officers and employees of the United States Trustee System have been added by paragraph (g).

In addition, the second sentence of § 64.1 has been replaced by two new sentences to reflect that the designated officers and employees and members of their immediate families are also protected by the provisions of 18 U.S.C. 115.

The Department of Justice's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). Immediate application of this order is necessary to provide protection to those federal officials designated by this order.

The Department of Justice has determined that this order is not a major rule for purposes of E.O. 12291. This order will not have a substantial impact on a significant number of small entities, thus a regulatory flexibility analysis has not been prepared pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Finally, this order does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 28 CFR Part 64

Crime, Government employees, Law enforcement officers.

By virtue of the authority vested in me by 28 U.S.C. 509, 5 U.S.C. 301, and 18 U.S.C. 1114, part 64 of chapter I of title 28, Code of Federal Regulations, is hereby amended as follows:

PART 64—DESIGNATION OF OFFICERS AND EMPLOYEES OF THE UNITED STATES FOR COVERAGE UNDER SECTION 1114 OF TITLE 18 OF THE U.S. CODE

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

Authority: 18 U.S.C. 1114, 28 U.S.C. 509, 5 U.S.C. 301.

2. Section 64.1 is revised to read as follows:

§ 64.1 Purpose.

This regulation designates categories of federal officers and employees in addition to those who are already designated by the statute, who will be within the protective coverage of 18 U.S.C. 1114, which prohibits the killing or attempted killing of such designated officers and employees. The categories of federal officers and employees covered by section 1114 are also protected, while they are engaged in or on account of the performance of their official duties, from a conspiracy to kill, 18 U.S.C. 1117; kidnaping, 18 U.S.C. 1201 (a)(5); forcible assault, intimidation, or interference, 18 U.S.C. 111; and threat of assault, kidnap or murder with intent to impede, intimidate, or retaliate against such officer or employee, 18 U.S.C. 115(a)(1)(B). In addition, the immediate family members of such officers and employees are protected against assault, kidnap, murder, attempt to kidnap or murder, and threat to assault, kidnap, or murder with intent to impede, intimidate, or retaliate against such officer or employee, 18 U.S.C. 115(a)(1)(A). This protective coverage has been extended to those Federal officers and employees whose jobs involve inspection, investigative or law enforcement responsibilities, or whose work involves a substantial degree of physical danger from the public that may not be adequately addressed by available state or local law enforcement resources.

3. Section 64.2 is revised to read as follows:

§ 64.2 Designated officers and employees.

The following categories of Federal officers and employees are designated for coverage under section 1114 of title 18 of the U.S. Code:

(a) Judges and special trial judges of the U.S. Tax Court;

(b) Commissioners and employees of the U.S. Parole Commission;

(c) Attorneys of the Department of Justice;

(d) Resettlement specialists and conciliators of the Community Relations Service of the Department of Justice;

(e) Officers and employees of the Bureau of Prisons;

(f) Criminal investigators employed by the U.S. Attorney's Office; and employees of the U.S. Attorney's Office assigned to perform debt collection functions;

(g) U.S. Trustees and Assistant U.S. Trustees; bankruptcy analysts and other officers and employees of the U.S. Trustee System who have contact with creditors and debtors, perform audit functions, or perform other investigative or enforcement functions in administering the bankruptcy laws;

(h) Attorneys and employees assigned to perform or to assist in performing investigative, inspection or audit functions of the Office of Inspector General of an "establishment" or a "designated Federal entity" as those terms are defined by sections 11 and 8E, respectively, of the Inspector General Act of 1978, as amended, 5 U.S.C. app. 3 sections 11 and 8E, and of the Offices of Inspector General of the U.S. Government Printing Office, the Merit Systems Protection Board, and the Selective Service System.

(i) Employees of the Department of Agriculture at the State, district or county level assigned to perform loan making, loan servicing or loan collecting functions;

(j) Officers and employees of the Bureau of Alcohol, Tobacco and Firearms assigned to perform or to assist in performing investigative, inspection or law enforcement functions;

(k) Federal air marshals of the Federal Aviation Administration;

(l) Employees of the Bureau of Census employed in field work conducting censuses and surveys;

(m) Employees and members of the U.S. military services and employees of the Department of Defense who:

(1) Are military police officers,

(2) Have been assigned to guard and protect property of the United States, or persons, under the administration and control of a U.S. military service or the Department of Defense, or

(3) Have otherwise been assigned to perform investigative, correction or other law enforcement functions;

(n) The Director, Deputy Director for Supply Reduction, Deputy Director for Demand Reduction, Associate Director for State and Local Affairs, and Chief of Staff of the Office of National Drug Control Policy;

(o) Officers and employees of the Department of Energy authorized to carry firearms in the performance of investigative, inspection, protective or law enforcement functions;

(p) Officers and employees of the U.S. Environmental Protection Agency assigned to perform or to assist in performing investigative, inspection or law enforcement functions;

(q) Biologists and technicians of the U.S. Fish and Wildlife Service who are participating in sea lamprey control operations;

(r) Uniformed and nonuniformed special police of the General Services Administration; and officers and employees of the General Services Administration assigned to inspect property in the process of its acquisition by or on behalf of the U.S. Government;

(s) Special Agents of the Security Office of the U.S. Information Agency;

(t) Employees of the regional, subregional and resident offices of the National Labor Relations Board assigned to perform investigative and hearing functions or to supervise the performance of such functions; and auditors and Security Specialists of the Division of Administration of the National Labor Relations Board;

(u) Officers and employees of the U.S. Nuclear Regulatory Commission:

(1) Assigned to perform or to assist in performing investigative, inspection or law enforcement functions or

(2) Engaged in activities related to the review of license applications and license amendments;

(v) Investigators employed by the U.S. Office of Personnel Management;

(w) Attorneys, accountants, investigators, administrative judges and other employees of the U.S. Securities and Exchange Commission assigned to perform or to assist in performing investigative, inspection or other law enforcement functions;

(x) Employees of the Social Security Administration assigned to Administration field offices, hearing offices and field assessment offices;

(y) Officers and employees of the Tennessee Valley Authority authorized by the Tennessee Valley Authority Board of Directors to carry firearms in the performance of investigative, inspection, protective or law enforcement functions; and

(z) Officers and employees of the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the National Highway Traffic Safety Administration, the Research and Special Programs Administration and the Saint Lawrence Seaway Development Corporation of the U.S. Department of Transportation who are assigned to perform or assist in performing investigative inspection or law enforcement functions.

Dated: November 19, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92-28871 Filed 11-27-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 920666-2275]

RIN 0651-AA59

Changes in Practice Relating to Filing Patent Applications

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent cases to provide a uniform practice with respect to filing an oath or declaration and filing fees in continuing applications.

EFFECTIVE DATE: January 4, 1993. These rules will be applicable to all papers and applications filed with the Office on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Jeffrey V. Nase by telephone at (703) 305-9282 or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in the **Federal Register** (57 FR 31344) on July 15, 1992, and in the Patent and Trademark Office Official Gazette (1141 Off. Gaz. Pat. Office 9) on August 4, 1992, the Office proposed to amend § 1.60. The due date for submitting written comments was extended to September 10, 1992, in an Extension of Comment Period published in the **Federal Register** (57 FR 38640) on August 26, 1992.

One comment was received. The comment favored adoption of the proposed rule changes.

A continuation or divisional application filed under § 1.60 did not receive a filing date until a complete copy of the prior application was filed, including a true copy of the oath or declaration. Since the Office is in possession of the oath or declaration of the prior application, § 1.60 is being modified to be consistent with §§ 1.53 and 1.62 by permitting filing of a true copy of the oath or declaration within a time specified in a notice of missing parts mailed by the Office.

The specific revisions are discussed below:

(1) Correction of inventorship (§ 1.48): Section 1.48(a) is amended to replace the designation by letter of various requirements therein with numbered designations so as to avoid confusion when making reference to this section.

(2) Procedures for completing applications filed under § 1.60: Section 1.60 outlines one of the procedures that may be followed by applicants to file a continuation or divisional application. One of the requirements under this section is that applicants file a true copy of the complete parent application as filed, including the oath or declaration. Paragraph (c) of this section had specified that a filing date would not be granted if applicant failed to file a complete application under this section. When the missing item was filed, a filing date was granted as of the date of receipt of the missing item. Practice under § 1.60 is being modified to be similar to the procedures for filing continuing applications under § 1.53(d) and continuation-in-part applications under § 1.62. More specifically, a new paragraph (d) is added in § 1.60 to indicate that if an application filed pursuant to § 1.60(b) is otherwise complete, but does not include the appropriate filing fee or a true copy of the oath or declaration from the prior complete application, a filing date will be granted. The copy of the oath or declaration, as well as payment of the appropriate filing fee must be submitted within a time period specified in a notice of missing parts mailed by the Office. In a manner similar to the practice under §§ 1.53(d) and 1.62(d), the appropriate oath or declaration and/or filing fee as well as the surcharge set forth in § 1.16(e) must be filed within the time period specified in the notice of missing parts in order to avoid abandonment of the application. Paragraphs (b) and (c) of this section are amended to make reference to the exception specified in paragraph (d) discussed above.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these changes is to accord a filing date to certain continuing applications which, through oversight, fail to include certain papers which can be submitted after the filing date.

The Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individuals; industries; Federal, state or local government agencies; or geographic regions because most of the changes reduce procedural burdens. There will be no 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.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 1

Administrative practice and procedures, Freedom of information, Inventions and patents, Reporting and record keeping requirements.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. 6, part 1 of title 37 of the Code of Federal Regulations, is amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.48, paragraph (a) is revised to read as follows:

§ 1.48 Correction of inventorship.

(a) If the correct inventor or inventors are not named in an application for patent through error without any deceptive intentions on the part of the actual inventor or inventors, the application may be amended to name only the actual inventor or inventors. Such amendment must be diligently made and must be accompanied by:

(1) a petition including a statement of facts verified by the original named inventor or inventors establishing when the error without deceptive intention was discovered and how it occurred;

(2) an oath or declaration by each actual inventor or inventors as required by § 1.63;

(3) the fee set forth in § 1.17(h); and

(4) the written consent of any assignee. When the application is involved in an interference, the petition shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634.

* * * * *

3. In § 1.60, paragraphs (b) and (c) are revised and paragraph (d) is added to read as follows:

§ 1.60 Continuation or divisional application for invention disclosed in a prior application.

* * * * *

(b) An applicant may omit signing of the oath or declaration in a continuation or divisional application (filed under the conditions specified in 35 U.S.C. 120 or 121 and § 1.78(a)) if:

(1) the prior application was a complete application as set forth in § 1.51(a),

(2) applicant indicates that the application is being filed pursuant to this section and files a true copy of the prior complete application as filed including the specification (with claims), drawings, oath or declaration showing the signature or an indication it was signed, and any amendments referred to in the oath or declaration filed to complete the prior application,

(3) the inventors named in the continuation or divisional application are the same or less than all the inventors named in the prior application, and

(4) the application is filed before the patenting or abandonment of or termination of proceedings on the prior application. The copy of the prior application must be accompanied by a statement that the application papers filed are a true copy of the prior application and that no amendments referred to in the oath or declaration filed to complete the prior application introduced new matter therein. Such statement must be by the applicant or applicant's attorney or agent and must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. Only amendments reducing the number of claims or adding a reference to the prior application (§ 1.78(a)) will be entered before calculating the filing fee and granting the filing date. If the

continuation or divisional application is filed by less than all the inventors named in the prior application, a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation or divisional application. Except as provided in paragraph (d) of this section, if a true copy of the prior application as filed is not filed with the application or if the statement that the application papers are a true copy is omitted, the application will not be given a filing date earlier than the date upon which the copy and statement are filed, unless a petition with the fee set forth in § 1.17(i)(1) is filed which satisfactorily explains the delay in filing these items.

(c) If an application filed pursuant to paragraph (b) of this section is incomplete for reasons other than those specified in paragraph (d) of this section, applicant will be notified and given a time period within which to complete the application in order to obtain a filing date as of the date of filing the omitted item provided the omitted item is filed before the patenting or abandonment of or termination of proceedings on the prior application. If the omission is not corrected within the time period set, the application will be returned or otherwise disposed of; the fee, if submitted, will be refunded less the handling fee set forth in § 1.21(n).

(d) If an application filed pursuant to paragraph (b) of this section is otherwise complete, but does not include the appropriate filing fee or a true copy of the oath or declaration from the prior complete application, showing the signature or an indication it was signed, a filing date will be granted and applicant will be so notified and given a period of time within which to file the fee, or the true copy of the oath or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application. The notification pursuant to this paragraph may be made simultaneously with any notification pursuant to paragraph (c) of this section.

Dated: November 23, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-28961 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-16-M

37 CFR Part 1

[Docket No. 920670-2281]

RIN 0651-AA57

Changes in Procedures for Reinstatement of Patents

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Interim rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent cases to provide for reinstatement of a patent where the delay in timely payment of a maintenance fee was unintentional. The Office is also establishing the amount for the surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been unintentional.

DATES: Interim rule effective October 23, 1992 except § 1.20(i)(2) and 1.378(c)(2) which are effective January 8, 1993. These rules will be applicable to all petitions to reinstate an expired patent filed with the Office on or after the effective date. Written comments on this rulemaking must be received on or before January 8, 1993 to ensure consideration. An oral hearing will not be conducted.

ADDRESSES: Address written comments on this interim rulemaking to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, marked to the attention of Jeffrey V. Nase. Correspondence may be sent by FAX to the attention of Jeffrey V. Nase at (703) 305-8825.

FOR FURTHER INFORMATION CONTACT: Jeffrey V. Nase by telephone at (703) 305-9282 or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in the **Federal Register** (57 FR 41899) on September 14, 1992, and in the Patent and Trademark Office Official Gazette (1143 Off. Gaz. Pat. Office 8) on October 6, 1992, the Office proposed to amend the current regulations in the event that proposed statutory changes were enacted to allow for the reinstatement of a patent where the delay in timely payment of a maintenance fee was unintentional.

Section 41 of title 35, United States Code, establishes fees that the Commissioner shall charge for patent-related matters. A bill to amend title 35 with respect to the late payment of maintenance fees was introduced on June 4, 1992, in the House of Representatives as H.R. 5328 (hereafter, Bill). The Bill, as introduced, proposed to: (1) amend 35 U.S.C. 41(c)(1) to permit reinstatement of a patent which expired unintentionally for failure to timely pay the maintenance fee, provided that the payment is made within eighteen months after the six-month grace period specified in 35 U.S.C. 41(b); and (2) amend 35 U.S.C. 41(a)(7) to require a petition fee for an unintentionally delayed payment for maintaining a patent in force. The Bill, with amendments, was enacted as Public Law No. 102-444 (hereafter, Act).

The Act amends 35 U.S.C. 41(c)(1) to permit reinstatement of a patent which expired unintentionally for failure to timely pay the maintenance fee, provided that the payment is made within twenty-four months after the six-month grace period specified in 35 U.S.C. 41(b).

Since the Act is effective on enactment and since it differs significantly from the Bill, as introduced, it is necessary to promulgate this interim rulemaking. This interim rulemaking implements the procedures the Office will follow to accept the unintentionally delayed payment of a maintenance fee. All aspects of this rulemaking either confer a benefit or are clearly and directly related to the benefit conferred. Therefore, this rulemaking is exempt from the Administrative Procedures Act's rulemaking requirements under the proprietary matters exception, 5 U.S.C. 553(a)(2). Furthermore, any delay in the implementation of this interim rulemaking would be contrary to the public interest in granting relief by ensuring that patents unintentionally expired for failure to pay the required maintenance fee are promptly reinstated.

Under the Act, the Commissioner has authority to set a surcharge for accepting the unintentionally delayed payment of a maintenance fee. The Commissioner has determined that an interim surcharge of $1,500 is appropriate. If a surcharge in a lower amount is finally adopted (after review of public comments in response to this interim rulemaking), patentees will be refunded any excess payment. The $1,500 interim surcharge was determined to be the appropriate amount when compared to the existing $620 surcharge for accepting the unavoidably delayed payment of a maintenance fee. The higher interim surcharge is appropriate since a petition to accept the unintentionally delayed payment of a

maintenance fee will require only a statement that the delay in payment of the maintenance fee was unintentional, not a showing of facts sufficient to establish unavoidable delay. Furthermore, the higher amount for relief based on the unintentional delay relative to those based on unavoidable delay is similar to the statutory difference in fees for petitioning to revive an abandoned application.

The $1,500 interim surcharge will not take effect until the date thirty days from publication of this interim rulemaking in the **Federal Register** or the Official Gazette of the Patent and Trademark Office, whichever is later. Section 1.378(c)(2) is waived until the $1,500 surcharge becomes effective. However, petitions to accept the delayed payment of a maintenance fee should not be delayed for that thirty-day period. The surcharge for the acceptance of a maintenance fee resulting from a petition filed under this waiver will be due when the petition is granted.

One comment on the proposed § 1.378 has been received.

Comment: The comment questioned the time limits proposed for § 1.378(c)(5).

Reply: The proposed time limits will not be adopted because the Act sets the time limit for filing a petition to accept the delayed payment of a maintenance fee.

Any final rule will treat both the comments made to the proposed rules and to these interim rules.

Discussion of Specific Sections To Be Changed or Added

(1) Post Issuance Fees. (§ 1.20)

Section 1.20(i) is amended to add a $1,500 surcharge fee for accepting the unintentionally delayed payment of a maintenance fee. This amendment will not become effective until the date thirty days after publication of this interim rulemaking in the **Federal Register** or in the *Official Gazette* of the Patent and Trademark Office, whichever is later.

(2) Delayed Payment of a Maintenance Fee (§ 1.378)

The Act amends subsection 41(c)(1) of title 35, United States Code, to permit the Commissioner to accept late payment of any maintenance fee filed within twenty-four months after the six-month grace period, if the delay in payment is shown to the satisfaction of the Commissioner to have been unintentional. In order to implement the Act, paragraphs (a) and (c) of § 1.378 are amended to permit the filing of a petition to accept late payment of a maintenance fee, where the delay in payment was unintentional.

In addition to the timeliness deadlines set forth in the preceding paragraph, a petition filed under the unintentional standard of § 1.378(c) would have to include the required maintenance fee set forth in § 1.20 (e) through (g), the surcharge for an unintentionally expired patent as set forth in § 1.20(i)(2), and a statement that the delay in payment of the maintenance fee was unintentional. The requirement of § 1.378(c)(2) that the petition must include the surcharge will be waived until the date thirty days after publication of this interim rulemaking in the **Federal Register** or in the Official Gazette of the Patent and Trademark Office, whichever is later. The surcharge for the acceptance of a maintenance fee resulting from a petition filed under this waiver will be due when the petition is granted.

A statement that the delay in payment of the maintenance fee was unintentional would not be appropriate unless the entire delay, up until the maintenance fee was actually paid, was unintentional. For example, a statement that the delay in payment of the maintenance fee was unintentional would not be proper when patentee becomes aware of an unintentional failure to timely pay the maintenance fee and then intentionally delays filing a petition for reinstatement of the patent under § 1.378.

Petitions to accept delayed payment of a maintenance fee in an expired patent, prior to enactment of the Act, required a showing of unavoidable delay. In the case of petitions filed more than six months after expiration of a patent, current § 1.378(c) further required a showing that the failure to timely pay the maintenance fee was beyond the control of the patentee. The Office has determined that the "beyond the control" standard does not find adequate support in the relevant statute (35 U.S.C. 41(c)) or in the legislative history of Public Law 97-247. See "Acceptance of Delayed Payment of Maintenance Fees in Expired Patents", 1115 Off. Gaz. Pat. Office 18 (June 12, 1990). Therefore, current § 1.378(c) is being deleted in its entirety to be replaced by the unintentional delay provisions discussed above. Additionally, § 1.378(b) is amended to provide that the unavoidable delay provisions are available at any time following expiration of a patent for failure to pay a maintenance fee.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these changes is to incorporate the Act into the regulations and will give relief to many small entities that do not now have a mechanism to reinstate their expired patent.

The Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individuals; industries; Federal, state or local government agencies; or geographic regions. There will be no 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.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes contain a collection of information requirement subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., which has previously been approved by the Office of Management and Budget under Control Nos. 0651-0011 and 0651-0016.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Freedom of information, Inventions and patents, Reporting and record keeping requirements.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. 6, part 1 of title 37 of the Code of Federal Regulations is amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.20 is amended by revising paragraph (i) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(i) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been

(1) unavoidable.....$620

(2) unintentional.....$1,500

* * * * *

3. Section 1.378, paragraphs (a), (b), and (c) are revised to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

(a) The Commissioner may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable (paragraph (b) of this section) or unintentional (paragraph (c) of this section) and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:

(1) The required maintenance fee set forth in § 1.20 (e)–(g);

(2) The surcharge set forth in § 1.20(i)(1); and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee.

(c) Any petition to accept an unintentionally delayed payment of a maintenance fee filed under paragraph (a) of this section must be filed within twenty-four months after the six-month grace period provided in § 1.362(e) and must include:

(1) The required maintenance fee set forth in § 1.20 (e)–(g);

(2) The surcharge set forth in § 1.20(i)(2); and

(3) A statement that the delay in payment of the maintenance fee was unintentional.

* * * * *

Dated: November 23, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-28962 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 431, 433, and 483

[BPD-661-FC]

RIN 0938-AE49

Medicare and Medicaid Programs; Preadmission Screening and Annual Resident Review

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

ACTION: Final rule with comment period.

SUMMARY: This rule sets forth State requirements for preadmission and annual review of individuals with mental illness or mental retardation who are applicants to or residents of nursing facilities that are certified for Medicaid. It also sets forth an appeals system for persons who may be transferred or discharged from facilities or who wish to dispute a determination made in the preadmission screening and annual review process. These provisions implement several provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203 and the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101-508.

DATES: EFFECTIVE DATE: These regulations are effective January 29, 1993. However, this effective date does not relieve States and facilities from their obligation to perform certain activities effective on earlier dates specified by the statute. A summary of statutory effective dates is given in the preamble of these regulations. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of January 29, 1993.

State agencies have until 90 days after receipt of a revised State plan preprint to submit their plan amendments and required attachments. We will not consider a State plan to be out of compliance with the requirements of these final regulations if the State submits the necessary preprint plan material by that date. We wish to clarify, however, that while we do not intend to hold a State plan out of compliance with these regulatory requirements until final regulations are issued, we cannot waive the statutory requirements and we cannot limit our ability to disallow based on those requirements. Of course, we re precluded from taking compliance actions under section 4801(b)(1) of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) for failure to meet PASARR requirements before the issuance of guidelines on May 26, 1989. We interpret "compliance actions" to include disallowance actions based on statutory requirements prior to that date.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 29, 1993.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-661-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or,

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD-661-FC. Written comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-690-7890).

FOR FURTHER INFORMATION CONTACT: Julie Walton, (410) 966-0103.

SUPPLEMENTARY INFORMATION:

I. Background

Proposed Rule

On March 23, 1990, we published in the **Federal Register** (55 FR 10951) proposed regulations to implement sections 1819(e) and 1919(e) of the Social Security Act (the Act), added by sections 4201(a) and 4211(a) of OBRA '87. Section 1919(e) of the Act requires that States implement preadmission screening and annual review (PASARR) of the need for admitting or retaining individuals with mental illness (MI) or mental retardation (MR) in nursing facilities (NF) that are certified for Medicaid. Also included was a requirement in sections 1819(e) and 1919(e) of the Act that States institute an appeals system for persons who may be transferred or discharged from Medicare skilled nursing facilities (SNFs) and

Medicaid NFs or who wish to dispute a PASARR determination. The purpose of the statutory provisions is to prevent the placement of individuals with MI or MR in a nursing facility unless their medical needs clearly indicate that they require the level of care provided by a nursing facility.

Prior to the enactment of OBRA '87, there was no Federal requirement for screening of individuals with MI or MR prior to admission to a NF to determine if they required the level of care provided by the facility, and, if so, whether they needed specialized services for their MI or MR. Similarly, there was no explicit Federal requirement for annual review of all individuals with MI or MR who reside in nursing facilities, regardless of their method of payment.

Legislative Revisions

On November 6, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101-508, was enacted. Section 4801(b) of OBRA '90 contains several revisions to the PASARR requirements in sections 1919(b)(3)(F) and 1919(e)(7) of the Act. These revisions—

- Prohibit the Secretary from taking any compliance action against any State that has made a good faith effort to comply with the PASARR requirements with respect to any period prior to May 26, 1989, the effective date of our program instruction, State Medicaid Manual Transmittal, No. 42.
- Clarify that residents readmitted to a NF from a hospital, and individuals discharged from a hospital directly to a NF for a stay of less than 30 days for treatment of a condition for which the individuals were hospitalized, are not subject to preadmission screening (PAS).
- Clairfy that Federal Financial Participation (FFP) is not available in the cost of NF services provided to any individual found not to require the level of services provided by a nursing facility (except certain exempted long-term residents).
- Clairfy that a State mental health or mental retardation authority may not subcontract its PASARR responsibilities to a NF or a related entity.
- Require States to report on an annual basis to the Secretary on the number and disposition of short-term residents with mental illness or mental retardation found to require only "specialized services" (formerly known as active treatment) and of any residents with mental illness or mental retardation who are found to need neither specialized services nor NF care. Both of these groups must be discharged, but the first group (those in need of specialized services) may be covered by an alternative disposition plan (ADP). The second group is not eligible for coverage under an ADP and must be discharged immediately.
- Allow States with approved alternative disposition plans to revise those plans, subject to the approval of the Secretary, by October 1, 1991. Any revised plan must provide for disposition of inappropriately placed residents no later than April 1, 1994.
- Modify the definition of mental illness for purposes of applying the PASARR requirements from "a primary or secondary diagnosis of a mental disorder as defined in the Diagnostic and Statistical Manual, 3rd edition)" to a "serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)." These revisions also exclude from PASARR individuals with a non-primary diagnosis of dementia and a primary diagnosis that is not a serious mental illness.
- Substitute, for PASARR purposes, the term "specialized services" for the term "active treatment."

The statutory changes that forbid State delegation to NFs, permit ADP revisions, and substitute the term "specialized services" for "active treatment" are effective with enactment (November 5, 1990). All the other PASARR amendments are effective as if they were part of the original OBRA '87 statute.

Section 4801(e)(4) (and the corresponding provision for Medicare) of OBRA '90 also provide clarification of the NF's responsibility for treatment and services required by the mentally ill and mentally retarded that are not otherwise provided or arranged for (or required to be provided or arranged for) by the State. This revision, which amends the list of services that an NF or a SNF is required to provide at section 1819(b)(4) and 1919(b)(4) of the Act, is effective as if it were part of the original OBRA '87.

These amendments represent refinements of the PASARR requirements rather than totally new policy directions. Many of the changes enacted by OBRA '90 were proposed to Congress by the same individuals and organizations which submitted comments to us. In some instances, the statutory changes simply give us the authority to accept those comments. Because Congress did not believe the OBRA '90 nursing home reform changes constituted significant enough redirection of policy to warrant further delays in implementation because of rulemaking requirements, Congress specifically gave us the authority to issue interim final rules.

For these reasons, we have integrated the OBRA '90 changes into these final regulations and discuss the changes in relation to the comments. For purposes of consistency, we have substituted "specialized services" for "active treatment" throughout this preamble even when commenters obviously commented using the old terminology. While these rules are final, we will accept public comment on the way we have implemented those provisions which are new in OBRA '90. Each of these sections is identified in the preamble.

II. Provisions of the Proposed Rule

In accordance with the provisions of sections 1819(e) and 1919(e) of OBRA '87, we proposed that, as a condition for approval of the State plan, each State must establish a program designed to screen all individuals with MI or MR who apply as new admissions to Medicaid NFs on or after January 1, 1989. The screening must determine whether, because of the applicant's physical and mental condition, he or she requires the level of services provided by an NF. If the individual with MI or MR is determined to require an NF level of care, the State must also determine whether the individual requires active treatment (now called specialized services) for the MI or MR. In addition, by April 1, 1990, we proposed that a State make an initial review of all current residents of NFs who entered the facility prior to January 1, 1989. Effective April 1, 1990, annual reviews would be required of all residents with MI or MR. We proposed that PASARR apply to all individuals, including persons with private pay status.

Funding for State PASARR activities would be available at the 75 percent FFP rate for administrative functions. However, FFP would not be available for active treatment (now called specialized services) of the MI or MR furnished to NF residents as NF services.

Failure by a State to implement a PASARR program in accordance with the proposed requirements would lead to compliance actions against the State under section 1904 of the Act. The failure to implement the clear statutory mandates, such as subjecting all categories of individuals (Medicaid, Medicare, and private pay) with MI or MR to PASARR and requiring that NFs not admit unscreened individuals, would be viewed as a failure to meet Medicaid State plan requirements. Compliance proceedings could result in loss of FFP

in the State's Medicaid nursing home program until compliance is achieved. Even in the absence of a compliance action, HCFA could disallow FFP in NF services provided to individuals required to be subject to PASARR review but not, in fact, reviewed.

We proposed that the State mental retardation authority has responsibility for the evaluations of individuals with MR, and that evaluations of individuals with MI must be performed by a person or entity independent of the State mental health authority. Since the State Medicaid agency is charged with administration of the State plan, it is ultimately responsible for assuring that State mental health and mental retardation authorities, who are charged with making the required determinations, fulfill their responsibilities so that the State's PASARR program operates in accordance with the Act and our regulations.

We proposed detailed evaluation criteria for a State PASARR program. We also proposed that the State may make determinations as to whether a NF level of services and active treatment (now called specialized services) for MI or MR are needed based on advance group determinations by category. These categorical determinations would take into account that certain diagnoses or levels of severity of illness clearly indicate that NF services or specialized services are or are not normally needed. Examples of categories that might indicate a need for NF services would be terminal illness as defined for hospice purposes, or severe physical illness such as coma, or ventilator dependence.

We proposed an appeals process for PASARR modeled on the Medicaid fair hearing process specified in 42 CFR part 431, subpart E. The process would provide for the maintenance and the reinstatement of services (and FFP for expenditures for such services) until after the hearing is conducted, if certain conditions are met. This process would apply to hearings for the transfer and discharge of residents from a Medicaid NF or a Medicare SNF and to PASARR determinations. Continued funding would apply only to Medicaid recipients, not for Medicare beneficiaries because funding of Medicare services is available only to the extent it is otherwise available under title XVIII of the Act.

We proposed that the PASARR provisions would be added to our regulations at 42 CFR part 483, which contains requirements for long term care facilities. We would rename the part, Requirements for States and Long Term Care Facilities, to reflect the States' obligations with respect to PASARR activities, and add new subparts C and E dealing with preadmission screening and review of mentally ill and mentally retarded individuals and appeals of discharges, transfers, and PASARR determinations, respectively.

III. Response to Public Comments

In response to the proposed regulations, we received over 700 comments from States, nursing facilities, hospitals, client advocates, provider groups and members of Congress. The great majority of commenters wrote in response to the proposed PASARR requirements. Consequently, we address those issues first. Later, we address comments on proposed revisions to parts 405, 431 and 433, which deal primarily with appeal procedures and availability of Federal matching funds. Following are specific comments received and our responses to these comments and, where appropriate, to the OBRA '90 statutory amendments.

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

Subpart C—Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals

Section 483.102—Applicability

We proposed that the PASARR requirements apply to all individuals entering or residing in Medicaid NFs, regardless of the source of payment for their care.

Comment: A large majority of commenters, well over 400 of the 736 responses we received, objected to the application of these PASARR requirements to non-Medicaid eligible NF applicants and residents. Commenters especially disagreed that persons who pay privately for their care should be subject to these requirements. Commenters argued that persons with private pay status have a right to make decisions concerning their health care, free of government barriers to access to facilities an individual can use. They noted that, especially in rural areas, factors such as remaining close to their physician and family play an important role in choosing a NF placement.

Many commenters were concerned about denials of admission and discharge of individuals who pay privately. They argued that our proposal ignores the emotional, financial, and physical disruption in residents' and families' lives when no alternatives exist. One State noted that its pre-existing preadmission screening system screened private pay patients but gave them the choice of entering.

Some commenters asserted that where government has no responsibility for payment, HCFA has no authority to compel disclosure of confidential medical or mental health information. Some States also pointed out that State laws prohibited disclosure of confidential information on non-Medicaid eligible individuals.

A number of commenters questioned whether our proposal reflected Congress' intent, pointing out that the choices that have to be offered a privately paying long-term resident who needs only specialized services make no sense since these are Medicaid-covered services. Other commenters pointed out that last fall a proposal was seriously considered by Congress to exclude persons with private pay status from PASARR.

By contrast, a number of commenters strongly supported the proposal. They argued that a fundamental public health interest is served by assuring that individuals are not inappropriately admitted to nursing facilities when, instead, they require care of a different type, and that the mental health needs of a sizable segment of the population should be identified and addressed. In addition, commenters noted that failure to apply the system to all individuals would result in discrimination against Medicaid recipients, since privately paying individuals who might not require nursing facility care could occupy beds which might otherwise be filled by Medicaid recipients.

Response: After evaluation of the concerns of commenters both for and against our proposal, we are retaining the requirement that the review system extend to all applicants and residents with mental illness or mental retardation because we believe that the meaning of the law is clear and a statutory change would be needed to limit PASARR to government-funded individuals.

In support of our position we note that the House Energy and Commerce Committee language to accompany the House Budget Reconciliation Bill for 1989 (H.R. Rep. No. 247, 101st Cong., 1st Sess. 463 (1989)) stated that:

> Under current law, prior to admission to a nursing facility, States are required to screen all individuals (including those eligible for Medicare and those using private, personal funds or private long-term care insurance) with mental illness or mental retardation to determine whether they require the level of services provided by a nursing facility. Effective January 1, 1989, nursing facilities participating in Medicaid may not admit any

individual with mental illness or mental retardation who has been determined not to require such care.

Current law also requires the State to review, on an annual basis, all residents (including those eligible for Medicare and those using private, personal funds or private long-term care insurance) * * *.

This language was repeated almost verbatim in the Report of the House Budget Committee to accompany H.R. 5835, the House bill for 1990 (H.R. Rep. No. 881, 101st Cong., 2nd Sess. 112 (1990)). The 1990 House Budget Reconciliation Bill, like the 1989 House bill, proposed a statutory delay in the application of PASARR to private pay applicants and residents until they become Medicaid eligible. The conference committee report to accompany H.R. 5835 (H.R. Conf. Rep. No. 964, 101st Cong., 2nd Sess. 853 (1990)), however, notes that the conference agreement does not include the House bill.

Thus, for two years in a row, Congress has acknowledged that the PASARR requirements apply to all individuals with MI or MR seeking admission to or residing in Medicaid-certified NFs and has declined to enact a statutory change which would exempt individuals who pay privately from the PASARR requirements. Although some commenters disputed whether Congress originally intended these PASARR provisions to apply to non-Medicaid individuals or not, we believe that, since Congress has now twice spoken on the matter (by failing to take action when it was proposed), it recognizes the correctness of our interpretation of the law.

The Federal courts have likewise supported our position. In none of the pending cases involving PASARR has a Federal judge disputed that, as currently written, these requirements apply to all residents regardless of the method of payment for their care. We do not believe we have the administrative discretion to exempt non-Medicaid individuals from PASARR.

We note that our requirements for participation in the Medicare and Medicaid programs apply to all residents of certified facilities unless specifically limited by language in the law. To exempt individuals who pay privately from PASARR review without specific statutory language to this effect, we would have to depart significantly from our longstanding interpretation of the meaning of facility certification. The maintenance of this policy is essential to the concept of requirements for participation and is particularly important to the preservation of the resident rights provisions of OBRA '87 for privately paying individuals.

We recognize that commenters have alleged that these rules violate the constitutional rights of privately paying individuals to confidentiality of their medical records and to the freedom to access care of their choice and contract freely for services that they have the means to purchase. Questions as to the constitutionality of these provisions have been raised in many, if not all, of the several PASARR cases that have been entered in Federal courts around the country. No Federal district court, however, has so far agreed with these contentions. We have, therefore, implemented the law, to require the application of these requirements to persons with private pay status.

Comment: A few commenters protested the application of these requirements to Veterans Administration (VA) contract residents. These commenters were concerned that a large number of veterans suffering from well-controlled psychiatric conditions as a secondary diagnosis could be prevented by PASARR from entering or staying in a NF even though the Department of Veteran Affairs has approved the stay and the veteran's physician has certified him or her for NF care.

Response: For the same reasons that we cannot exclude privately paying individuals, we cannot exempt VA eligible individuals from PASARR. We would note, however, that the review system for PASARR described in the proposed regulations would enable individuals such as those discussed by these commenters to be approved for admission to nursing facilities. In our view, the operation of an effective PASARR program would not preclude appropriate nursing facility admissions.

Comment: A few commenters asked if the PASARR requirements still apply when a Medicare beneficiary is receiving covered skilled nursing facility (SNF) care in a facility also approved and participating as a Medicaid NF (i.e., a dually certified facility). They also asked whether time spent in a Medicare SNF, whether or not it is dually certified, can count toward continuous residence in a NF when it comes to calculating whether the resident qualifies for long-term resident protections.

Response: It is clear from the law that PASARR requirements apply to NFs that participate in the Medicaid program and not to SNFs that participate only in the Medicare program. The universe of individuals subject to PASARR consists of all those individuals who have MI or MR and who apply for admission to, or are residents in an NF, including Medicare beneficiaries as well as veterans and persons with private pay status.

It is also true that a facility that participates as both an SNF under Medicare and an NF under Medicaid must meet the PASARR requirements because Medicaid participation is not possible for a facility that admits individuals who have MI or MR but who have not been screened. In many cases, a single institution may have a "distinct part" which participates in the Medicaid program as an NF and another "distinct part" which participates in Medicare as an SNF. In such a case, the Medicaid "distinct part" would be subject to the PASARR requirements and the Medicare SNF would not be.

With respect to the issue of counting time towards the 30-month minimum for protection of inpatient status, we believe that residence in a Medicare or Medicaid SNF or an intermediate care facility (ICF) would qualify the individual. (Effective October 1, 1990, Medicaid SNFs and ICFs, except for ICFs for the mentally retarded, no longer exist, and facilities must meet requirements as an NF). We believe that it is clear that the 30-month period was not intended to relate to source of payment and it is also clear that Medicare SNF requirements and Medicaid SNF (effective October 1, 1990, NF) requirements are identical. This interpretation is not inconsistent with the distinction between Medicare SNFs and Medicaid NFs drawn above, because the focus of the long-term resident exception is on the resident not the facility. From the resident's viewpoint, time spent in one facility is the same as time spent in the other. Thus, there is no reason why residence in a Medicare-participating SNF could not count towards 30 months of continuous residence.

Comment: A few commenters observed that continuing care retirement communities (CCRCs) with Medicaid-certified nursing facilities must perform preadmission screening (PAS) on all individuals seeking admission to NF care covered by their CCRC contracts, even though these individuals are not, or never will be, eligible for Medicaid. But if admission is denied by PAS, the CCRC is still legally obligated to deliver NF services to its contracting residents, placing them in a breach of contract situation. They asked for an exemption from the PASARR requirements. In their view the effect of PASARR is to inhibit growth of this delivery system because CCRCs are reluctant to admit someone unless they can guarantee the individual an NF bed if the need arises. This is

particularly a problem when one spouse has some history of MI or MR or when parents with an adult child with MI or MR seek to enter a CCRC.

Response: We recognize that the PASARR requirements present a difficulty for NFs operated as part of CCRCs; however, we do not believe that, to the extent that they are Medicaid-certified facilities, the law provides a basis for treating CCRC NF residents differently from others. Of course PASARR requirements do not apply to nursing facilities that do not participate in the Medicaid program. CCRCs have the option of not participating. If they do participate in the Medicaid program, they are subject to these rules like any other NF.

We would note, however, that even when there is no economic reason to anticipate Medicaid eligibility, the value of PASARR reviews in assuring appropriate placement and treatment continues to exist. Individuals who are locked by contract into CCRC arrangements may well benefit from the reviews that are done in such cases when the results of the review indicate the need for treatment which may previously have been overlooked. The issue of the CCRC's liability for failing to provide NF services to a community member determined by preadmission screening not to need such services is one that must be addressed by CCRCs in their contracts.

Comment: A group of commenters from one State responded to our statement in the preamble to the proposed rule that the PASARR requirements do not currently apply to swing beds. A change in the swing bed regulatory requirements would be needed to make them apply. These commenters urged speedy inclusion of PASARR into these requirements.

Response: Concurrently with development of this regulation, we are developing a proposed rule, which includes a proposal for modifying the current swing bed requirements to include requirements included in the nursing home reform provisions of OBRA '87. We are studying the PASARR requirements, among others, to determine whether they should apply in the swing bed setting.

Comment: Several States opposed the application of the PASARR rules to institutions for mental diseases (IMDs) on several grounds. They claimed that since IMDs are one of the potentially appropriate settings to which applicants or residents are to be deflected, it makes no sense to screen individuals entering or residing there. One commenter stated that IMDs are by definition specialized facilities for the treatment of mental illness. Therefore, by definition they provide specialized services. Furthermore, NF/IMDs re regulated by their own conditions of participation. Another commenter believed that only individuals leaving IMDs for regular NFs should be screened. Several States attested that they had completed their reviews of these facilities and found absolutely no inappropriately placed residents in them.

Response: We continue to believe that the law requires PASARR to be performed for individuals who are proposed for admission to or who are residents in IMDs that are also NFs. There are two Medicaid benefits which may be provided in IMDs: Inpatient psychiatric services for persons under age 22 and IMD services for persons over age 65. Both these benefits provide for payment on behalf of persons who are patients in IMDs. IMD patients between the ages of 22 and 64 are ineligible for any Medicaid benefits. In the case of persons under age 22, the law clearly requires the need for and provision of specialized services. For persons over age 65 there is no such requirement in connection with the benefit. For the two benefits that may be provided in IMDs, there are program, but not special facility, requirements. The facilities by which these benefits are provided do not participate in Medicaid as a class of providers known as IMDs. They participate as NFs or psychiatric hospitals which offer these benefits. Therefore, the view of some commenters that IMDs have their own conditions of participation and that IMDs, by definition, provide specialized services does not reflect an accurate understanding of Medicaid policy.

On the issue of whether an IMD is subject to PASARR, the IMD designation is used for facilities that provide services under Medicaid under the two benefits described above as well as for facilities which do not participate. PASARR would not, of course, be required for facilities that do not participate in Medicaid. Among IMDs that do participate in Medicaid, the PASARR requirements apply only to those facilities that are NFs. Neither of the benefits described above is required to be provided in NFs and both of them could also be provided in hospitals. There is nothing in the law that distinguishes one setting from the other or creates an exemption from PASARR for any NF. In the absence of any statutory language to the contrary, we believe we must require PASARR for all NFs, including those which have been designated as IMDs.

There is some utility in these reviews since they will likely identify individuals who might otherwise be inappropriately placed and may well assist the facility in the assessment and treatment of the individuals reviewed. As noted above concerning the benefit for those 65 and older, specialized services is not a program requirement. Therefore, absent a facility requirement, an individual in an IMD may not be receiving needed specialized services. In addition, an IMD may contain a strong minority (up to 49 percent) of residents who might be classed as "regular geriatric" residents. If IMD/NFs were excluded from PASARR, residents in this group who actually have MI or MR would be missed. Therefore, the statutory application of the PASARR requirements to IMDs is not without logical basis.

Comment: A few commenters, citing section 1919(a)(1) of the Act, which states that a NF is not primarily for the care and treatment of mental diseases," disputed our interpretation that a facility could be both a NF and an IMD.

Response: The commenters identify an inconsistency in the Act. On the one hand, section 1919(a)(1) of the Act, which was added by OBRA '87, prohibits a NF from being an IMD. On the other hand, section 1905(a)(14) of the Act explicitly provides that medical assistance may include "inpatient hospital and nursing facility services for individuals 65 years of age and over in an institution for mental diseases. . . ." OBRA '87 changed the terms "skilled nursing facility" and "intermediate care facility" to the new designation, "nursing facility," which OBRA '87 instituted for all Medicaid long term care facilities. Because of this latter change, we conclude that Congress did not intend to exclude the possibility that this Medicaid benefit could be provided in a NF.

It is clear to us that, despite the language in section 1919(a)(1) of the Act, Congress intended NF/IMDs to be able to participate in the Medicaid program in order to provide the benefits authorized in section 1905(a)(14) of the Act. As noted in the above response, it is also clear that Congress intended that all NFs fall within the purview of the PASARR provisions. Therefore, we are unable to accept the suggestions of the commenters.

Comment: Associated with the requirement in § 483.120(d) that the NF must provide mental health or mental retardation services which are of a lesser intensity than specialized services to all residents who need them, a sizable number of commenters from both the States and the nursing home industry requested changes in the IMD guidelines

so that NFs that meet the mental health needs of their residents will not risk reclassification as IMDs.

Response: We agree with the commenters that the criteria used to identify IMDs may need to be reconsidered in the light of OBRA '87 requirements. We would note that the Congress also made this an objective in the Omnibus Budget Reconciliation Act of 1989 (C BRA '89), Public Law 101-239. Section 6408(a) of that Act requires the Secretary to undertake a study both of the IMD exclusion itself and of its implementation to determine if changes in either the exclusion itself or the implementation guidelines are appropriate, given the changes in medical practice. The report of the study was due to the Congress in late 1990, but has not yet been completed. Because we believe this report will provide a useful baseline for our work, we have deferred revision of the IMD criteria now contained in section 4390 of the State Medicaid Manual until the report has been prepared and we have the benefit of its findings.

In the near term, we would expect our regional offices to take nursing home reform requirements relating to mental health and mental retardation services into consideration when applying the guidelines to determine whether a facility is an IMD. We do not expect the implementation of the nursing home reform provisions to result in inappropriate IMD determinations by HCFA auditors, especially since we note that OBRA '90 contains a clarification concerning responsibility for services for residents with MI or MR which explicitly states the concept reflected in § 483.120(d) of the Act itself.

Comment: A group of commenters representing individuals with related conditions such as cerebral palsy believed that the proposed regulations do not sufficiently address the needs of persons with their conditions. They questioned the assumption that applicants and residents who qualify for specialized services need to be in an ICF/MR regardless of their concomitant need for SNF services. Another commenter expressed the belief that HCFA should not limit options of the States or localities to offer programs specifically designed to meet the special needs of persons with related conditions.

Response: This regulation is not intended to limit the options States have for providing appropriate services for individuals with cerebral palsy or other conditions for which Medicaid ICF/MR coverage may be appropriate. The key to appropriate treatment for these individuals, as for other individuals with unusual service needs, is development of appropriate care settings, both institutional and non-institutional.

The PASARR requirements include individuals with "related conditions," as used in section 1905(d) of the Act, and defined in regulations at 42 CFR 435.1009. The statutory use of the term is to describe the range of services to be offered by an "Intermediate Care Facility for the Mentally Retarded And Persons With Related Conditions." There is no assumption that such individuals must always need ICF/MR care, or even inpatient care; however, the Medicaid law provides coverage of care in an ICF/MR for such individuals who do need it, as it provides coverage in nursing facilities for others who need the level of care in such settings, and as it provides States with the option to provide other services for such individuals in the home and community setting.

We would expect States to exhibit special sensitivity to the needs of persons with related conditions when they are reviewed under PASARR, both with respect to their need for nursing facility (as opposed to other inpatient or home or community-based) care, and with respect to the need for specialized services. While we do not have specific guidelines adapted to the review of such individuals, we believe that the regulations are flexible enough to permit States to continue to operate review and service systems that are sensitive to the needs of this population.

Section 483.102(a)—Applicability Regardless of Known Diagnosis

Comment: Some commenters, especially organizations representing physicians, objected strongly to the suggestion that the PASARR process could overturn a physician's diagnoses or recommendations of what is best for his or her patients. Commenters disputed our interpretation of sections 1919(b)(3)(F) and 1919(e)(7) of the Act to cover all individuals applying to and residing in a Medicaid NF who actually have MI or MR, whether or not there is a diagnosis to this effect on record. They objected to our suggestion that PASARR evaluators should look behind the diagnostic labels for presenting evidence of MI or MR, and to our suggestion that a diagnosis of dementia should be supported by evidence of a thorough mental status examination. (See the later discussion of dementia in § 483.102(b)).

One of these organizations indicated that it is seeking congressional repeal of the PASARR provisions on the grounds that PASARR process is an affront to their professional standing. In the meantime, this commenter asked that we amend the rule to require State mental health and mental retardation authorities to follow the determinations of an individual's personal physician before the appropriateness of NF services is decided.

Response: We believe the strong reaction of some physicians to the suggestion that PASARR evaluators look behind existing diagnostic labels results from the misplaced concern that the suggestion is intended to reflect adversely upon the honesty or professionalism of physicians. This is not the case. We know from comments we have received from physicians among other persons that some physicians may be reluctant to record a diagnosis of mental illness or mental retardation out of consideration for the patient or the family or out of a sense of reticence generally. In fact, a reluctance to diagnose mental illness or mental retardation has sometimes been given both as an argument against the PASARR legislation generally because it stigmatizes individuals with these conditions and as an argument for the need for these screenings to identify these individuals so that their needs will be served.

We understand these concerns and recognize that a physician may well avoid making (or recording) a diagnosis for reasons which reflect neither on the physician's integrity or abilities. Nonetheless, the requirement for screening of all persons with mental illness or mental retardation makes it necessary for the State to identify such individuals if possible. This necessity gives rise to our suggestion that the screener look beyond the presenting diagnosis in some cases.

As we are noting in a subsequent comment and response, we have reexamined our views on the identification of individuals with dementia on the basis of the comments we received.

Comment: A number of commenters expressed the fundamental view that the entire screening process overrides the doctor/patient relationship and inappropriately questions the physician's judgments. On the other hand, other commenters thought the regulation should contain specific information on how to deal with the physician's refusal to accept a PASARR determination. Some reported that NFs were encountering considerable difficulty in getting physicians to comply with their requests for data needed to perform Level I evaluations, particularly

on applicants coming from the community.

Response: As noted in the response to the comment above, we believe there is good and adequate reason to support the detailed screening requirements we have instituted and these are not intended in any way to impugn the professionals involved in diagnosing and treating patients. We would hope that a clearer understanding of our purpose would overcome any reluctance to fully comply with the best needs of the patients, which we believe will be served by these rules. We reiterate that because mental illness/mental retardation diagnoses may be withheld from individuals or their families because of family preferences or the medical discretion of the physician, we do not believe it is appropriate to accept existing diagnostic information without question.

Comment: Some commenters noted that, while the preamble suggests that the Level I evaluator should not just rely on "known diagnosis" but should "use discretion in reviewing client data and look behind diagnostic labels...for any presenting evidence of MI," it did not mention psychotropic drugs as an identifier of MI. Such a reference was included in the May 1989 State Medicaid Manual issuance. These commenters recommended that we retain the Manual guidance relating to psychotropic drugs in the final rule. In their view, this guidance suggested that evaluators review the use of these medications in relation to the reason they were prescribed. For example, if an individual is taking such medication for a reason other than MI, the mere presence of the medication in the person's medical history should not by itself cause a person to be sent for a Level II evaluation.

Response: While we recognize the concern that gave rise to this comment, we believe emphasizing the possibility that psychotropic drugs might be an indentifier of MI could lead to misunderstanding. The criterion relating to psychotropic drugs in the State Medicaid Manual instruction was included because we believed at the time it was issued that the use of such drugs could be construed, at the least, as a basis for further consideration as to whether an individual may have mental illness. A large number of comments and complaints about the instruction elicited examples of cases in which psychotropic drugs were prescribed for the control of certain physical, nonpsychiatric conditions. They also cited examples of cases in which the use of a psychotropic drug in the relatively distant past resulted in referral of an individual's case for Level II review. The thrust of the comments was that the use of this criterion as a mandatory criterion for selection of individuals for Level II screening cast too broad a net and resulted in unnecessary screenings. The omission of this criterion from the regulation does not prevent a State from using it, either as a general criterion, despite the criticisms discussed above, or on a more selective basis, based on a more refined application. We are omitting it from this final regulation because we want to avoid the potential for misunderstanding that arose when we included it in the manual instruction.

Section 483.102(b)—Definitions

Comment: Some commenters objected to the breadth of our definition of mental illness as a primary or secondary diagnosis of a mental disorder described in the Diagnostic and Statistical Manual, 3rd edition, revised (DSM–III–R), which was based on the statute as enacted by OBRA '87.

Response: OBRA '90 changed the first part of the definition of mental illness from "a primary or secondary diagnosis of a mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition)" to a "serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)." This statutory change permits us to narrow the definition considerably, thereby reducing the number of individuals to whom PASARR applies and eliminating much needless screening. The previous definition cast a very broad net by encompassing individuals who, for example, may be experiencing "normal" anxiety or depressive reactions to a terminal or chronic debilitating condition or suffering from such things as tobacco addiction. While such individuals might need occasional mental health services, they would probably never need services of the intensity characterized by the term "specialized services."

The Conference Committee agreement on H.R. 5835 (H.R. Rep. No. 101–964, 101st Cong., 2nd Sess. 850 (1990)) instructs us, in defining serious mental illness, to consult with the National Institute of Mental Health (NIMH). The Report of the House Committee on the Budget to accompany H.R. 5835 (H.R. Rep. No. 881, 101st Cong., 2nd Sess. 118 (1990)) further indicates that the House Energy and Commerce Committee, where this provision originated, intends that in developing this definition of MI we should refer to the term "serious mental illness" as that term is defined and used in the Community Support Program operated under the NIMH. We, therefore, used this definition as a basis for discussions with NIMH staff. The definition which resulted from these consultations is presented at § 483.102(b)(1).

The NIMH Community Support Program's definition of serious mental illness defines its population along three dimensions: diagnosis, level of disability, and duration of the illness. We followed this general approach. Some aspects of the NIMH definition, however, had to be rejected. First, the NIMH Community Support Program limits its population to adults aged 18 and over. Because Medicaid provides inpatient psychiatric services (sometimes in the NF setting) to individuals aged 21 and under, we could not place any age restriction on the seriously mentally ill population for PASARR purposes.

Second, under the diagnosis dimension, the NIMH definition includes organic disorders. Section 1919(e)(7)(G), which defines mental illness, contains a second clause (as amended by OBRA '90) which states: "and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder) or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness." Since various types of dementia form the bulk of disorders classified in DSM–III–R as organic disorders, we rejected NIMH's inclusion of organic disorders within the definition of serious MI for PASARR purposes.

Third, to adapt the NIMH definition to the NF population, we made modifications to the level of severity and duration criteria. For example, among NF residents, being unemployed or unable to work, is not necessarily an indication of the severity of a mental impairment. Likewise, difficulty in maintaining or establishing a personal support system describes many NF residents, including those with dementia, not just those with serious mental illness.

While this is a final rule, we will accept comments on this definition of serious mental illness which we developed in response to Congress' commission to us in OBRA '90.

Comment: A number of commenters responded to the definition of dementia as we had proposed it in section 483.102(b)(2). Commenters asserted that distinctions between primary and secondary diagnoses of dementia are artificial, confusing, clinically inaccurate, and unimportant. They observed that the typical person with

dementia entering an NF has multiple coexisting physical and mental problems that together create the need for NF services. While commenters proposed various definitions of "primary" and "secondary" diagnosis, all agreed that the condition has the same relative impact upon its victim and must be addressed. They also noted that once dementia has been diagnosed, further screening is not relevant. One commenter, nevertheless, cautioned that if the dementia exclusion were to be applied broadly it should not extend to individuals with a noncomitant mental illness.

Response: We note that in OBRA '90 Congress, apparently agreeing with our commenters, expanded the dementia exclusion from MI to include non-primary dementias so long as there is not a concurrent primary diagnosis of a serious MI. This statutory change is reflected at section 483.102(b)(1)(i)(B).

Comment: Some commenters believed that we took an unnecessarily literal reading of the Act in proposing in section 483.102(b)(2)(ii) that the dementia exclusion could not apply to individuals with MR even though we recognize the special aging needs of some segments of the MR population. Commenters who addressed this issue of dementia/MR strongly advocated that we extend the dementia exclusion to individuals with MR.

A few commenters suggested that States be allowed to use the system of categorical determinations at § 483.130 to make PASARR determinations for all individuals with non-primary dementias and individuals with both MR and dementia without the need for performing individual reviews. Categorical determinations would still be determinations made by the State for individuals meeting the statutory definitions of MI or MR.

Response: We found considerable merit in the suggestion of some commenters that we permit use of non-primary dementia and dementia/MR group categorical determinations and had planned to adopt such a course of action prior to the enactment of OBRA '90. As noted in the previous response, the OBRA'90 revisions concerning dementias permit exemption of individuals with non-primary dementias (and a primary diagnosis which is not a serious mental illness) from PASARR on the basis that these individuals are not mentally ill. OBRA '90, thus, resolved the issue with respect to non-primary dementia exclusions from the definition of MI.

Nevertheless, the dementia/MR issue remained. The statutory change does not provide a specific basis for a dementia exclusion from the definition of MR. Moreover, it is clear throughout the relevant discussions in the conference committee and House budget committee reports that the expanded dementia exclusion is an exclusion from the definition of MI, not a general exclusion from PASARR. There are no grounds for inferring that Congress intended that individuals with dementia and MR or a related condition should be exempted from PASARR or that there should be a generic dementia exclusion limited only by presence of a concurrent primary diagnosis of MI. (H.R. Rep. No. 964, 101st Cong. 2nd Sess. 850 (1990) and H.R. Rep. No. 881, 101st Cong. 2nd Sess. 118 (1990)).

The lack of support from the statutory language and legislative history was critical in our decision not to alter the definition of MR to exclude dementias. We also reasoned that much the same end could be achieved by permitting categorical determinations in dementia/MR cases. We have therefore added a dementia/MR categorical determination in a new § 483.130(h). While this approach is a more complicated method of achieving a similar result, it does ensure that individuals with both conditions will be reviewed in at least a preliminary fashion rather than being exempted totally from PASARR.

Since this decision represents a discretionary action taken on our part in response to OBRA '90, we specifically solicit comments on this portion of the final regulation.

Comment: Approximately 25 commenters responded to our invitation to share their ideas on how stringent the diagnostic screening requirements for applying a dementia exclusion from further screening should be. Twenty commenters believed that our proposed standard that the dementia exclusion should only be applied when a primary diagnosis of dementia was supported by "positive evidence from a thorough mental status exam focusing on cognitive functioning and performed in the context of a complete neurological or neuropsychiatric exam." was too restrictive. They claimed that having to complete such extensive screenings would result in extended hospital stays, especially in rural areas, and would result in the exclusion of people with dementia from NFs. While they did not want to encourage the glib use of dementia diagnoses as a means of avoiding PASARR, these commenters recommended that we drop all references to a "complete neurological" or a complete neuropsychiatric" examination and rely solely on a physician's diagnosis of dementia which is reasonably established on the basis of a prior examination and a patient's medical records.

Some commenters noted that the National Institutes of Health (NIH) developed a consensus document on Differential Diagnosis of Dementing Disease in 1987. They recommended that in future revisions to our program instruction we incorporate the method suggested in that document to identify key benchmarks that indicate dementia versus another condition. They felt that the State Medicaid Manual would serve as the appropriate vehicle for giving direction to States on how the Level I function, as it relates to dementias, should be conducted.

As noted earlier, some commenters, notably physicians' associations, objected to our suggestion that Level I evaluators should be required to look behind a physician's diagnosis. This group of commenters believed that the PASARR evaluator, who usually does not know the individual being screened, should not be able to overturn a diagnosis of dementia made by the patient's own physician.

Other commenters, who advocated less restrictive requirements for accepting a diagnosis of dementia than we proposed, believe that PASARR is not the appropriate vehicle for assessing a person's needs in order to design appropriate care and services. The comprehensive resident assessment for all nursing home residents should determine that. They recommended that Level I determinations that an individual has dementia and therefore need not go through Level II evaluation should be made more simply on prevailing evidence.

The remaining commenters supported the position we took in the NPRM.

Response: We believe that the commenters have made a number of valid points relating to screening of individuals for dementia. To some extent, the comments on this condition throw into relief the problems of designing a set of criteria to govern the implementation of a PASARR program by a State. We note that the statutory purpose of the criteria contained in this rule is not expressly to tell States how to conduct such reviews but to measure the appropriateness of State systems developed for that purpose. On the one hand, there are no doubt cases in which some pains must be taken in order to discern whether an individual has dementia or whether the dementia is complicated by another mental condition. On the other hand, there are apparently many cases in which such a determination is more readily made or has already been made by the

individual's physician. While we do not want to require routinely burdensome procedures for making such determinations, we also wish to avoid what one of the commenters called the prospect of having dementia become the diagnosis of choice. Nor do we wish to tie the States to the Consensus Statement methodology referred to above. The Statement was prepared by a non-Federal panel convened on a single occasion and was an independent report of the panel. It did not constitute a policy statement of the NIH or the Government.

Ultimately, however, we believe that States must have the flexibility to deal with situations in which the conditions of individuals presented for admission and the amount and reliability of the medical information available to assist in determining their diagnoses vary considerably from case to case. Thus, we no longer believe that it is necessary for a State to gather positive evidence of a thorough mental status exam focusing on cognitive functioning and performed in the context of a complete neurological or neuro-psychiatric exam in every case where a diagnosis of dementia is made. On the other hand, we do expect States to take reasonable measures to assure that diagnoses are accurate and we expect that such measures will vary for some patients. When we develop specific protocols to monitor State PASARR implementation, we will include features to look behind the determinations made to assure that inappropriate dementia diagnoses were not routinely used to avoid the need for review.

Section 483.106(b)—New Admissions, Readmissions, and Interfacility Transfers

We proposed that a patient be considered a new admission when an individual is being admitted to any NF in which he or she had not recently resided and to which he or she could not qualify as a readmission. We proposed to define a readmission as an individual being readmitted, following a temporary absence for hospitalization or for therapeutic leave, to a NF in which he or she has resided. In the proposed rule we suggested that States could define "recently resided" and "temporary absence" as they saw fit. If the State had a bedhold policy, we suggested that the State could use that time period or a longer one, if it chose, in defining these terms. We further suggested that States that did not have a bedhold policy ought to devise a definition for these terms.

Comment: We received a number of comments concerning our suggested use of the bedhold period in defining temporary absence for readmission purposes. Believing that the bedhold period was too short, commenters generally argued that the legislative intent was to eliminate as much duplicative testing as possible. While some commenters suggested defining a temporary absence as 30 days or less, the majority favored subjecting a returning resident who had a PAS or annual resident review (ARR) during the preceding year to a new PAS only when there is a hospital admitting diagnosis of MI or MR (i.e., the MI or MR condition is a cause for the hospital admission), a first time identification of MI or MR, or a change in the resident's physical condition which has a direct bearing on patient's mental health needs.

Response: Since we issued the proposed rule on March 23, 1990, Congress has acted on the issue of readmissions through OBRA '90. Specifically, section 4801(b)(2) clarifies that the PAS program required at revised section 1919(e)(7)(A)(i) need not apply to readmission to a NF of an individual who, after being admitted to the NF, was transferred for care in a hospital. This provision places no specific time limit on the length of absence from the NF. Nor does it qualify the exemption from PAS based on the type of care received in the hospital or the reason for the hospital transfer. Ostensibly, readmissions to a NF following transfer to a psychiatric unit in an acute hospital or to a psychiatric hospital for treatment of an acute episode of serious mental illness would be equally exempt for PAS as would be, for example, transfers for treatment of pneumonia or a broken hip caused by a fall. The statute also does not appear to clearly limit readmission to the same NF in which the resident previously resided. That is, it speaks of readmission to "a" (or "any") NF of an individual who, after being admitted to "the" (or a specific) NF, was transferred to a hospital for any type of care.

We have incorporated the new OBRA '90 language on readmissions into § 483.106(b)(1)(iii) of the regulation. We note, however, that while any readmission to a NF from a hospital is not subject to PAS, the individual is still subject to ARR which would normally be due some time over the next 12 months. If the ARR falls due during the hospital stay, the ARR must be performed within the quarter after return to the facility. If the ARR is not due for some time, but there has been a significant change in the resident's condition an earlier ARR is required by these regulations. As discussed elsewhere in this preamble, at the time of a resident's readmission to a NF, the facility must perform a new resident assessment (RA) within the first 14 days of readmission. If this RA indicates a substantial change in the resident's condition which would have a bearing on his or her mental health needs, the NF must refer the resident immediately for an ARR. Thus, we believe, the very legitimate concerns of commenters that some hospitalizations ought to trigger a new review by the State mental health or mental retardation authority should be satisfied.

Comment: Concerning interfacility transfers, most commenters objected to our interpretation that a new resident is someone unknown to the receiving NF. We had proposed that in such cases, a PAS was required. In the preamble we had suggested, however, that a PAS or ARR of record within the preceding year could be simply updated if there had been no significant change in the resident's condition. Commenters proposed an alternative view of a "new" admission as an individual who is initially seeking NF services, and not necessarily someone who is new to a specific NF. They reasoned that residents transfer fairly frequently from one NF to another, with or without an intervening hospital stay, for any number of reasons. They believed that to require a new PAS at every juncture would only waste scarce resources and discriminate against residents with MI or MR. Several commenters also objected that because of our definition of transfer in the provisions of the rule dealing with appeals, a transfer from one type of certified bed to another type of certified bed within the same physical plant would be an interfacility, rather than an intrafacility, transfer which would be subject to a new PAS.

Response: We are persuaded by commenters that the statutory phrase "new resident" can arguably be interpreted to mean an individual being admitted for the first time to a NF rather than to a specific NF. We have therefore revised § 483.106(b) so as to require PAS only at first entry into the NF system. This provision allows essentially continuing residents to be subjected only to ARR even though they may transfer among NFs, need hospitalization, or take therapeutic leave during the course of the year from their most recent PAS or ARR. As noted above, however, in the case of a change in the resident's condition we assure timely attention by requiring an earlier ARR for continuing residents.

Because a facility is defined at section 483.5 as a certified entity, transfers from one certified entity to another are

interfacility transfers. This fact, however, should cause no undue difficulties for nursing homes with distinct parts because, as noted above, we are not requiring a PAS at the time of transfer.

Comment: A number of commenters favored by the flexibility we gave States in devising categorical groups to deal with such situations as the need for convalescent care following a hospital stay. However, some commenters objected to the proposed requirement that the PASARR/MI or PASARR/MR cannot automatically be waived when a categorical determination on the need for NF care is made under the PASSAR/NF portion of the screening. They wanted the categorical determinations to function as exemptions from any further screening. [See discussion of § 483.130(d)].

Response: We are revising § 483.106(b) to include a new OBRA '90 provision concerning certain hospital discharges which are exempt from PAS. To qualify for this exemption, the individual must meet three pre-conditions. First, he or she must be admitted to any NF directly from a hospital after receiving acute inpatient care at the hospital. Second, the individual must require NF services for the condition for which he or she received care in the hospital. Third, the attending physician must have certified before admission to the facility that the individual is likely to require less than 30 days of NF services. Such a hospital discharge is exempt from PAS.

The statute does not specify what should happen if the stay exceeds 30 days. We must provide for this possibility in order to assure that this exemption could not be misused to avoid PAS. Therefore, we are adding that, if it becomes apparent during the 30 days that a longer stay is needed, the individual must receive an ARR within 40 calendar days of admission.

Because not all convalescent care admissions from hospitals will be able to fit the prerequisites for a PAS-exempt hospital discharge, we are retaining the categorical group determination at § 483.130(d)(1). For instance, convalescence from a broken hip would normally be expected to require longer than 30 days. In such a case, the person could not qualify from the new statutory exemption from preadmission screening. The individual could still be admitted, however, under a convalescent care categorical determination that NF services were needed, accompanied by determination of specialized service needs. Since the definition of mental illness has now been restricted to serious mental illnesses, it is extremely important that such individuals not be admitted to NFs for extended periods of time without having their need for specialized services reviewed.

We will accept comments on the way we have implemented the new OBRA '90 provisions on readmissions and PAS-exempt hospital discharges.

Section 483.106(d)—Responsibility for Evaluations and Determinations

Independent Evaluations

We proposed in § 483.106 that PASARR determinations for individuals with MI must be made by the State mental health authority and be based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority. For individuals with mental retardation, the PASARR determinations must be made by the State mental retardation authority without any requirement for independent evaluation.

Comment: Several commenters questioned why independent evaluations are required for individuals with MI but not for individuals with MR. Some developmental disabilities advocates felt that if independent evaluations offer some measure of protection to individuals with MI, this same protection should be extended to individuals with MR. They believed that the physical and fiscal constraints imposed on State mental retardation authorities by PASARR could compromise the authorities' performance of this responsibility.

On the other hand, several States objected to the proposed requirement that, for individuals with MI, the State mental health authority base its determinations on an independent evaluation. They claim that having to use independent evaluators is very inefficient and time consuming, especially given the credential and data requirements proposed. These States indicated that their State mental health authorities are just as capable of doing their own evaluations as their State mental retardation authorities. They argued that making the use of independent evaluators optional rather than mandatory would be more efficient.

Response: Section 1919(e)(7)(B)(i) of the Act requires that the State mental health authority base its determinations on an independent evaluation performed by a person or entity other than the State mental health authority. To allow the State mental health to do its own evaluations would require a statutory change. Therefore, States must use independent evaluators to perform all evaluations on individuals with MI. The Act places no similar requirement on the State mental retardation authority to base its determinations on independent evaluations. In the State Medicaid Manual, Transmittal No. 42, which we published in May 1989, we indicated that State mental retardation authorities are free to use independent evaluators if they so choose.

Comment: We also received a few comments asking who in the State was responsible for hiring the independent MI evaluators, the State mental health authority or the State Medicaid agency.

Response: States are free to use the Medicaid agency, the mental health authority, or some central contracting office to contract with independent evaluators so long as the terms of the contract specify that the evaluations are to be performed independently. We wish to allow States latitude in organizing their administrative structures to respond to the PASARR requirements. The law, however, makes the State Medicaid agency ultimately responsible for seeing that MI determinations are based on independent evaluations. We are also requiring that the interagency agreement designate the independent evaluator and ensure that all the requirements of these regulations are met. [See preamble discussion of interagency agreements.]

Section 483.106(e)—Delegation of Authority To Perform Evaluations

In § 483.106(e), we proposed that the State mental health and mental retardation authorities may delegate the evaluation and determination functions for which they are responsible to another entity: (1) If the respective authorities retain ultimate control and responsibility; and (2) if the determinations of need for NF services and for specialized services are based on a consistent analysis of the data. The State mental retardation authority would have responsibility for both evaluation and determination functions, while the State mental health authority would have responsibility only for the determination function. We proposed that the evaluation of individuals with MI cannot be delegated by the State mental health authority because the law provides that it must be performed by a person or entity other than the State mental health authority. The State, not the mental health authority, must see that an independent entity is used. (See discussion of interagency agreements.)

Comment: One commenter objected to the fact that, if a State mental retardation authority delegates its responsibility to perform evaluations, we do not require that agents be adequately prepared to perform the

evaluations. This commenter felt that more safeguards were needed. The commenter noted that for MR evaluations we proposed only one credential requirement (i.e., that a licensed psychologist who is a qualified mental retardation professional must measure the level of intellectual functioning).

Response: This issue is dealt with under a later response to personnel issues. We believe that requiring the State mental health and mental retardation authorities to be ultimately responsible for the performance of their functions, if they delegate them, is a sufficient safeguard.

Comment: One commenter objected to the delegation provision in § 483.106(e) on the grounds that he found an inherent conflict of interest in allowing the Medicaid agency to conduct the evaluations. A second commenter objected to allowing the State mental health and mental retardation authorities to delegate their determination functions in cases in which a conflict of interest may exist. Several other commenters indicated that NFs in a few States may currently be expected to arrange for Level II evaluations, transport applicants or residents to screenings, and otherwise carry out the administrative functions of the State to see that Level II evaluations are performed, tasks which are beyond the scope of the NF's responsibility for doing a Level I identification.

One commenter protested an arrangement in his State that does not provide for an "independent" evaluation (i.e., the evaluation and determination functions are not performed by two separate entities, the one independent of the other). He also contended that a further conflict of interest exists in that the local boards, in some cases, own, operate, fund or otherwise have control over public NFs. The commenter urged us to prohibit the entity which has responsibility for performing evaluations from also making the determinations and urged that we prohibit delegation of either the evaluation or determination function to any entity that owns, operates, funds, or otherwise has control over a nursing facility.

Response: Sections 1919(b)(3)(f) and 1919(e)(7)(B)(i) of the Act require that the State mental health authority make the required determinations for individuals with MI based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority. In determining the meaning of "independent" we note that the Act requires only that the person or entity performing the evaluation be independent of the State mental health authority. It does not require that the evaluation and determination functions be performed by two separate entities acting independently of each other. This provision, as originally enacted, did not preclude delegation to any other entity—either to the State Medicaid Agency or to a nursing facility, the two delegations to which commenters objected. We note, however, that OBRA '90 contains a new provision which prohibits State mental health and mental retardation authorities from delegating, by subcontract or otherwise, their responsibilities for PAS and ARR to a nursing facility or any entity that has a direct or indirect affiliation or relationship with such a facility.

Despite the fact that the heading for section 4801(b)(4) of OBRA '90 broadly states "No delegation of authority to conduct screening and reviews," the actual text of this provision only prohibits delegation of the State mental health or mental retardation authority responsibilities to NFs or like entities. It does not prohibit other types of delegations such as to the State Medicaid agency or to individual persons (as opposed to entities), such as physicians, who in some rural areas might be the only available personnel to perform the evaluations.

We believe that this position—that the only delegations which are prohibited are those which involve NFs or like entities—is consistent with Congressional intent. The House Energy and Commerce Committee language incorporated in the House budget committee report states:

> Although OBRA 1987 did not specifically prohibit States from delegating these responsibilities to nursing facilities themselves, it was never the law's intention to allow facilities to be able to conduct these activities. Since nursing facilities have a direct interest in the eligibility determinations that are to be made for those individuals subject to the PASARR requirements, there is a potential conflict of interest in permitting them to make these determinations. Thus, it was the Committee's view in 1987—as it is today—to prohibit nursing facilities (or their related entities) to participate, in any way, in the PASARR process.
>
> It has come to the attention of the Committee, however, that some State mental health and mental retardation agencies (or other appropriate State authorities) may be circumventing the intent of OBRA 1987 that PASARR determinations be made independent of a nursing facility by entering into subcontracts with nursing facilities (or related entities) to carry out the State's responsibility with respect to the PASARR requirements. Under the Committee bill, such subcontracts * * * are specifically prohibited.

Based on the new statutory prohibition against delegation to NFs, we have revised § 483.106(e) to include a third prerequisite for an approvable delegation of either the evaluation or determination function under PAS or ARR to another person or entity. This precondition is that the entity to which the delegation is made may not be a NF or an entity that has a direct or indirect affiliation or relationship with a NF. Because State mental health authorities technically do not have authority to conduct (and therefore to delegate) PASARR evaluations, we have added a further provision at the end of § 483.106(e)(3) to require that in designating an independent person or entity to perform MI evaluations, the State must not use a NF or an entity that has a direct or indirect affiliation or relationship with a NF.

We believe it is necessary to clarify that this new provision in no way impairs our authority to require that NFs conduct Level I screenings. Level I identification is, in effect, a pre-PASARR activity designed to determine who is subject to PASARR. We also wish to clarify that the statute prohibits NFs and similar "entities" from conducting PASARR. Individual physicians or mental health professionals (unless they are owners, operators, or employees of the NF) would not be precluded from performing those portions of the PASARR evaluation which they are qualified to perform.

In response to the two specific comments on delegations, we note that this change in the law has resolved the concerns of the commenter who objected to one State's delegation of responsibilities to local boards which own or operate public nursing facilities. Such types of delegations are now barred. Because the scope of the congressional action is so specific, we did not accommodate the commenter who objected to delegation to the State Medicaid agencies on the grounds that this also represented a conflict of interest. This type of delegation is very common because it often occurs in States that had screening programs in operation prior to OBRA '87. Since Congress singled out one less frequent type of delegation for prohibition and remained silent on the issue of delegation to State Medicaid agencies, we believe that such delegations remain permissible.

Section 431.621—Interagency Agreements

and

Section 483.108(a)—Relationship of PASARR to Other Medicaid Processes

In § 431.621, we proposed that the State plan must provide that the Medicaid agency has in effect a written agreement with the State mental health and mental retardation authorities that meets certain specified requirements. In § 483.108, we proposed that PASARR determinations made by the State mental health or mental retardation authorities cannot be countermanded by the State Medicaid agency or by the State survey and certification agency. We also proposed that determinations made by the State mental health and mental retardation authorities must be based on criteria relating to NF level of care and specialized services that are consistent with this regulation and any supplementary criteria adopted by the State Medicaid agency. To avoid duplicative testing and effort, PASARR must be coordinated with the routine resident assessments required under § 483.20(b).

Comment: Approximately 25 State agencies responded to proposed § 483.108(a) or § 431.621, usually in combination. The primary concern of most of the State Medicaid agencies was their objection to having responsibility for the results of the PASARR process in the State without having any control over that process. Specifically, they objected to the requirement that the Medicaid agency not countermand determinations of the State mental health and mental retardation authorities (SMHMRAs). In their view, the SMHMRAs have no training in making NF level of care determinations. They recommended that PASARR determinations be shared by the Medicaid agency and the SMHMRAs: the Medicaid agency should handle the NF question and the SMHMRAs should handle the specialized services question. Some pointed out that many of the approximately 35 States that had pre-existing screening programs have set their systems up this way, through delegation, so as not to disrupt a working system.

Response: The issue of control is a sensitive one; however, State Medicaid agency concerns must give way to the plain requirement in the law that some of the PASARR functions be conducted and determinations be made by the SMHMRAs. This is not a requirement subject to administrative alteration. Of course, the SMHMRAs are not free to make determinations that are inconsistent with the law and regulations. Both the proposed regulation and this final regulation make it clear that the determinations of the SMHMRAs with respect to the need for NF care and specialized services must be consistent with the Medicaid program's law and regulations. The requirements relating to interagency agreements that we have included in this regulation were for the express purpose of ensuring that the Medicaid agency would assure that the appropriate relationships were established formally, including the bases for determinations by the SMHMRAs.

The law clearly requires that the State comply with the PASARR requirements as a condition of approval for the State's Medicaid plan and our regulations do what we believe is appropriate with respect to assuring that the State government is aware that the determinations of the SMHMRAs must be consistent with Medicaid requirements, and the responsibilities must be spelled out in interagency agreements. These agreements provide the means by which the Medicaid agency achieves the control it needs to assure that its plan is in compliance.

Although some commenters opined that the Medicaid agency can make more appropriate determinations about the need for NF care and recommended that we delegate this function to them, the law requires that both the NF and specialized services determinations must be made by the SMHMRAs. Any delegation of responsibility back to the Medicaid agency would need to be done through an interagency agreement. We also note that, consistent with the legislative history, we have adopted the Medicaid fair hearing system for PASARR appeals and appeals of transfers and discharges. We have amended § 483.108(a) to clarify that only an appeals determination made through the system designated in Part 483 Subpart E may overturn a PASARR determination made by the SMHMRAs.

Comment: Several Medicaid agencies amplified upon the problem of having responsibility without control. They objected to the fact that the regulation would require the Medicaid agency to withhold payment for unscreened individuals but would not give the Medicaid agency any way to find out who these individuals are. Some stated that the elimination of inspections of care (IOCs) put the Medicaid agency at a distinct disadvantage. Noting that the preamble to the proposed rule stated that the State survey agency would identify individuals who should have been screened but were not, they asserted that the surveys will only look at a sample. They asked for clarification of how the Medicaid agency is supposed to ensure PASARR compliance if it cannot do IOCs and cannot control the survey process. Some States asked that we specify the extent to which the survey process will be responsible for identifying missed PASARRs. Others asked for clarification of the role of the Peer Review Organization (PRO) with respect to PASARR.

Response: Commenters who complained that the elimination of IOC deprives them of the means to validate the proper working of the PASARR system misread the law and our regulations. While IOC will no longer be required after the State has implemented the minimum data set and has begun conducting surveys under the new survey procedures, the law does nothing to limit the ability of the State to monitor its own programs. While we have not specified a method for monitoring PASARR compliance, we have not prohibited States from establishing systems for doing so. While neither we nor the Act established a specific role for PROs in connection with PASARR, States have the latitude to contract with them for services. For example, the State might contract with a PRO to perform the assessment of persons with MI, which must be performed by an entity independent of the State mental health authority.

Comment: Concerning the interagency agreement proposed at § 431.621, several States, while complaining that they had no control over the PASARR process, stated that the interagency agreement requirements were too prescriptive. They felt that although the Medicaid agency is the funding vehicle for PASARR, that agency should not have to do accounting, auditing and enforcing functions. In their opinion, the interagency coordination requirements would double State administrative cost. Several States indicated that they favored a less prescriptive approach which simply measures outcomes instead of placing the Medicaid agency in the position of having to supervise the SMHMRAs. These commenters also believed that the regulation should make the SMHMRAs bear responsibility for PASARR outcomes.

By contrast, one State mental health authority applauded the fact that we required the Medicaid agency to be responsible for the PASARR system. They requested that the regulations require that this statement be included in the interagency agreement.

Other comments concerning the interagency agreement were:

- HCFA has exceeded the requirements in the Act by requiring an interagency agreement.

• HCFA should allow each State to determine if it needs an interagency agreement.

• The interagency agreement requirement should be expanded to explain what the State is to do if both the Medicaid agency and the SMHMRA are under the same umbrella agency within the State or the overarching agency is the single State agency.

Response: State complaints about the burdensome nature of the required interagency agreements are somewhat at odds with earlier comments about the need to assure better control of circumstances by the Medicaid agency. We do not believe that Medicaid is a mere conduit of funds to the SMHMRAs for PASARR functions. We believe that the law makes the Medicaid agency responsible for the functioning of the process and that it is important for the details to be spelled out in the interagency agreements we require. In cases where components involved in the PASARR process are within the same umbrella agency, this requirement may be met by establishing written procedures governing how those components will accomplish the required tasks.

Comment: One commenter claimed that in many passages the proposed rule is unclear because of the use of the term, "the State." He noted that usually this term means the single State Medicaid agency, but in the PASARR context this is uncertain. He, therefore, urged us to specify that "the State" means the single State Medicaid agency and that "State authorities" means the SMHMRAs.

Response: We recognize that the term, "the State," is used throughout the regulation. In our proposal, we followed the specific wording of the Act, which requires many functions be accomplished by "the State," specifies that some responsibilities be carried out specifically by the Medicaid agency or SMHMRAs, and makes compliance with the requirements generally a condition of approval for the State's Medicaid plan. In this final rule, we have attempted to assure that our usage also follows the Act and have made corrections when necessary.

Section 483.108—Relationship of PASARR to Other Medicaid Processes; Coordination of PASARR and Resident Assessments in NFs

Comment: Stating their intention to eliminate as much duplication of testing as possible, virtually all of the approximately 15 commenters who responded to this requirement strongly supported the concept of coordination between the NF's resident assessment (RA) process and the State's PASARR program. Many asked for clarification of how the RA should interplay with Levels I and II of the PASARR. Others gave their opinions on how the two processes should interrelate. Several commenters expressed the view that the RA should suffice for at least Level I of ARR, thus eliminating one step.

Response: In both the preamble to the proposed rule and in the earlier program instruction, we indicated that the NF's resident assessment could serve as a Level I for ARR. If an individual had been identified as having MI or MR through PAS but was approved for NF admission and was subsequently admitted, that individual should already be in the State's PASARR tracking system. Similarly, the initial resident reviews, which were required to have been completed by April 1, 1990, should have added many more individuals with MI or MR to the tracking system. In fact, the population being tracked should be nearly complete except for new entrants through PAS or through the discovery of new or newly diagnosed conditions. RAs subsequently performed by the NF on these individuals on at least an annual basis would likely only confirm the continued need for these individuals to be retained in the State's tracking system and subjected to ARRs as required on at least an annual basis. For this fixed population of residents with MI and MR, one could conceive of the Level I screen as not really being necessary since the State has already been alerted to its responsibility to rescreen the individual annually.

Both RAs and ARRs, however, are required to be performed more frequently than annually if a significant change in the resident's condition occurs. We envision that an earlier RA (i.e., one which is performed between annual RAs in response to a significant change in the resident's condition) should trigger a similarly expedited ARR. In such cases, the RA should function actively as a Level I to identify residents with new or newly discovered conditions of MI or MR.

It is also possible that, particularly with residents with MI, who constitute a somewhat more fluid population than residents with MR (although the statutory change in the definition of MI to more serious and chronic forms of mental disorders reduces this fluidity), the RA could indicate that an individual in the State's tracking system is found no longer to have MI. Such a finding by the NF should serve as a negative Level I to the State. When doing the next ARR, the State may agree that the individual should be removed from the State's tracking system because he or she does not have MI or MR.

Comment: One commenter was concerned that if the resident assessment instrument (RAI) were to be used for Level I it would result in large numbers of referrals for Level II ARRs because nearly anyone with some aspect of a possible mental health problem would trigger an ARR on the grounds that the resident was identified as having MI or MR. Consequently, this commenter asked for clarification of the types of data that would trigger a Level II.

Response: We agree and, in fact, hope that individuals with MI who have previously had needs that were ignored and unmet will be identified through the RA process. The statutory change in the definition of MI reduces the likelihood that large numbers of individuals who had previously been unidentified as mentally ill will be discovered. Only data that indicate a serious mental illness would trigger a Level II review (we discuss the definition of serious mental illness below).

Comment: Some commenters thought that the RA should function more broadly in the PASARR process than serving as a Level I identifier. A few questioned the need for a Level II ARR once the NF's RA process is in place because they viewed the RA as more thorough and complete than the ARR. Others saw ARR as performing a different but somewhat subordinate role, e.g., one commenter favored coordination of PASARR with resident assessment, but not vice versa, asserting that the minimum data set (MDS) is meant to be the centerpiece of care planning and quality of care while PASARR should simply signal whether admission or residence in the NF is or continues to be appropriate.

Response: The requirement that ARRs be performed on all individuals in NFs who have MI or MR is statutory and, hence, cannot be eliminated. There must be two processes for these two populations, the mentally ill and the mentally retarded. We have no authority to allow the NF process to substitute for the State process. Although they may share a common core of data, PASARR and RA are different processes which serve different purposes. As explained in a later response, they offer the opportunity of providing differing perspectives on the resident, each of which has its own value.

The OBRA '90 provision prohibiting delegation of the SMHMRAs' authority to conduct PASARR to the NF does not preclude the use of NF-developed RA data by PASARR evaluators. It does prevent the NF's staff from performing the PASARR evaluations rather than

simply supplying data for use by the State's PASARR system.

Comment: Several commenters believed that the information collected through the RA should form the database for the ARR. One commenter recommended that we delete the phrase, "to the maximum extent practicable" from the coordination requirement. Another noted that IOCs formerly made level of care determinations, but that the NF's RA will replace the IOC process, hence the State mental health and mental retardation authorities should look at the RA when doing the ARR.

Response: We agree with the commenters who suggested that ARR evaluators should use the most recent RA as the basis for their review. The RA and the ARR have as a core a common set of resident examinations and evaluations. We believe there is little utility in replicating, for purposes of the ARR, the physical, functional, and mental status assessments contained in the RAI unless the evaluator has some reason to suspect that the information contained in the most recent RA is inaccurate or no longer current. As we indicate in section 483.128(e), existing data may usually be used for PASARR. However, each process also has some specific requirements which are in addition to the core of common evaluations. While the RA may supply most of the data required for the ARR, some additional data may be needed for ARR purposes in some cases.

While we are maximizing opportunities for having a very recent RA by the NF available to serve as the basis for the ARR, we cannot guarantee that total coordination always will be possible. Because sections 1819(b)(3)(E) and 1919(b)(3)(E) of the Act require coordination to "to the maximum extent practicable," we retain this phrase in our regulations. (Section 483.20(b)(7) in the February 2, 1989 long term care final rule repeats this coordination requirement. In the discussion of 483.114, below, we also respond to comments concerning the scheduling of ARRs.)

Comment: Several State commenters recommended having the minimum data set (MDS) well in advance of the effective date of the final PASARR regulations so that the State Medicaid agencies would have time to build coordination strategies into the process. These sentiments were echoed by several other commenters who stressed the need for consistency between the two instruments. One recommended that the PASARR evaluation process and criteria—used in determining the level, intensity, and types of services which are needed—be linked to the criteria in the MDS for the resident assessment and development of plan of care. This commenter felt strongly that there must be consistency between the information gathered for the two processes, that common definitions of service should be used, and that the individualized plan of care for residents with MI or MR should result from a combination of the two processes.

Along the same line, another commenter noted that the resident assessment instrument (RAI) should function as a continuum where care planning interventions for psychosocial needs trigger further mental health evaluation when there is a deficit. Attesting that the current version of the MDS would trigger at least 6 areas which would require further investigation into mental health needs, this commenter believed that the RAI may constitute a sufficient mental status examination for ARR purposes, even without the additional domains on the MDS. This commenter noted, however, that while the RAI contains federally-mandated data requirements, the PASARR screening tools, developed by States in response to the emerging Federal PASARR criteria, have comparatively few data requirements. Without additional guidelines on coordination of the two instruments, this commenter believed that coordination will not occur.

Response: The MDS was distributed in draft form to the State Medicaid agencies several times, beginning in April 1990 (i.e., during the comment period on this regulation). It was also distributed as a program instruction in early September 1990 in both the State Medicaid Manual (HCFA Pub. 45–4, Transmittal 49) and the State Operations Manual (HCFA Pub. 7, Transmittal 241). Additionally, it is scheduled for publication in the near future as a proposed rule. While it is not feasible to delay establishment of these requirements until the completion of rulemaking on MDS, States were given the opportunity to specify an RAI well before the effective date of this regulation. If a State specified an RAI before December 31, 1990 and implemented it by March 31, 1991, it would have been relieved of the responsibility for filing a quarterly IOC report for the fourth quarter of 1990 and for subsequent periods.

We recognize that the content of the MDS must be closely related to the assessment requirements in the nursing facility requirements and that PASARR requirements, as well, will need to be coordinated with this data. It is our intention to propose any necessary revisions in these processes in connection with the rulemaking process for the MDS.

Since this rule is being published as a final rule with comment, we formally invite comments from readers on how best to coordinate the resident assessment process with PASARR. Because we expect to issue the MDS as a proposed rule in the near future, commenters may wish to comment on that rule as well.

We agree with the commenter who indicated that the individualized plan of care for residents with MI or MR should result from a combination of the 2 processes. We envision an interactive process. Information and findings from the PAS process, which precedes the NF assessment process, should supply data to the NF for use in performing its assessment and care planning. Information and findings from the ARR, which can and should utilize data developed in conjunction with the RA, should be fed back into the NF's care planning. For this reason we indicated in the preamble to the proposed rule and reaffirm in this final rule that the State's PASARR evaluation report should identify NF service needs (including the need for mental health services which are of less intensity than specialized services) and specialized services needs, if these are determined to exist.

As discussed later under comments in response to proposed § 483.128(g)(3–5), we do not anticipate that the PASARR process should replicate the NF's RA process. Rather, it should support it and build on it. Since PASARR is performed by mental health and mental retardation specialists, their professional views on the individual's service needs, while not constituting as comprehensive an analysis of all the resident's needs as the RA should provide, can provide the NF with insights into care planning as it relates to the resident's mental health or mental retardation needs. In this sense, information provided by the PAS or ARR should provide another perspective on the resident's needs. The PAS can serve as a starting point for the first RA after admission and subsequent RAs should supply data for ARRs. The ARR should supplement the RA, either corroborating it or providing conflicting views. Both instruments, thus, should contribute to the care planning process.

So that the NF can utilize PASARR findings in its care planning, the NF obviously must receive a copy of the PASARR report. We have therefore added a new § 483.128(l), to require that the admitting or retaining NF receive a copy of the PASARR evaluative report. We are not specifying whether we mean the individualized or categorical

evaluative report. We are primarily concerned that the NF receive a copy of the more detailed evaluative reports which result from individualized evaluations. However, if an agent other than the NF performs the Level I identification and applies to the case a categorical determination made by the State in its rules at this point, the NF should receive a copy of the abbreviated report. In most cases, we envision that the NF discerns that the categorical determination developed by the State applies to the individual on the basis of the evaluative data the NF has available. A NF that does the evaluation in these categorical cases does not need to send a copy of the evaluative report. However, some States may be using other mechanisms for applying the categorical determinations. We want to ensure that the NF receives copies of PASARR reports on their residents, regardless of who issues them.

It is especially critical that the NF receive a copy of the report in cases in which an individual who needs specialized services is approved for NF admission or continued residence and is admitted or remains in the NF because care planning will need to be coordinated between the NF and the State which must provide or arrange for the provision of specialized services. The PASARR report, in such cases, should serve as a starting point for working out between the NF and the State which entity should provide which service so that integrated care results.

Section 483.110—Out-of-State Arrangements

In § 483.110, we proposed that for an individual eligible for Medicaid, the State in which an individual is a legal resident must pay for the PASARR and make the required determinations. For an individual not eligible for Medicaid, the State in which the facility is located would be responsible for paying for the PASARR determination unless the States have mutually agreed to another arrangement. Also, a State would have the option to include arrangements for PASARR in its provider agreements with out-of-State facilities or reciprocal interstate agreements.

Comment: About a dozen State agencies responded to the requirements on out-of-State arrangements stating that this section was confusing. States favored a single way of treating all out-of-State residents: Either the home State pays for everybody or the host State does. Moreover, they preferred the same rule to apply for both PAS and ARR, with the State working out the rest of the details through interstate agreements.

Although commenters were divided on the issue of whether the home State or the host State should have responsibility in all cases, a slim majority of commenters favored having the home State pay. A few commenters also asked that we cross-reference this section to our regulations at section 435.403 governing State residence for purposes of Medicaid eligibility.

Response: We appreciate the commenters' desire for a single rule for both Medicaid-eligible and other individuals and for both PAS and ARR purposes. We have, therefore, attempted to simplify this requirement. We have also accepted commenters' suggestion that we cross-reference the regulations defining State residence at § 435.403. We are amending the basic rule to require that the State in which the individual is a State resident (or would be a State resident at the time he or she becomes eligible for Medicaid), as defined in § 435.403, must pay for the PASARR and make the required determinations, in accordance with § 431.52(b)(1). We note, however, that while simplified, this "home State pays" rule may result in different outcomes for Medicaid and non-Medicaid individuals.

The rules at § 435.403 define State residence for the purposes of Medicaid eligibility. In most cases, State residence is determined by where the Medicaid recipient (or his or her guardian) physically resides. In other cases, an individual may be eligible for Medicaid in a State other than the one in which the individual is physically present and receiving care. For example, the home State may arrange for an individual to be placed in an out-of-State NF. In such cases, the home State pays for the individual, although the State may enter into inter-State compacts under 41 CFR 435.403(k) under which the host State agrees to accept some or all out-of-State Medicaid recipients as their own.

For non-Medicaid eligible individuals, however, the issue of State residency is not determined until the individual applies for Medicaid. In most cases, an individual who has entered a NF in State different from the one in which he resided prior to institutionalization, would claim residence in the facility's State at the time he or she had spent down to Medicaid levels. Therefore, the State in which the facility is located would become the NF resident's home State.

The cardinal principle that we believe must be preserved is that the State that bears financial responsibility for the individual (or would bear responsibility, if the individual becomes Medicaid eligible in the future) should pay for both the PAS and ARR and should make the required determinations. Our reason for believing this is that the State that bears financial responsibility (which we call the home State) must be able to control its utilization. It must know about and have in its tracking system those State residents for which it is obligated to provide services (or would be obligated if they become Medicaid eligible).

We are leaving to the home State's discretion how it chooses to work out the arrangements for seeing that its State residents are screened. For Medicaid recipients receiving care in an out-of-State NF, the State may prefer to perform the screenings and make the determinations itself through its own PASARR program or may choose to contract with the facility's State program to perform all or part of the work. For instance, the home State might choose to contract out the evaluation phase while retaining the determination phase. Alternatively, it could contract out the entire process to the host State in which the home State resident seeks admission or physically resides in a NF.

A PAS could often be performed more easily by the home State while the Medicaid recipient is still physically present in the home State before entering the out-of-State NF. An ARR, on the other hand, may more easily be performed by the host State and be simply paid for by the home State. States may therefore wish to make one set of arrangements for PAS and another for ARR.

A NF accepting an applicant or having a Medicaid-eligible resident who is the responsibility of another State is responsible for seeing that the applicant's or resident's home State has made the required determinations. Under this rule, State survey agencies in the facility's State should know that it is the responsibility of a Medicaid recipient's home State to provide for the PAS or ARR. All other NF residents with MI or MR should be screened by the facility's State PASARR program. The survey process, to the extent that it is able, using samples, can, thus, serve as the means of detecting residents who might otherwise be missed.

We acknowledge that States will, in practice, find it advantageous to work out interstate agreements and include PASARR arrangements with out-of-State providers to deal with their Medicaid-eligible recipients who receive care out-of-State. However, we are not requiring such agreements and are providing States with maximum flexibility to arrange the out-of-State procedures

which best suit their needs so long as they maintain the principle that the home State retains control over and responsibility for its State residents. We may, however, provide further guidance on out-of-State arrangement issues when we revise our program instruction.

Comment: One commenter noted that the proposed rule required that the State "must pay" for PASARRs performed on Medicaid recipients but stated simply that "the State . . . pays" for non-Medicaid eligible individuals. The commenter believed that, in addition to designating which State should pay in certain situations, we should require States to pay the screening costs of its residents with private pay status.

Response: We are requiring that the NF resident's or applicant's home State must pay for and make the determinations. The cost of the PASARR screening itself is a State responsibility as an administrative expense of operating the Medicaid program. Therefore, the home State must pay the cost for PASARR for all individuals, including non-Medicaid eligible individuals.

Section 483.112(c)—Timeliness

We proposed in § 483.112(c) that a preadmission screening determination must be made in writing within 7 working days of referral of the individual with MI or MR by whatever agent performs the Level I identification to the State mental health or mental retardation authority.

More than 150 commenters addressed the timeliness standard proposed in § 483.112(c) for PAS. These commenters represented several different perspectives: hospitals and hospital associations; State mental health and mental retardation authorities; State Medicaid agencies; screener/contractors; consumer advocacy organizations; physicians' and mental health professional associations; and nursing facilities and their organizations. The positions taken by each group reflect their perspectives and interests in the process.

Hospitals commented generally that very short time frames should be mandatory and that special payment provisions should be made to compensate them for costs they may incur in cases where a patient remains in the hospital while a screening determination is made. Hospitals commenting provided a variety of anecdotes relating to delays in screenings, both generally and in specific cases, to support their contentions. Even the 7-day standard, many hospital commenters claimed, ignores the question of who pays for patients awaiting placement and leaves them with days of uncompensated care. They also alleged that early referral by the hospital discharge planner to the State does not solve the problem. They explained that under Medicare few diagnoses allow for a 7-day stay and outliers (see 42 CFR part 412, subpart F) are not really a help in most cases. Under Medicaid, they asserted, assistance is only available if the State pays for administratively necessary days. Private patients must either go home or pay to continue care in the hospital while awaiting placement. Hospitals generally favored specific additional payments from the Medicare or Medicaid programs to cover days of care necessitated by the operation of the PASARR program.

At the opposite end of the spectrum, State Medicaid agencies and State mental health and mental retardation authorities, along with some consumer advocacy groups, asserted that the timeliness standard we proposed was unrealistic. Moreover, combined with the denial of FFP for the entire stay if a PAS were not performed timely, they felt the standard was both arbitrary and punitive. In the view of many of the State agencies, we were asking for too much detailed information about clients, expecting determinations to be made by too highly credentialed (and unavailable) personnel, wanting determinations made too fast, and then applying strong penalties when the States failed.

Among those commenters who thought the 7-day standard was unfair or unattainable there was, however, very little agreement on what the timeliness standard should be. A few commenters thought that States should be allowed to set their own standards based on their own unique circumstances. Of those who suggested alternative timeframes, some were willing to concede that the 7-day standard should be kept for admissions from hospitals or for emergency placement cases, but believed that more time should be allowed for admissions from other settings.

The distribution of suggested standards ranged from the 7 we had proposed to 30 days or longer for exceptional cases, with the largest number of commenters favoring the greatest time. Some commenters wanted a standard based on flat aggregate averages, averages with outer day limits, differential limits based on the location of the client, or limits with exceptions.

We also received a number of requests for a different and longer timeframe for PASs on individuals with MR. One screening contractor reported that to distinguish developmental disabilities from other causes of disability often requires an investigation that could not be done quickly. For example, this often requires sending for records from previous treatment programs or schools. Another disabilities advocate noted that only a small percentage of NF applicants who require PAS as a result of MR or related condition are residing in an acute care hospital when they apply. For those few seeking NF admission from hospitals or experiencing a crisis (current residence in an out-of-home setting that cannot meet his or her needs or the sudden loss of caregiver), the 7-day standard should apply. Otherwise this commenter believed the regulation should allow 30 days. Still another contractor performing PASs/MR stated that obtaining adequate histories on individuals with MR, particularly those of advanced age with no living relatives to substantiate an early history of MR/DD, is one of their biggest problems. In their view, substantiating a diagnosis of MR of any age is a serious matter and requires more consideration than just testing. They urged that the regulation allow adequate time to obtain as much previous information and history as is needed to do a thorough job and reach a responsible decision.

For both MI and MR populations however, State agencies presented a variety of more general reasons for needing a longer timeframe than the proposed 7 working days:

- Many States use contracts to complete necessary assessments and can't always get the evaluations done when they would like.
- Especially on individuals coming from the community, data are not always in place and records must be requested or testing by appropriate professionals arranged.
- A State has no way of compelling physicians to cooperate in filling out forms, especially on applicants from the community.
- It takes time to schedule the evaluation once referral is received. Contractor schedules have to be accommodated. Also, transportation has to be arranged which can be troublesome, especially in rural areas.

By contrast, a small number of States indicated support for a minimum standard of 7-days. Often these States alluded to having very high occupancy rates and a need for the fastest PAS system possible. Some consumer advocate groups were also concerned that without timeframes for emergency, priority and routine situations,

individuals could lose a bed in high occupancy States while awaiting placement. We also heard from a number of NFs in States in which PASARR appears to be working well. These commenters saw no problem with the 7-day timeframe. We also heard from one private PASARR screening contractor who has successfully developed regional networks of professionals to do the screenings and has fully computerized its operation so that it is able to provide a 72-hour turn-around.

Response: The commenters raise a variety of valid points with respect to the different types of situations in which the screening may need to occur. In selecting a response to the comments, we recognized that the overall purpose of the timeliness standard was not necessarily to assure that each screening be accomplished very quickly but, rather, to assure that States operate an efficient process under which individuals are screened as quickly as possible.

The variety of views provided by the commenters convinced us that it would not be possible to establish alternative timeliness standards for all of the types of situations raised by them. We therefore rejected this approach in favor of a single timeliness standard which would nonetheless provide flexibility in individual cases. We are replacing the requirement that each determination be made in writing within 7 working days of referral to the State mental health or mental retardation agency with a standard that requires that the State's determinations reflect a maximum annual average timeliness of between 7 and 9 working days from the date of referral to the State mental health or mental retardation authority to the date of a written determination.

A standard requiring an annual average makes it possible for States to allow longer time periods for more difficult cases and permits it to take advantage of simpler cases to keep its average processing time in line with the requirement. We received enough comments in support of the proposed 7 day standard to persuade us that it is achievable. Nothing in the regulation would penalize an efficient State if screenings were performed more quickly than the required average. We would also encourage States to set their own timeliness standards within the limits we have identified. In particular, they may wish to establish categories of cases in which they require expedited review.

We have also rejected the idea suggested by some commenters of an outer time limit for individual PASs which would constrain the system of aggregate averages. We believe that setting an outer limit would induce some States to view reaching that limit in some cases as sanctioned behavior. We prefer to emphasize solely the goal of reaching an acceptable mean. States may wish, however, to set their own outer limits.

Because we recognize that in some States the SMHA and the SMRA are different agencies which may want to each keep their own records on timeliness, we have added a provision at § 483.128(c)(3) which permits separate averages for individuals with MI and MR. Both averages, however, would have to meet the same standard of an annual average of 7 to 9 days. Even in cases where two different agencies are involved, however, the State may wish to combine their averages if MR evaluations, on an average, take longer than MI evaluations. We leave it to the State to determine how it chooses to calculate its averages for the purpose of complying with the standard.

We are also adding a provision to the regulation indicating that an exception to the timeliness standard may be granted by the Secretary in cases where the State exceeds the average and provides justifications satisfactory to the Secretary that the longer period of time was necessary. We are including this provision to assure that we do not penalize a State when the average processing standard is exceeded for good cause.

We recognize that a number of the commenters were concerned about the timeframes involved in screening out of concern about payment for care, primarily continued inpatient hospital care, that may be necessitated during the time screening takes place. As we have noted, delays can be minimized in cases where the need for screening is identified at or near the time of admission and requested immediately. Moreover, there are existing provisions in both the law and regulations that permit States to make payment to hospitals in situations where individuals remain in the hospitals for lack of an NF bed and a number of States make such payments. FFP is available under Medicaid when States make such payments in accordance with the law and regulations. In the case of a Medicare patient who is a hospital inpatient and awaiting discharge to an SNF (which also participates in Medicaid as an NF), there is a similar provision of law which provides coverage for the days of care in question. (Whether actual per diem payments are made for such days depends upon whether the patient is in a hospital paid on a cost basis or, if in a PPS hospital, whether the patient is in outlier status.)

We note that a number of other changes made in this final regulation and discussed elsewhere in this preamble will have the effect of reducing the number of individuals being screened and decreasing to some extent the time it takes to perform some screening examinations.

It is not within the scope of this regulation to deal with the payment issues that arise from this provision and we have not done so here.

Comment: Various commenters touched on a number of other aspects of the timeliness standard than simply the timeframe. Several commenters supported the use of telephone calls to relay requests and announce results which we had presented in the preamble to the proposed rule. One commenter recommended that phone calls be required to be followed by written confirmation.

Response: We recognize the potential for errors to be made when determinations are relayed by telephone in advance of their reduction to writing; however; we are permitting this method of conveying determinations because we believe that the need for efficiency demands the use of quick methods. Our revisions to the timeliness standard, discussed above, no longer require that the average processing time be calculated from the date of referral to the date of a written determination but, rather, simply measure the elapsed time between referral and determination.

Comment: A few commenters appeared confused about whether the 5-day limit we proposed in § 483.128(j) for completion of the evaluation was included within the 7-day timeframe or in addition to it. Other commenters requested that the regulation not specify a separate timeframe for the evaluation, but leave it to States to work out how much time for evaluation and how much for determination. Still another commenter asked for further clarification as to when the clock starts in terms of timeframes for which States will be held accountable.

Response: Because we have revised the overall timeframe requirement to reflect annual averages, we are deleting the 5-day limit for completion of the evaluation in § 483.128(j). As we noted in § 483.112(c), as revised, PAS timeliness will be judged form the date of referral to the State MI or MR authority to the date of the determination.

Comment: Several States indicated that they would like the regulation to

permit a categorical protective services determination for emergency cases similar to provisional admissions for delirium or short respite care (See § 483.130(d)(4) through (6)).

Response: We recognize that an emergency may necessitate an immediate admission, to be followed as soon as possible with a PAS and appropriate assessment and care planning and we are revising § 483.130(d)(4) relating to categorical determinations to permit such determinations to be made for a period of time not to exceed 7 days.

Comment: One commenter asked us to clarify in the preamble that this timeliness standard applies only to PAS, not to ARR. Because it was placed in the § 483.112, the PAS section, and not in § 483.114, the commenter thought that this timeliness standard applied only to PAS. However, he cited language in the preamble on p. 10962 (discussion of denial of FFP) which he believed suggests there is a timeliness standard for ARRs.

Response: Annual resident reviews are also subject to an FFP penalty if they are not performed timely. In a later comment and response discussion we note that we will permit ARRs to be performed in the quarter in which they are due in order to permit States to take advantage of annual facility reassessments required under § 483.20(b)(4)(v). Accordingly, we would view an ARR as late, and therefore subject to the FFP penalty, if it were not performed by the first day in the subsequent calendar quarter. Since we have adopted the policy that ARRs may be conducted any time in the calendar quarter in which they are required; we do not see the need for further requirements relating to timeliness.

Comment: Few commenters responded to our request in the preamble to the proposed rule for information on whether a timeliness standard is needed for Level I. Most of them stated that they did not believe a Level I standard was needed. One commenter suggested a 3-working day limit while another suggested that a time frame for Level I is unnecessary if done by hospital discharge planners. However, if a State agency is doing Level I, the commenter felt a time frame is needed to assure prompt action. This commenter also felt that States should be required to reimburse hospitals for services furnished if patients must await Level I screening by a party other than the hospital. Another commenter noted that the Level I process in place in his State has not created any delays.

Response: We do not believe that it is appropriate to establish a time frame for Level I screenings. Hospitals and nursing facilities have a clear incentive to perform such screens as soon as possible since they have an interest in prompt discharge and prompt admission approval, respectively. We received no information from the commenters that indicates the lack of a timeframe for this review has created a current problem. Therefore, we have not instituted a timeliness standard for Level I review.

Section 483.114—Annual Review of NF Residents

The proposal was that for each resident of a NF with MI or MR who entered the NF before January 1, 1989, the State must have made an initial review of that person's need for NF services and specialized services by April 1, 1990. Also, we proposed that the State must have in operation as of April 1, 1990, an ongoing ARR program for making such determinations for all residents with MI or MR regardless of whether they were first screened under PAS or the initial resident review.

Comment: Several commenters, noting that the proposed rule drew no distinction between screens for PAS and ARR purposes, objected to having to replicate the entire screening process every year. They believed that most of the people affected are elderly and not much change can be expected. They asked about the possibility of updating previous records or of performing abbreviated reviews for those residents who do not need specialized services. One commenter felt that the NF's mandatory annual resident assessment should suffice.

Response: Section 1919(e)(7)(B) of the Act requires that the State mental health or mental retardation authority review every resident with MI or MR on at least an annual basis. There is no way of avoiding this statutory requirement that the same questions relating to appropriateness of placement and service needs must be asked year after year if the individual continues to have MI or MR. However, we have never suggested that a completely new work up must be done on an individual every year. Indeed, in § 483.128(g) we indicate that evaluators may use relevant evaluative data obtained prior to the initiation of PAS or ARR if the data are considered valid and accurate and they reflect the current functional status of the individual. Some further testing may be called for to verify the currency and accuracy of existing data, but zero-based screening is not required. Since a full medical history is an important part of any review, careful attention should be given to updating this history. This process should indicate whatever else, if anything, needs to be done.

As noted above in our discussion of the required coordination between the NF's resident assessment process and the State's PASARR process, the two processes should support each other and allow for interchange of data. If a significant change in the resident's condition has occurred during the year, it should have triggered a speedier ARR. As discussed in the response to the following comment, by allowing ARRs to be performed on a facility-by-facility basis within the quarter in which the anniversary date of the individual's ARR falls, we have increased the likelihood that a recent NF resident assessment has been performed and will be available for the State ARR evaluators to use.

Comment: Several State agencies proposed that we allow ARRs to be done on a facility-by-facility basis rather than on the basis of the anniversary date of the PAS or initial review for each individual resident. Citing the inspection of care (IOC) review process and the utilization review regulations as precedents, they argued that scheduling ARRs on a routine basis would reduce costs and allow reviews to be done in an orderly manner. A few commenters asked that we allow ARRs to be done any time within the quarter in which the individual resident's anniversary date occurs while another few commenters requested that we allow ARRs to be done within 30 days of the anniversary date of last review. In asking for clarification of the meaning of "annual," these commenters sought to avoid disputes between NFs and the State mental health and mental retardation authorities as to deadlines.

Response: We agree that one feasible way for evaluators to accomplish the task of performing ARRs on all residents with MI or MR is for the State to establish a schedule of regular visits to each facility to review those residents who will come due for an ARR within a specified timeframe. We also want our requirements to allow for the maximum degree of coordination between PASARR and the NF's resident assessment. In the preamble to the proposed rule we indicated that the NF resident assessment could serve as the Level I screen although the resident would probably already be included in the State's tracking system if he or she received a previous PAS or ARR which confirmed the diagnosis of MI or MR. If a previously undetected condition of MI or MR were to be uncovered through the facility's resident assessment, this

assessment should serve as a trigger for a Level II screen. If a Level II evaluation confirms the diagnosis of MI or MR, the resident would then be brought into the loop of the State's tracking system on all residents with MI or MR.

Because the PAS is performed prior to admission and, the first resident assessment is performed within 14 days of admission, there will always be a slight lag between the anniversary date of the PAS and the next annual resident assessment done by the NF. Adhering firmly to the anniversary date of PAS would mean that the most recent resident assessment available would always be, unless the resident had experienced a significant change in condition, nearly a year old. The Act requires coordination of PASARR processes with the mandatory resident assessment to the maximum extent feasible, and we believe it would be contrary to the intent of Congress to enforce a rigid ARR schedule that results in duplication of effort. We, therefore, find the proposal that ARRs be performed within the quarter in which the anniversary date falls to be an appropriate means of ensuring maximum coordination between the two processes. Subsequent AARs would always fall, according to the facility visitation schedule, 4 quarters later. If a resident experienced a change in condition during the year, his annual review date could be readjusted using the date of this resident review.

We recognize that allowing a quarter's tolerance in which to schedule screenings might be viewed by some as not meeting the literal requirements of the law (i.e., that the ARR must be performed "not less often than annually"), we believe that other parts of section 1919(e)(7)(B) of the Act provide a basis for allowing this amount of flexibility. Sections 1919(b)(3)(F) and 1919(e)(7)(A) of the Act require PAS to have commenced on January 1, 1989. Section 1919(e)(7)(B)(i) requires the on-going ARR to have been in effect as of April 1, 1990. Since the on-going system of ARR was not required to be fully operational until April 1, 1990, for the first quarter of 1990 the two processes were still not totally synchronized in terms of the Act. Furthermore, section 1919(e)(7)(B)(iii) provides that the ARR on an individual admitted after a PAS need not be done until the resident has resided in the NF for one year (i.e., not until one year after admission, not one year after the initial PAS which normally would have occurred some days prior to admission). Added to these facts is the requirement that the NF resident assessment process and the PASARR process should be coordinated to the maximum extent possible. This cannot be accomplished unless the ARR occurs after the annual NF resident assessment. We believe the quarter's lag may have been intended by Congress to avoid needless duplication of effort.

We are therefore interpreting "annual" to mean occurring within every fourth quarter after the previous PAS or ARR and are revising § 483.114(c) to reflect this change.

Comment: Approximately 25 commenters representing both the States and NFs expressed various concerns relating to the April 1, 1990 deadline for the completion of initial resident reviews on all residents with MI or MR who entered NFs prior to the commencement of PAS on January 1, 1989. Most of these commenters asked that we include in the regulation a hold harmless clause with respect to the penalties proposed in § 483.122, for recognition of States' good faith efforts to meet the deadline, or for a postponement of the deadline from April 1, 1990 to October 1, 1990.

A number of States felt that they should not be penalized for failing to meet the deadline, noting the lack of timely Federal guidelines. Other State commenters complained that until the resident assessment instrument based on the minimum data set is in place, it is impossible for NFs to do a good job of identifying individuals with MI and MR. Therefore, the States cannot be sure of having identified all individuals with MI or MR. On the other hand, several NFs in one State complained that they were impeded in performing their responsibilities because their State did not release its PASARR policy until February 1, 1990 due to lack of direction for HCFA. Some State agency commenters also expressed fears that when a final regulation is published, they would have to rescreen everybody done under their old PASARR processes which were based on previous drafts of the Federal criteria.

Nursing facilities, anticipating loss of FFP (see comments on § 483.122), believed that they and their residents should not be penalized in the way proposed in the NPRM for the State's failure to complete all initial reviews by the deadline. For their part, States were concerned about the possibility of future disallowances through post-audits and disputes about dates and whether screening was complete enough to meet requirements. States also professed concern that the quality of services would suffer for those residents for whom disallowances are made.

Response: We have consistently indicated that our criteria are advisory until we issue final regulations and that, when published, the standards contained in the final regulations will be applied only for prospective periods. The States are bound in the meantime by the statutory requirements alone. Completion of the initial resident reviews by April 1, 1990 is a statutory requirement. While we do not plan to focus our enforcement efforts on periods of time before the final regulations become effective, States are subject by law to FFP penalties if reviews have not been performed. Thus, we cannot by regulation hold harmless States which have failed to complete their reviews by the deadline. Some States may well be subject to disallowances in the future, as a result of audits done by HCFA or the Inspector General's Office.

Section 483.118 (b) and (c)—Persons Determined Not To Need NF Services

In § 483.118(b), we proposed that, for a resident who requires neither NF services nor specialized services, the State must arrange for the resident's discharge from the facility and prepare the resident for discharge. In § 483.118(c), we specified requirements for residents who do not require NF services but require specialized services. For an individual who continuously resided in the NF for at least 30 months before the date of the determination, we proposed that the State must arrange to provide specialized services, offer the resident the choice of whether to remain in the facility or receive services in an alternative setting, inform the resident of institutional and non-institutional settings, and if the resident chooses to leave the facility, clarify the effect on Medicaid eligibility. For an individual who has not resided continuously in the NF for at least 30 months, we proposed that the State must arrange for the discharge of the resident, prepare the resident and provide specialized services.

Comment: One State questioned the statement in § 483.118(c)(1) that the State must, in consultation with the resident's family or legal representative and caregivers, undertake certain steps aimed at allowing the long term resident to choose between staying in the NF or moving to an alternative appropriate setting. They asked us to clarify the meaning of "consultation with the family," to inform them of what notice requirements are involved, and to specify that the placement decision can only be made by the resident or legal representative.

Response: Concerning the resident's choice of where he or she would like to live, the Act presents a decision-making process which involves a number of parties: The resident and any legal representative, State representatives, the resident's family, and the resident's caregivers who would presumably be the NF staff and the resident's physician. We do not believe that any special notice requirements are required. Rather we would expect this decision-making process to take place within the context of the regular care planning conference in the NF to which any legal representative and interested family members would be invited and encouraged to attend. The invitation to the legal representative and family members should, of course, explain the nature and importance of the discussions to be held and the fact that the Act requires that the family or legal representative be consulted. Efforts should be made to hold the conference(s) at a time when all parties involved can attend.

In regulations published in the **Federal Register** on February 2, 1989 (54 FR 5316) we dealt extensively with the question of who may exercise the rights of residents, including residents who are incompetent or incapacitated. We clarified in that rule that only the resident or a legally appointed surrogate decisionmaker can exercise a resident's rights. Others may, however, assist a resident to exercise his or her rights. In the designation of legal surrogates by either judicial or non-judicial means, we deferred entirely to State laws. We would, therefore, allow the choice decision to be made, in the case of an incompetent or incapacitated resident, by any duly designated legal representative, whether this representative be a court-appointed guardian or conservator or someone operating under some non-adjudicative instrument authorized by the State such as a durable power of attorney.

Comment: A few States asked us to address the issue of permanency of resident's choice. Section § 483.118(c)(2)(iv) requires the State to clarify for the resident the effect of choosing to leave the NF on his or her eligibility for Medicaid services under the State plan, including its effect on readmission to the facility. These commenters believed that residents choosing to stay or go should be allowed to change their minds.

Response: We do not agree. The language used in this section of the regulation is taken directly from section 1919(e)(7)(C)(i)(III) of the Act. The House Budget Committee language gives little further clarification concerning this requirement. It simply states that the State must "make clear to the individual and his legal representative whether he will lose Medicaid eligibility if he leaves the facility" (H.R. Rep. No. 391, 100th Cong., 1st Sess. 461 (1987)).

We believe that this language was included specifically because the choice a resident or his or her representative makes could be significant. We do not believe that it should be revocable. For one thing, we believe that the provision permitting longstanding residents to remain in a facility was intended to accommodate longstanding arrangements that a resident or family might not want to change. We believe it was intended to be a single, one time choice.

We would note, however, that a State might permit a longstanding resident of a nursing facility to take a therapeutic leave of absence for a limited period of time in order to determine if a different arrangement was more desirable. This regulation would not prohibit this type of action if the State elected to offer it. Once the choice is made, however, any future choices are subject to Medicaid rules in effect at the time of the choice.

Comment: Concerning the requirements at § 483.118 (b) and (c)(2), several States objected to being required to arrange for the discharge of NF residents on the grounds that discharge planning and resident preparation and orientation for discharge are NF functions and requirements. Some commenters saw no way that the State could have a central discharge process while others asked for clarification of how the State is to work with the NF in discharge planning.

Response: Section 1919(e)(7)(C) of the Act places certain discharge responsibilities on the State as a condition of approval of its State plan. However, since 46 States have alternative disposition plans (ADPs) covering NF residents who are in need of relocation to alternative appropriate settings, discussion of the State's responsibilities concerning discharge planning must be framed in the ADP context, at least for two of the three groups for whom the statute gives the State discharge responsibilities. ADPs may cover the long-term residents identified in § 483.118(c)(1) who elect to move and the short-term residents identified in § 483.118(c)(2) all of whom must move. Section 1919(e)(7)(E) of the Act, which permits ADPs, does not permit inclusion of the third group of potential discharges, those residents who are found to need neither NF nor specialized services who are identified in § 483.118(b).

The NF can only discharge residents to already existing placements. The State, on the other hand, has statutory responsibility for making available the appropriate alternative settings to which residents can move. To deal with these residents, the State must have a master plan which, based on assessed needs, provides for the expansion or creation of the placement options, in the right numbers and types, as have been determined to be needed. This is the essence of the ADP process. Discharge planning cannot begin until residents have some place to go; seeing that they have some place to go is the State's role.

The States are correct, however, in asserting that the actual act of discharging the resident and the preparation and orientation activities which normally occur shortly before the discharge are the NF's responsibility, as identified in § 483.12(a) of the regulation. The NF must abide by the requirements of this section.

Comment: Some States were concerned that 30 days for discharge is not enough time to work out relocation plans for those residents needing to be moved.

Response: In response to concerns raised by some commenters that 30 days is an inadequate period in which to make alternative living arrangements, we would assert that, depending on the timetable which the State has set for itself in its ADP, it has time in which to make the necessary arrangements before discharge can take place for most residents who are slated for discharge. Only in the case of residents identified in § 483.118(b) (i.e., those who require neither NF nor specialized services and are thus not protected by an ADP) would discharge have to be accomplished speedily under the terms identified in section 1919(c)(2) of the Act and § 483.12(a) of the February 2, 1989 rule. We note, however, that the 30 days begin from the date of the NF's issuance of a discharge notice to the resident, not from the date of the State authority's determination letter.

Comment: A number of NFs were concerned that some of their residents, whom they believe need the more structured setting of the NF to function, would be harmed by discharge into poorly supervised community settings or to non-existent alternatives. They wanted to have an opportunity to make recommendations concerning placement options for these residents.

Response: We recognize the interests of NFs who commented that they know their residents well enough to believe

that continued NF placement is the most appropriate course. As noted in a previous response, the State is required to include the resident's caregivers among those with whom it consults in the process of allowing the long-term resident to select the placement option he or she wants and in arranging for the safe and orderly discharge of the short-term resident who needs only specialized services. In fact, if a long-term resident elects to stay in the NF, such discussions are critical, given the need for the State and NF to coordinate with respect to the issue of specialized services.

As to the issue of alternatives, we would note that the law absolutely requires that the States make appropriate alternatives available and we would not anticipate a State ordering a discharge where a placement is not available. We cannot, however, provide formally for the NFs to participate in the State's decision-making process concerning the types of alternative appropriate placements it chooses to develop. Informally, however, NFs may be able to influence the decision-making process for the residents about whom they have special concerns by supplying information about the residents' needs.

Comment: Both NFs and States expressed concern over how the costs of discharge activities associated with ARR determinations would be covered. States asked if the 75 percent Federal financial participation (FFP) for PASARR activities would be available for the State's discharge planning activities. NFs, who generally expressed disfavor over our previous program instruction which prevented States from paying NFs for PASARR costs, except through the regular NF per diem rate, enumerated their cost factors resulting from having to handle ARR discharges. They claimed that if the State makes a decision to remove a resident from a facility because of ARR, the time and cost involved for the NF will be considerable. For none of these costs does the NF receive any extra reimbursement even though it is acting as the State's agent in carrying out the discharge.

Response: Both of these questions concerning the availability of the 75 percent FFP for discharge planning activities of the State and the status of NFs are discussed under §§ 483.122 and 483.124 where other FFP issues are dealt with. We would note, however, that there is nothing to prevent a State from paying NFs for the services they perform in accordance with the State plan. In fact, section 1902(a)(13) of the Act and § 447.250 of our regulations require such payments to be made. It is up to the State to determine its nursing home payment rates, subject to approval by the Secretary, and so we have not specified how such costs should be taken into account in rate-setting.

Comment: One commenter asked whether the right to stay in a NF, which is available to residents who have resided in a NF for 30 months or longer, is a portable benefit that moves with the resident if he or she wishes to transfer to another NF. Because we had proposed that interfacility transfers would require PAS, the commenter further asked whether the right applies only to ARR situations or whether it would also apply to PAS situations when the resident wishes to move to another NF.

Response: It is clear that Congress intended not to disrupt long-standing care arrangements by granting an exception for long-term residents who do not need NF services, but do need specialized services. It is not quite so clear whether this exception is specific to the NF in which the resident was located at the time of the determination or whether the exception can be more broadly interpreted to mean that the resident has the right to elect to remain at the NF level of care and receive the specialized services he or she needs in that setting rather than being compelled to relocate to a more appropriate setting.

We believe that one can readily argue that Congress exempted this long-term population in the belief that these residents should not be forced to suffer for placement mistakes made by others in the distant past. It can also be argued that Congress believed such individuals, having been institutionalized in the NF for a long time, would have lost all ties with the community and would not be able to cope in a community placement if that were the State's preferred treatment setting. In order not to subject them to the trauma of involuntary transfer or forced adaptation to an unfamiliar treatment setting, Congress allowed these residents the option of choosing to be inappropriately placed.

Under this line of reasoning, that freedom from coercion was Congress' objective in dealing with these long-term inappropriately placed residents, the decision to be inappropriately placed is permanent and should be portable. To require the resident to remain in the particular NF in which he or she was located at the time of the determination or to require him or her to move involuntarily to a setting which is not of his or her choice—perhaps years later—because of the closure of the original NF, would be a strange form of bondage indeed. Freedom from coercion, in this case, from involuntary transfer cannot be turned into another form of coercion, the denial of a right to voluntarily transfer.

We believe, therefore, that Congress intended the choice for long-term residents to be a general, portable benefit rather than one specific to a particular NF. While it is likely that most residents will want to remain in the same facility for reasons of familiarity or convenience, it is also likely that some residents may need or want to transfer to other nursing facilities. For example, beds may become available in a facility nearer to the homes of family members, or one facility may close or cease to participate in the Medicaid program, thus necessitating a transfer. As previously discussed, we are revising § 483.106(b) to exempt these individuals in most cases from PAS requirements when they transfer from one facility to another.

Comment: Other commenters, chiefly advocates for individuals with MI and MR, responded to § 483.118(c)(1) by asserting that there would be no real reform if there are no new more appropriate placement options created. These commenters claimed that ADPs began to address the need to create more community placements, but they were concerned that the regulation did not really provide any treatment of ADPs, giving just passing references to them. This group of commenters was distressed that at various points we discussed discharge to alternative settings, without specifying that these alternative settings must be appropriate (e.g., at §§ 483.118(c)(1)(iii) and 483.130(o)(3)). These commenters were particularly concerned about the possible discharge of short term residents to homelessness or inadequate and inappropriate settings.

Other disabilities advocates felt that the proposed regulations at § 483.118(c) did not clearly reflect the intent of section 1919(e)(7)(C)(i) of the Act that a long-term resident who requires only specialized services can receive those services in a non-institutional setting. They believed we had failed to take into proper account the phrase, "regardless of the resident's choice" of institutional or noninstitutional settings, which would require the State to provide specialized services in non-institutional settings. They urged us to require by regulation that the State must provide specialized services in non-institutional settings. Without this requirement, these commenters believed, the State mental health authorities could simply move these residents with MI back to the

State mental institutions from which they had been deinstitutionalized a decade ago.

Response: We agree with the commenters that the provisions of the law will not have been implemented if the alternative placements required under it are not made available by the States. We also agree that the placement opportunities created by the States under this law must be appropriate. We would note, however, that the States themselves have considerable latitude in devising such placements and we do not believe it is proper for us to enumerate or describe the various alternatives a State may choose. On the other hand, the law does require that the States provide appropriate treatment both in and outside NFs in order for their State Medicaid plans to be in compliance with the law, and a failure to do so would subject a State to a compliance action under section 1904 of the Act.

We also agree with the commenters who wanted us to add the statutory words "regardless of the resident's choice" to the language in § 483.118(c)(1)(i). While we believe that the language carries the meaning desired by the commenters in its proposed form, we have clarified it further by adding the phrase desired. The law clearly requires that the State provide specialized services to the individuals who require it both inside and outside of institutional settings. (See also the discussion of § 483.132(a).)

Comment: One commenter was concerned about the impact on the board and care industry of our requirements to discharge residents who do not need NF care. They asserted that States should not evict elderly individuals with mental illness from the medical model of care (which they believe the NF embodies) until there is funding for a social model within which the board and care industry plays a part. This commenter believed that personal care homes could provide a social model at great savings, but they must have adequate funding if they are to assume this role.

Response: While the PASARR statutory provisions require that States ensure placements for those to be discharged from a NF, the nature and funding of alternative placements is determined by the States. Whether personal care homes would be a suitable alternative placement for some individuals being discharged and what funding sources would be available for that placement are questions that are beyond the scope of these regulations.

Comment: Only a few commenters addressed our discussion in the preamble to the proposed rule of "temporary absence" from a NF as it relates to determining whether a resident has continuously resided in a NF for 30 months for purposes of eligibility for the right to choose to stay in the NF. More commenters were concerned with the use of this term as it relates to determining if a resident who underwent a hospital stay or therapeutic leave could be considered a readmission of a new resident (see discussion of § 483.106). The few commenters who responded to the concept of a temporary absence as counting toward a continuous residence believed that the State's bedhold period, if one exists, is too short a time period. Some commenters suggested 30 days.

Response: Because the OBRA '90 changes concerning readmissions contain no time limits on the period of absence from the NF, we have removed references to "temporary absence" from our definition of readmissions in § 483.106(b). Although readmissions are not subject to PAS, they continue to be subject to ARR. This fact effectively sets an outside limit of one year on what can reasonably be called a temporary absence for hospitalization or therapeutic leave.

We do not believe it is appropriate to set a more precise limit on the length of a temporary absence from a NF for purposes of counting periods of continuous residence than the one year outer limit implied in § 483.106(b) for readmissions. We agree with commenters that a State's bedhold period is likely to be too short. We also reject the 30-day limit suggested by some commenters. We believe, instead, that the issue should be resolved on a case-by-case basis by review of the resident's records. For example, a long-term resident may well be granted a therapeutic leave for a period longer than 30 days with the expectation that he or she will return to the facility. In other cases, residents may sustain periods of hospitalization of longer than 30 days even though there is continuing expectation that the patient will return to the NF (or another NF, if the resident's bed has not been held or if there is no bed available at the time of the hospital discharge). The key, we believe, is a finding by the State that when the individual left the NF, there was an expectation that he or she would return to the facility (or another facility) at the end of the absence.

Comment: Commenters also asked whether time spent in a Medicare SNF bed could count toward the 30 months of continuous residence.

Response: This comment is addressed previously under the discussion of proposed § 483.102, applicability to Medicare beneficiaries.

Comment: One commenter asked whether § 483.118(c)(3) applies only to the initial review of residents who entered the NF prior to the start-up of PAS on January 1, 1989 or whether the 30 months could be counted back from subsequent determinations performed on individuals covered under an alternative disposition plan (ADP).

Response: The initial resident reviews were required by the Act to be completed by April 1, 1990. Short-term residents who were found under the initial resident reviews to need only specialized services were eligible for inclusion under an ADP. At subsequent ARRs, these residents would eventually reach 30 months residency if they remained in the NF awaiting relocation under the terms of the ADP. If we permitted the second interpretation (i.e., that the 30 months could be counted back from subsequent determinations), these residents would be eligible to choose to stay in the NF once they had resided in the NF for 30 months. In other words, eventually no one would have to be moved as all would have attained long-term resident status.

Clearly, this interpretation is unacceptable. We have, therefore, amended § 483.118(c) to state that the 30 months residence is calculated back from the date of the first annual resident review determination which finds that the individual is not in need of NF level of services. This means that if the resident were found through the initial resident review performed prior to April 1, 1990 not to need NF care, his or her status concerning the right to choose to stay would be permanently established based on the number of months of residence the resident had attained at that time. Subsequent reviews would not alter his or her status as a short- or long-term resident. However, another resident could be found through the initial resident review to need both NF care and specialized services but, upon subsequent review, be found to need only specialized services. For instance, such a result could occur if a there was an improvement in a physical impairment. The subsequent determination, in this case, would be the first time an ARR found the individual to need only specialized services. Length of residence would then be calculated back from this subsequent review.

Section 483.120(a)(1)(i)—Definition of Specialized Services for Mental Illness

In § 483.120(a)(1), we proposed to define specialized services (formerly known as active treatment) for mental

illness as the continuous and aggressive implementation of an individualized plan of care that is (i) developed under and supervised by a physician in conjunction with an interdisciplinary team of qualified mental health professionals; (ii) Prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of severe mental illness, which necessitates supervision by trained mental health personnel; and (iii) Is directed toward diagnosing and reducing the resident's behavioral symptoms that necessitated institutionalization, improving his or her level of independent functioning, and achieving a functioning level that permits reduction in the intensity of mental health services to below the specialized services level of services at the earliest possible time.

In § 483.120(b), we proposed that, for mental illness, specialized services do not include intermittent or periodic psychiatric services for residents who do not require 24-hour supervision by qualified mental health personnel.

Comment: Although a few commenters favored a broader definition of specialized services than we proposed, the overwhelming majority of commenters who responded to this section on the definition of specialized services for MI supported the definition which restricted specialized services to the level of intensity of services and degree of supervision that might be found in an inpatient psychiatric setting. Some of those who supported the definition in general principle had, however, some refinements to suggest. Those who objected to the definition were afraid that individuals with serious mental illnesses which are not in an acute phase currently might not get the intensity of services they need, even though they do not need specialized services for the moment. A very few commenters, thinking that what was called active treatment is active and anything less than active treatment is passive or non-existent, wanted the definition of what is now called specialized services to be broadened to include all MI conditions except non-reversible degenerative disorders such as dementia.

Those who supported the narrow definition did so largely because it allows the vast majority of individuals with mental disorders to enter and reside in NFs. Coupled with the strengthening of the requirements that the NF meet the mental health needs of its residents, if these needs are below the specialized services level, these commenters were satisfied that the needs of these residents could be served and stood a better chance than ever before of being served.

For example, one commenter believed that the vast majority of people in NFs with mental disorders have not been in public institutions. They are either individuals with late onset mental health problems such as Alzheimer's disease or the physically ill elderly who develop associated psychiatric, emotional or behavioral conditions. Most common among these are depression, wandering, confusion, disorientation, withdrawal lethargy agitation, stress reaction, dependency, apathy, and irritability. While individuals who exhibit such conditions and behavior clearly need some form of treatment, which should be identified in the care planning process, the treatment will not be so intensive that it should be considered specialized services.

Another commenter noted that removal from the NF should be restricted to those individuals whose needs are so severe that they cannot be adequately provided for within the NF. This commenter was happy that, under this clear definition, there would be no question that most individuals with mental disorders would be able to be admitted to or remain in the NF.

A mental health professional organization expressed support for the separation of the definitions of specialized services for MI and MR. While it liked the definition which restricts specialized services (formerly known as active treatment) for MI to an acute episode of MI (now defined as a serious mental illness), the organization recognized that the old statutory term "active treatment" had created problems in implementing these PASARR provisions. The commenter indicated that his organization, like a number of others, favored a statutory change in the term to "specialized and intensive treatment" with separate applications to persons with MI and MR instead of the term active treatment.

Response: We believe that the comments as a whole support the approach we have taken to specialized services. We agree generally with the commenters that the statutory use of the term "active treatment," as opposed to a term such as "specialized service," made it difficult to discuss the concepts involved without some confusion over issues of institutional versus noninstitutional services and without creating concern with respect to individuals whose needs fall in the middle of the continuum of mental health care rather than at either of the ends. Congress has solved this problem for us, however, by substituting the term "specialized services" for "active treatment." The supporting committee language from the House Energy and Commerce Committee (H.R. Rept. 101-881, 101st Cong., 2nd Sess. 118 (1990)) indicates that we are free to define this concept as we see fit with only one restriction. The report notes:

> As under current law, the term 'specialized services' is to be defined by the Secretary. And like current law, the Secretary cannot define 'specialized services' to include those services within the scope of services that a nursing facility must provide or arrange for its residents under the OBRA '87 requirements relating to the provision of services and activities.

We are choosing to define "specialized services" for MI in the same fashion in which we defined active treatment for MI in the NPRM and have modified the definition to take account of commenters' suggestions as described in this section of the preamble. Essentially we are simply substituting one term for another. We believe this is the intent of Congress as well as of those groups which sought the legislative change from Congress. However, we recognize that there may be other views on this issue and will accept comments on it in response to this final regulation.

As will be explained more thoroughly in § 483.120 (c) and (d), specialized services are a State—and not a NF—responsibility. Nursing facilities are responsible for all mental health services needed by residents with mental disorders who are determined under the new definition of MI not to have MI as well as for those services needed by residents who are determined under the new MI definition to have MI but which are not, because of their intensity and scope, classed as "specialized services" and provided separately by the State.

Originally, the term active treatment referred to a mode of treatment rather than a set of treatments. By exchanging the term "specialized services" for "active treatment," we are substituting terms and not concepts. We wish to preserve the original intent of emphasizing the mode and intensity of treatment rather than the separate and distinct nature of these specialized services.

Since enactment of OBRA '90, we have been asked by some members of the interested public to develop lists of services which are considered to be specialized services which the State would be responsible for providing. (This request has also been made with

respect to specialized services for individuals with MR and is also discussed under that topic).

As a practical matter, we find that we cannot list certain discrete services as separate and distinct from nursing facility services. As we noted in the NPRM, with respect to active treatment for MI, "While the services provided may be the same in both instances, mental health professionals point out, the critical difference between active treatment and "regular" mental health services lies in the level of intensity." (55 FR 10951, March 23, 1990, p. 10961). The requirement of OBRA '90 that the NF is responsible for providing mental health or mental retardation services not provided or required to be provided for by the State, implies that the same types of services will be provided by both the State and the NF. The difference is a matter of intensity and frequency.

The PASARR report, as discussed later, becomes the key, for each individual with MI or MR, to determining who does what and who is responsible if services are not being supplied. As discussed in § 483.128, the PASARR report must identify, if specialized services are needed, what those services are. The report must also identify, whether specialized services are needed or not, what mental health or mental retardation services are needed which are below the level of specialized services and are to be considered NF services. Thus, on the individual level, a list of specialized services for which the State is responsible and a list of other mental health or mental retardation services for which the NF is responsible is developed as a result of the PASARR process. Based on the PASARR report a NF can make admission decisions on prospective residents with MI or MR. State surveyors will also be able to tell which services are the NF's responsibility and which are the State's.

We are leaving it open to States to craft a list of services which they believe are "specialized services," if they so choose. The State plan preprint will provide States with an opportunity to list these specialized services, if the State selects this option. Such a list could serve as a fixed menu from which specific choices could be made for each individual and listed in his or her PASARR report. Since mental health and mental retardation services delivery systems vary form State to State, we believe it is preferable to allow States the flexibility to define specialized services within the context of their own systems rather than prescribing a uniform national list of what these services should be.

Comment: Among those commenters who supported the basic idea of a definition that characterizes specialized services as an intensive level of services, some commenters objected to what they characterized as the institutional character of the definition we provided. One group, which otherwise supported the approach, stated that one of its few major disagreements with the proposed rule was that the definition of specialized services failed to recognize that the law authorizes the provision of these services in a non-institutional setting. Apparently, our proposed definition was viewed as implicitly relating to inpatient services. This commenter recommended some slight modifications in the definition, including removal of the reference to 24-hour care, to make it refer more clearly to community-based services as well. Another mental health professionals' organization concurred with this view stating that it is unrealistic to require 24-hour care in a community setting or a nursing home. Although residents experiencing an acute episode of MI certainly require close supervision, the professionals asserted, these residents may not require 24-hour care. Another commenter asserted that the focus in our description on 24-hour care implied that persons with more moderate symptoms never need specialized services.

On the other hand, another commenter stated that the need for 24-hour care should be included in the definition of specialized services for MI rather than just in the definition of what specialized services is not. Still another commenter suggested that this section, which aims at a functional definition of the need for specialized services, needs to be supported by clinical and functional indicators rather than time indicators.

Response: In general, the commenters on intensity of services (i.e., in need of 24-hour supervision) and institutional bias in the definition make some of the same points made in connection with the term specialized services for persons with MR. As we noted in the response to those comments, we do not believe that the definition reflects an institutional bias, since it requires such services on an inpatient basis only for persons who require it or under the limited exception available to persons who have resided in the NF for more than 30 months. The definition stresses the treatment, not the setting in which it is furnished. As we have noted elsewhere in this preamble, the term 24-hour supervision does not require 24-hour treatment programs but, rather, the availability on a 24-hour basis of staff who are prepared to intervene as appropriate to deal with symptoms that may arise. That is, we mean to identify individuals whose needs are such that constant supervision is needed to assure proper care.

The language in the proposed regulation concerning what specialized services are not was taken in part from our ICF/MR regulations, where it was designed to distinguish between clients whose needs should be met outside the facility and those clients whose needs would be appropriately met inside the facility to assure that inappropriate placements were not made. We believe that the NF context is one in which resident needs are sufficiently heterogeneous that this restriction is not helpful to the definition. Moreover, the comments persuade us that the term "24-hour a day supervision" has given rise to the erroneous impression that actual treatment must proceed throughout each 24-hour period. We are, therefore, deleting that portion of § 483.120(b) that characterizes what specialized services are not. We believe that this change will eliminate the impression of institutional bias and the misunderstanding of the term "continuous" for both the MI and MR populations.

Comment: Among those commenters who wanted a somewhat less stringent definition of specialized services, one organization stated that while they agreed that the statute intends something more intensive than would normally be appropriate in a NF setting, they believe that the proposed definition leaves too much out. This commenter was concerned that a large range of mental disorders and treatments would remain undistinguished and unaddressed by the PASARR process. Chronically mentally ill residents who have acute episodes of illness and require intensive but intermittent psychiatric care would not be distinguished under PASARR from those who suffer milder depressive disorders that are controllable and readily treatable within the NF setting. The commenter recommended that the definition of specialized services be expanded to include those chronically ill individuals who need intensive, though intermittent, psychiatric treatment. Under such a definition, the State would be required to pay for the psychiatric care of these people.

In a similar vein, another consumer advocacy group objected that the narrow proposed definition sets individuals up to be shifted back and forth between settings with every swing in their condition. This same commenter argued that we are using the definition

mainly to perform a gatekeeper function. By limiting the definition to very extreme circumstances, the commenter argued that we restrict the number of people to whom it applies and therefore reduce the number of people who will be found to need specialized services (which the commenter felt would, at least by implication, bar them from NF placement). Yet, the commenter maintained, the statute allows for a combination of needs and seems to direct evaluators to look at those needs in combination and send people to the right setting accordingly In the commenter's opinion, we may prevent people from being served by using such a stringent definition.

This commenter believed that our efforts to require the NF to provide all mental health services short of specialized services might accomplish the desired end, but only if the definition of services which are less than specialized services clearly addresses the needs of people with serious MI who are not in an acute phase of their illness. The commenter urged us to find a way for persons likely to be gravely affected by continuous transfers from one setting to another to receive the care they need without disruption.

Response: We agree with the commenters who indicated that some individuals may function quite well in a NF setting but may occasionally need specialized services for the management of an episode of MI or to adjust medication. We believe that such individuals would likely be found not to need specialized services when screened and we believe that it can be appropriate for such individuals to reside in NFs even though occasional hospital admissions may be necessary for symptom management. In response to comments about individuals whose condition may necessitate frequent inpatient hospital stays for treatment, we note that knowledge of such a need would likely affect the State's view of whether the individual's needs could be met in a NF and result in a determination that NF care is not appropriate

These, like a number of other comments, appeared to be directed towards the conclusion that the possibility of inappropriate screening determinations would give rise to inappropriate placements which would result in inappropriate treatment. While we agree that the effect of errors in the operation of PASARR systems may be inappropriate placements, we do not believe that these regulations can totally prevent the possibility of errors.

We do not believe that this regulation will result in the routine admission of individuals with serious mental illness (MI as it is currently defined as a result of OBRA '90) because such individuals are not likely to be able to receive appropriate treatment in that setting. The regulations clearly require that all individuals who are admitted to NFs receive the services they require, so we do not believe that the regulations themselves envision admission of individuals with needs that will go unmet. As we have said earlier, it is difficult to discuss these issues without reference to specific cases for discussion. When a State determines that an individual requires NF services and specialized services, the State must do so in anticipation that it will provide the treatment. When a NF considers admission of an individual approved by the State it must determine if it agrees his or her needs can be met in the facility and must meet those needs (in conjunction with the State, if the needs include the need for specialized services) if it elects to accept the individual for admission.

Comment: A large group of commenters, particularly doctoral-level psychologists, objected to the requirement that a physician must supervise the plan of care in the provision of specialized services for MI. Feeling that this requirement puts non-physician team members in a subordinate position, these commenters noted that physicians rarely see NF residents. They contended that mental health professionals, in collaboration with physicians, should provide the bulk of specialized services in an NF. These commenters understood that we had borrowed this language concerning the role of the physician from the context of the psychiatric services for individuals under 21 benefit. They asserted that physician supervision of the interdisciplinary team is generally not necessary for NF residents with MI because pharmacological treatment is often not required (and, if anything, is overused). They believed that for NF residents with MI less invasive interventions are often more effective. For these reasons they requested that we change section 483.120(a)(1)(i) to make it consistent with the requirements in the ICF/MR regulations which state that the plan of care is "developed by an interdisciplinary team that represents a physician, other qualified mental health professionals, disciplines or service areas."

Response: We agree that this provision requiring physician supervision of the specialized services plan of care needs revision. As we discuss more fully under credentialing issues, recent legislative changes affecting a number of Federal health care programs have granted doctoral-level psychologists increased autonomy in both inpatient and outpatient settings. Specifically, doctoral-level psychologists, operating within the scope of practice permitted by State law, are now authorized to admit patients to inpatient psychiatric settings under Medicare as if these services were provided by a physician and to supervise their plan of care while there, so long as the patient's physician is informed of the treatment being provided.

The definition of specialized services (formally called active treatment) for MI which we proposed in the NPRM grew out of the existing definitions of active treatment in the regulations governing the inpatient psychiatric services for individuals under 21 benefit and in manual instructions relating to inpatient psychiatric hospital services. These regulations and instructions require physician supervision of the active treatment plan of care for these benefits. Because of the above-cited recent legislative changes and because we agree with other points made concerning treatment needs of NF residents with MI, we believe that for our purposes here the specialized services plan of care should be developed and supervised by an interdisciplinary team rather than by a physician. The team should include a physician and qualified mental health professionals and other professionals as appropriate. We have therefore revised the regulation accordingly.

Comment. Another organization of mental health professionals, while supporting the general character of the specialized services definition for MI, recommended that we change the word "psychotic" in (iii) to "behavioral" or "psychiatric."

Response: We are replacing the term "psychotic" in § 483.120(a)(1)(iii) with the term "behavioral" because we agree that this word better expresses our intention.

Section 483.120(a)(2)—Definition of Specialized Services for Mental Retardation

In § 483.120(a)(2), we proposed to define specialized services (formerly active treatment) for mental retardation as treatment that meets the requirements of § 483.440(a)(1). That section defines active treatment for residents of intermediate care facilities for the mentally retarded (ICFs/MR).

Comment. Several advocates for individuals with developmental disabilities objected strongly to our

cross-referencing of the definition of specialized services for individuals with MR to the definition of active treatment contained in the ICF/MR regulations. Some of their views can be summarized as follows

• PASARR presents an opportunity to take a fresh look at specialized services needs of individuals with MR Instead HCFA has relied on a medical model with its inherent institutional bias and which is narrow, inflexible, and outdated. It does not accommodate the variation and complexity of needs among individuals.

• By tying care to a model which requires 24 hours of supervision a day, HCFA is discouraging clients from achieving a degree of independence or success. Needing 23 instead of 24 hours of supervision a day, could result in loss of eligibility for services. This discourages clients from acquiring independent skills.

• HCFA's reasons for adhering to this definition—that the Act requires active treatment to mean what the Secretary defines it to be in regulations and the ICF/MR setting is the only context in which such a definition of active treatment for MR currently exists—are unconvincing.

Noting that the ultimate solution was to get a statutory change which would delete the reference to active treatment and require instead "specialized services," commenters, in the meantime, requested a separate definition of specialized services, which would leave the NF responsible for providing basic services that any NF resident would be entitled to receive. Supplementary services that are necessary to help the individual achieve appropriate developmental goals would then be provided by the State. This solution would focus on the types of adjunctive services and assistance persons with developmental disabilities may require while living in a NF. By contrast, only a few commenters representing NFs, supported restricting the definition of specialized services for persons with MR to within the parameters of the ICF/MR.

Response: We believe that to a large extent these commenters' concerns arise from a misunderstanding of the definition of active treatment that we have referenced in the proposed regulations We believe that the definition of active treatment contained in § 483.440(a)(1) is not tied to institutional care The key to this definition, as stated in that regulation, is—

> The acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible and the prevention or deceleration of regression of current optimal functional status.

The program of active treatment is described as "continuous" and includes an "aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services" that is directed toward that result. We believe that this definition is as relevant to services outside an institution as it is to services inside an institution. It is undeniable that, in many cases, an ICF/MR may be the only place where such services are available and, when that is true, an ICF/MR is the appropriate placement. It is also true that hundreds of persons with MR/DD diagnoses are served in the home and community under waivers which, as a condition of being granted, require that the client be in need of institutional care under Medicaid definitions.

One source of concern to the commenters, apparently, was the additional language in the referenced definition that indicated—

> Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

This statement is intended to assure that persons with MR/DD diagnoses who require fewer services because of their independence and functional status are not inappropriately retained in an institutional setting. It does not exclude non-institutional settings. The comments on the need for a 24-hour a day program and suggestions that individuals who require 23 or fewer hours are excluded reflect a misunderstanding of the concept generally. It is not that treatment itself must occur on a 24-hour a day basis. Rather, it is that individuals who lack the independence to function without constant supervision have such supervision available to them in the event that it is required. It also means that there is continuous competent interaction among all facility staff who come in contact with the individual so that treatment modalities identified in the plan of care can be properly implemented and reinforced as needed on a 24-hour a day basis If the need for supervision or treatment is not predictable because of the individual's condition, then clearly it needs to be available at all times However, while we believed this language is useful in understanding the meaning of the term we were defining, "specialized services" we now recognize that it gives rise to misunderstanding and we are therefore removing it from our cross-reference. The reference now includes only the positive language describing the treatment program.

A remaining concern of the commenters was the use of what they call a "medical model" for the treatment of persons with MR/DD. We understand their concern to be that such a definition does not enable Medicaid funds to be used for general social and community support of individuals who are generally independent, leaving this area of support to other Federal and State programs. We believe that this focus on individuals with greater needs is consistent with the purpose of the Medicaid program

We note that the most recent Congressional consideration of this concept occurred in connection with H.R. 3299, the version of the 1989 reconciliation act adopted by the House Budget Committee. Section 4231 of that bill would have renamed ICFs/MR as habilitation facilities and codified in law many of the requirements in current regulations Among them would have been the concept of continuous active treatment. Thus, we believe that the current definition represents an accurate interpretation of the Medicaid program's mandate and we have not changed it

The decision as to whether an individual requires specialized services while in a NF is a complex one related to that individual's general independence and functional status and the concomitant presence of a mental or physical condition in connection with the MR/DD diagnosis The concomitant illness might temporarily limit an individual's ability to benefit from specialized services or require modification in a specialized services program. Once the decision is made, however, we believe that the treatment may be furnished both inside and outside of institutions

In response to those commenters who requested a separate definition of specialized services which focuses on supplementary services that are necessary to help the individual achieve appropriate developmental goals, we refer to the discussion under the previous section on specialized services for MI. In that discussion, we point out that, as a practical matter, it is not possible for us to develop a uniform list of certain discrete services that are not also part of NF services which now, as a result of OBRA '90, include mental health and mental retardation services that are less than specialized services.

As we indicated in the previous section, we are allowing States the

option of developing such a list Whether the State develops such a list or not, however, we anticipate that the individual PASARR report will identify which services the individual needs are specialized services for which the State bears responsibility and which are NF services.

For these reasons, we have not revised the specialized services definition for persons with MR, except to substitute terms and to remove paragraph (b)(2) on what specialized services are not, which was a source of confusion.

We recognize, however, that some readers may not agree with the manner in which we have adopted the term "specialized services." We will, therefore, consider public comments on this issue.

Comment: Some disabilities advocates also claimed that designing and implementing a specialized services plan as defined in the ICF/MR regulations does nothing to promote the goal of community living and maximum independence for people with MR. In their view, the present ICF/MR regulations do not approach what are considered best practices in the field of developmental disabilities. They believe that adopting these regulations as a model for specialized services frustrates the goal of the legislation which is to provide quality lives. They requested that the definition be broadened to allow for and, in fact, encourage transfers to settings in the community

Response. Because these concerns are similar to comments discussed under § 483.118(c)(1), we have addressed them at that location.

Comment: Disabilities advocates also argued that the ICF/MR definition of active treatment is a global concept, which assumes that all persons with severe, complex developmental disabilities, regardless of medical complications, can benefit from active treatment services. Everything they need and get, whether the services attend to physical or developmental needs, is part of active treatment. The result, they claimed, is that for individuals who require both NF and specialized services there are no benchmarks for judging when NF care is or is not appropriate Advocates also claimed that this definition puts the NF in the business of being an ICF/MR

Response. These comments are similar to those raised by States over the practical difficulty in drawing a line between the State's responsibility to provide specialized services and the NF's responsibility to provide all mental health and mental retardation services below the specialized services level to individuals who need these services. We are addressing these concerns in our discussion of § 483.120(d).

Section 483.120(c)—States Must Provide Specialized Services

In § 483.120(c), we proposed that the State must provide or arrange for the provision of specialized services (previously known as active treatment) to all NF residents with MI or MR whose needs are such that 24-hour supervision, treatment and training by qualified mental health or mental retardation personnel is necessary, as identified by the screening.

Comment: In response to the requirement that the State must provide specialized services to all residents who are determined to need them, a number of States protested that there is no way to do this short of bringing qualified mental retardation and mental health professionals into NFs. They strongly objected to having to make NFs into ICFs/MR or psychiatric treatment facilities. Terming this impossible, they noted that a statutory change is needed to absolve them of this onerous responsibility

Response: We have discussed the substitution of the term "specialized services" for "active treatment" elsewhere in this preamble. There is little we can add to that discussion. Congress did not see fit to alter in any way the States' responsibility to provide these services, however they are called. When the need for specialized services is great, a State may need to examine whether, in fact, an ICF/MR, psychiatric hospital, or other setting may be a more appropriate placement. As we have noted elsewhere in this preamble, determinations as to the need for NF services and the need for specialized services in a PASARR program should be related to one another and sensitive, where appropriate, to the range of available services.

Comment. One State asked whether, in the case of an individual who requires NF services and specialized services, the individual can insist on admission to the NF of his or her choice or whether the State can dictate where it can effectively provide it. A related question was raised by another commenter who represented a group of disabled residents in one State which apparently attempted to preclude NF residence for persons with related conditions who needed both NF services and specialized services. This commenter urged us to revise the regulation so that the State would be prohibited from requiring anyone with MR or a related condition who needs specialized services to go to an ICF/MR or from requiring the NF to be responsible for providing specialized services. In this commenter's view, the regulation should explicitly state that NFs are not and cannot be made responsible for providing specialized services which the State determines to be necessary

Response: We believe that PASARR determinations are virtually always made when an individual is proposed for admission to a specific NF We also believe that many PASARR determinations, to be accurate, must take into account not only the specialized needs of the patient but also the ability of a specific NF to provide the services. If, in the State's view, the needs of an individual can only be met appropriately in specific facilities, whether NFs or ICFs/MR, then this view would be reflected in the State's PASARR determination relating to the need for NF care at the NF to which admission is proposed. Also, this type of determination is best done at a State, rather, than a Federal level, since NFs and mental health care systems may vary from State to State.

While our NF requirements are general, some NFs may specialize in treating specific types of residents, for example, by concentrating on physical rehabilitation or on residents with Alzheimer's Disease or other persons. We do not discourage such specialization, since it works to the advantage of the residents, and we do not believe that States should be prevented from considering such factors when they make PASARR determinations.

We would assume that when an individual has been considered appropriate for placement or continued stay only in a specific NF because of special capabilities of that NF to meet his or her care needs, any future contemplation of a transfer to another NF (which would normally occur without a new PAS) should involve consideration by the facilities of the needs that led to the previous PAS or ARR decision. We would expect the two NFs to be sensitive to these needs in arranging such a transfer If necessary the facility to which transfer is proposed may request a new PAS to determine whether placement in the new NF is appropriate. The next ARR would also evaluate the appropriateness of care in the new setting.

Comment. A few States also asked technical questions concerning how they might deliver specialized services in the NF. They wanted us to clarify if other available Medicaid services, such as targeted case management, can be used

to deliver specialized services to NF residents

Response: As we noted in the proposed rule, there are a variety of other possibilities beyond the NF benefit itself for providing services to persons who require specialized services, whether they are residents of NFs or are in the home and community setting. Because the Medicaid program provides so many options for creativity in providing services consistent with our regulations, it is not possible to discuss specific issues without reference to a specific proposal to amend a State's Medicaid plan We are therefore unable to respond to commenters who pose theoretical questions about services The responses to their questions must take account both the Federal regulations governing services and the choices individual States make in fashioning their Medicaid programs

Comment A couple of States objected to the requirement that States must provide specialized services to those who need both NF services and specialized services They noted that section 1919(e)(7)(C) explicitly requires the State to provide specialized services only to those residents who do not need NF services but do need specialized services They argued that, since the Act does not explicitly require provision of specialized services in dual need cases, we are exceeding our statutory authority. Moreover, these commenters were of the opinion that we should not require provision of specialized services in these cases unless we are willing to pay the full cost

Response: We do not agree with the commenters In our view the law does require that the States provide specialized services to persons in NFs who have been determined through their PASARR programs to require both NF services and specialized services. While the statute contains no explicit reference to provision of specialized services to those residents with dual needs, we are, in placing this requirement on States, relying on the central theme of all the OBRA '87 nursing home reform provisions which is that all of a resident's needs must be identified and served Congress could not possibly have intended that the specialized services needs of those residents who also need NF services, and are therefore approved for NF residence, should be ignored or go unmet. Since the description of specialized services at section 1919(e)(7)(G) clearly indicates that specialized services is beyond the scope of NF services, the NF cannot be required to provide it Both the statute and the legislative history indicate that the provision of specialized services is solely a State responsibility (see the House Committee Report language quoted in the preamble to the proposed rule on p 10962) The logical corollary is that the State must provide specialized services to residents with dual needs

It is also clearly the intent of Congress to assure that NF placements are appropriate and that the States supply the specialized services needed for persons who are residents of NFs We note that States have some latitude in determining whether individuals need NF care and may determine that individuals who need specialized services do not need NF care, in which case the issue of payment would not arise We suggest that the commenters review their PASARR criteria to determine whether the issue they raised may be resolved internally.

Comment: Over 250 NFs were concerned about the lack of accountability on the part of the State for the provision of specialized services. They complained that the regulations do not address the issue of a State's liability should it fail to arrange for or provide specialized services to an individual who is determined to need it. Asking for a hold harmless clause, they wanted the regulation to ensure that FFP could not be withheld from a resident or facility due to State's failure to provide specialized services. They recommended that the State be required to continue paying the facility if FFP is terminated.

Response: We understand the concern raised by the commenters, however we do not believe that the law provides for a specific remedy for States that fail to provide the specialized services required by the law. Absent a specific remedy the enforcement of the requirement would be done under section 1904 of the Act, which supports compliance actions. Such actions may be taken when the State Plan is out of compliance with the law. Withholding of FFP in compliance actions is prospective, effective only after the State has had reasonable notice and opportunity for a hearing.

With respect to FFP for NF services, we would note that the regulation does not hold the NF accountable for providing specialized services and failure of a NF to do so would not be cause for a sanction relating to the facility. This conclusion is now supported explicitly by sections 4008(h)(2)(D) (for Medicare) and 4801(e)(4) (for Medicaid) which explicitly makes MI and MR care a NF responsibility except to the extent services are provided (or required to be provided) by the State We also note that compliance actions taken under section 1904 of the Act relate to the State and not to facilities. The FFP relationship is between us and the States NF payments are, on the other hand, governed by agreements between the State and the NF It is beyond the scope of these regulations to interfere with these contractual relationships.

Comment. Nursing facilities also feared that if the State fails to provide specialized services they would be held accountable if they attempted to provide psychiatric rehabilitation, which would be inadequate to meet the residents' full needs.

Response: As noted above, we do not envision holding a facility accountable for deficiencies in the State's actions with respect to specialized services. We believe the law would need to be changed for us to do so. Facilities attempting to address a resident's needs would not be in jeopardy of sanctions unless they were otherwise out of compliance with the NF requirements.

Section 483.120(d)—NFs Must Provide Mental Health Services of Lesser Intensity Than Specialized Services

Section 483.120(d) proposed that a NF must provide mental health or mental retardation services which are of a lesser intensity than specialized services to all residents who need such services. In the preamble, we noted that specialized services are not services that a NF is required to provide under section 1919(e)(7)(iii) of the Act. However the law requires that specialized rehabilitative services be provided by SNFs and NFs. We indicated in the preamble to the proposed PASARR rule that, based on comments received on the long term care facility requirements, published on February 2, 1989 at 54 FR 5316, we intended to amend that rule (i.e., the long term care requirements) to include psychiatric rehabilitation among the specialized rehabilitative services which are required to NFs at section 483.45. Since that time, OBRA '90 has added language to sections 1819 and 1919(b)(4) of the Act, which supports our decision (see sections 4008(h)(2)(D) and 4801(e)(4)).

Comment A large majority of commenters, over 400 of the 736 responses we received, objected to what they perceived to be an expanded definition of covered mental health services under Medicaid Many of the letters enumerated 3 grounds for complaint In their view:

- Psychiatric rehabilitation constitutes a new category of services

that is far more intensive than those provided under the existing psychosocial services currently required of NFs under Medicaid;

- The new category exceeds the scope of psychiatric services as currently defined under Medicaid. Existing Medicaid regulations define psychiatric rehabilitative services as those which are intended to restore an individual to a prior functional level. These are not "maintenance" activities. The new category speaks of "intermittent or maintenance" services; and
- We have not addressed the question of funding for the expanded services. By narrowly defining specialized services, we have shifted responsibility for the provision of mental health services from the States to NFs.

They noted that as it is currently defined, very few residents would need specialized services. Requiring NFs to be responsible for everything short of specialized services would place a great hardship on the NF and its resources. They believed the costs involved in such a rule would be over $100 million.

In contrast to the adverse reaction by many NFs to the psychiatric rehabilitation proposal, a number of NF commenters supported our view that NFs should be held accountable for a certain level of mental health care. A few suggested that we use another term for psychiatric rehabilitation because they believed "psychiatric" is too narrow and medically oriented a term. As discussed more fully at § 483.120, several commenters also suggested that we substitute the term specialized and intensive psychiatric treatment for active treatment.

Response: Sections 1819 and 1919(b)(4) of the Act, as originally enacted by OBRA '87, both require that a nursing facility *must* provide—

> * * * nursing and related services and specialized rehabilitative services to attain and maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

and the term "highest practicable physical, mental, and psychosocial well-being" is also used in connection with social services and activities. In addition, sections 4008(h)(2)(D) and 4801(e)(4) of OBRA '90 further clarify NF responsibilities by adding an identical sentence (vii) to sections 1819(b)(4)(A) and 1919(b)(4)(A). These new provisions require that, to the extent needed to fulfill all plans of care described in sections 1819(b)(2) and 1919(b)(2), the NF must provide or arrange for the provision of "treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State." "Mentally ill," as used here in 1819 and 1919(b)(4)(A), we note, is broader than the new statutory definition of MI at section 1919(e)(7)(G) (See later discussion in this preamble). That more restrictive definition of MI (i.e., a serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)) applies only to sections 1919(b)(3)(F) and 1919(e)(7) of the Act.

In light of this specific statutory direction, there is no doubt that both mental and physical health services are mandatory components of nursing facility care. The same requirement appears in our regulations at the beginning of the quality of care section at § 483.25. Given these requirements, it is not possible to mount a credible argument that mental health services are not required.

We note, in fact, that those commenters whose reaction to this requirement was positive stressed that NFs should be held accountable for these essential services and made it clear that such services are an integral part of appropriate care in a facility. NFs traditionally have admitted and cared for individuals in need of mental health services, as evidenced by studies showing that diagnoses of mental illness are relatively prevalent in this setting. Evidence that such individuals are often treated inappropriately through the use of psychoactive drugs and restraints also demonstrates that facilities have long admitted and cared for such individuals. The principal issue appears to be whether such individuals must be appropriately diagnosed and treated or whether their problems can continue to be addressed improperly or incompletely.

Commenters who objected to the term "psychiatric rehabilitation" raised a number of valid points although we note that the term appeared in the preamble to the proposed rule and did not appear in the proposed regulation itself. We concede that the term "psychiatric" connotes a level of services which is both intensive and narrowly focused on psychiatric needs. We did not intend to convey that impression; such treatment is inherently distinct from NF services generally focused on rehabilitation. In the final regulation on Requirements for Long Term Care Facilities, which responds to public comments on the rule published on February 2, 1989 at 54 FR 5316 we intend to include in the specialized rehabilitation requirement the words "including mental health rehabilitative services" in recognition of the fact that they are an integral part of overall care. This change would meet our and commenters' objectives to require that the full range of physical, mental, and psychosocial needs of residents be met by the nursing facility which chooses to admit and treat them.

In this connection, we believe that commenters who asserted that a requirement for mental health services is a new requirement misread the law. While it is true that there is a statutory exclusion of coverage for any person who is a "patient in an institution for mental diseases," there is no other restriction on mental health services. Moreover, section 1905(a), which lists those services which are defined as medical assistance under Medicaid, includes nursing facility services. These services are defined in section 1919(b)(4) of the Act in the manner noted above to include nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. Thus, the services in question are an integral part of NF services under Medicaid. This point was made in the February 2, 1989 regulation. Our intention in discussing it here is to deal with the obvious confusion that has arisen over it and to clarify the requirement, not to institute a new requirement. Similarly, OBRA '90 adds further clarification on this point. As we discuss in the following response, this is not to say that a particular NF must admit individuals with MI or MR and provide these services. However, if a NF admits such individuals, it must provide services appropriate to their needs.

In response to the large number of comments dealing with the issue of payment for services, OBRA '87 included a requirement for States to amend their Medicaid payment plans to include funding for services required by the nursing home reform provisions of that act. While the statute excludes specialized services for MI and MR from NF services, Medicaid funding would remain available for some services under other benefits (for example, physical therapy, if a State plan provides such services). This may help States fund specialized services for those residents who need these services. We do not agree with commenters who argued that these requirements should not be implemented because the cost of remedying past neglect of this treatment area may be high. Moreover, while we do not believe that nursing homes generally neglect the mental health needs of their residents, an underlying assumption of the legislation is that

there are residents who are either inappropriately placed or, if properly placed, who are receiving inadequate treatment. One purpose of the legislation is to effect changes in this behavior.

Comment: States raised the issue of how payment should be made and how much should be paid. Some asked if States would have to pay for psychiatric rehabilitation as a vendor service or as part of their NF per diem rate. In addition, they noted, States would have to pay for specialized services. A few States wanted the regulation to allow the State Medicaid agency to require the NF to provide psychiatric rehabilitation either through in-house or contracted personnel or by referral to community mental health clinics (CMHCs).

Response: The issue of payment for services provided to NF residents is a complex one because it involves issues as to what services are included in the nursing facility's payment rate as well as what services might be furnished by providers of other services under the State's Medicaid Plan (e.g., physical therapy, physician services, rehabilitative services, etc.). We are currently in the process of rulemaking with respect to the services included within the NF rate. We published an NPRM on March 20, 1990, at 55 FR 10256, dealing with the issue and are currently in the process of analyzing comments and developing a final regulation. As to the services that may be provided under other Medicaid benefits, we would note that regulations governing these services are currently published, primarily in 42 CFR Part 440, and have not been affected by these final regulations. States have considerable flexibility in developing their Medicaid benefit packages and that flexibility provides them with differing options for dealing with these issues, as well.

Comment: Many commenters who responded to the psychiatric rehabilitation issue questioned the effect of this proposed rule on the role and character of the NF. They argued that NFs are not prepared to offer the psychiatric rehabilitation outlined in the NPRM. They held that NFs have never been IMDs or ICFs/MR, nor were they intended to be. Rural facilities particularly indicated that they would not be able to obtain or train the staff necessary to provide the level of mental health services we suggested even if they were to receive additional funding. In the view of many of these commenters, we should require the State mental health authorities to provide mental health treatment in State or private mental health facilities, not NFs.

A number of commenters believed that the role of the NF is to provide a homelike, peaceful environment for "normal" elderly people. They stated that residents with a psychiatric history require a different level of care than the geriatric population with a medical history. To take in residents with serious mental disturbances would require closer professional monitoring and documentation of activities than NFs can provide. Moreover, they argued, the presence of such individuals would be very frightening to other residents who do not understand that this is an illness. One commenter also noted that NFs are trying to reduce the use of psychotropic medications but that taking in more individuals with MI would result in increased use of these drugs.

Some commenters also noted a contradiction between the espoused view that NFs are inappropriate places for individuals with MI and our position that NFs are capable of providing psychiatric rehabilitation. They claimed OBRA '87 required PASARR because Congress wanted inappropriately placed people out of NFs. They argued that Congress did not raise the issue only to have responsibility for providing these services shifted from the State's mental health system to the NFs.

Response: Studies have shown that a high percentage of nursing home patients have diagnoses of mental disorders. By far the preponderance of these individuals appear to have Alzheimer's Disease or dementia, but there are other diagnoses as well and many individuals have more than one diagnosis. It is this population which the commenters apparently allude to as "normal." We agree that the current population is the one to which the requirements are addressed, but we believe that the misperception that these individuals are "normal" is a fundamental part of the problem intended to be addressed by OBRA '87, through PASARR reviews, resident assessment, care planning, and provision of services.

Some of the commenters appear to have misunderstood the PASARR requirements and incorrectly assumed that NFs might be required to accept persons with MI or MR. Nothing in the PASARR process requires that an individual be admitted to a nursing facility. The requirements simply prohibit the admission of an individual who has not been screened and who has not been determined to need NF care. A positive determination as to the need for NF care by the PASARR process simply creates the option for an NF to admit an individual. It does not require it.

A nursing facility still may determine which applicants to admit. The nursing facility requirements create a set of rules designed to ensure that those individuals who are admitted are properly assessed and treated, including rules to prevent inappropriate discharges or transfers. One way to view these requirements is to see them as a means of assuring that NFs treat the whole person. We would note that nursing facilities, like other types of health care providers, may well specialize in certain types of care—for example, the care of Alzheimer's victims—and may focus admission criteria so that applicants are selected who may benefit best from their specialty. Our concern is not to prevent facilities from specializing but to assure that individuals who are admitted for treatment are fully assessed and treated once they are admitted.

Comment: Many commenters sought clarification of what specific services are included in "mental health and mental retardation services that are of a lesser intensity than [specialized services]" and requested that any definition of these services be put forth in a proposed rule so that the industry may comment on the parameters of the defined services. They objected to our plan to revise the February 2, 1989 rule in response to comments on that regulation to require NFs to meet any mental health needs of their residents that are below the specialized services level. They felt that the promulgation of any definition of psychiatric rehabilitation or covered mental health services in an NF is too important to be adopted without public comment.

Similarly, approximately 20 State agencies argued that the States should have a chance to comment on the definitions of both terms, psychiatric rehabilitation and specialized services. They questioned how they could discriminate between the two services and what criteria would be used to determine who does what between the core NF services and the wrap-around specialized services. From a financial standpoint, they wanted to know which services would be billable as psychiatric rehabilitation and which would not be billable as specialized services. They noted that, particularly for individuals with MR, virtually all services in 1919(b)(4) are elements of what was formerly called active treatment. States were also concerned about how their survey agencies could tell the two services apart. Their general view was that we were creating an unsurveyable situation, one which is totally lacking in guidelines and measures.

Response: We do not believe that it is necessary to describe in detail all the services that are needed to meet the

mental health rehabilitation needs of NF residents and do not agree with the commenters that this particular issue requires specific notice and comment. As we noted, the February 2, 1989 regulation already requires services to meet the "the highest practicable physical, mental, and psychosocial well-being" of the residents, as does the law. The regulations do list, and have listed for many years, other specialized rehabilitative services quite generally, such as physical therapy and speech therapy. Specific definitions are not appropriate because the nature of the services may vary depending on the specific need of a particular individual. In this case, we are simply clarifying a general requirement in the law and the current regulations, we are not expanding or defining a new benefit. Similarly, OBRA '90, as noted earlier, contains provisions that fully support our conclusions as to SNF and NF responsibilities for MR and MI care and which are characterized in the legislative report language as clarifications rather than new requirements.

Commenters who focused on the difficulty of drawing a dividing line between specialized services and mental health services generally and commenters who more specifically advocated either a prohibition against admissions of individuals who need specialized services or recommended that specialized services be included as a nursing facility service, raise a challenging issue. It is possible to define a term such as "specialized services" but as a practical matter it is a very difficult to bisect a continuum of care with such precision that there is a clear line between one type of care and another when the guidelines are applied to the cases of individuals whose needs cluster around the dividing point. For example, it is difficult to write guidelines to distinguish the point at which the need for hospital care ends and the need for NF or SNF care begins. Much depends upon the condition of the individual and the capacity of one or another facility to meet his or her needs. While many decisions are clear, the close decisions must be made with close attention both to the condition of the individual and the capacity of the facility to provide care. That is one reason why nursing facilities continue to have discretion in accepting applicants. We have attempted to make the policy as clear as possible in this regulation but we acknowledge that many determinations require close medical judgment the particulars of which cannot be specified in regulations.

Comment: Going beyond the level of service intensity involved in providing psychiatric rehabilitation, approximately 40 NF commenters believed that NFs should be allowed to provide specialized services, if they can meet the program requirements. They reasoned that this approach to service delivery would be better monetarily and programmatically and would be less traumatic for the resident. They believed that when a resident's mental condition has been resolved and he or she can maintain relative mental stability on a low maintenance psychotropic drug, he or she should be allowed to enter or remain in a NF of his or her choice. In those rare cases where a resident experiences an acute episode, they felt the NF should be permitted to provide the specialized services required. Only if a resident becomes violent, did they believe he or she should be transferred, by contract, to an appropriate inpatient psychiatric setting. Consistent with the other NF comments, of course, these commenters noted that NFs which elected to provide these services would need to receive adequate funding to do both psychiatric rehabilitation and specialized services.

Response: Commenters who believed that NFs were prohibited by the proposed rule from providing specialized services misunderstood our intent in stating that specialized services is not a NF responsibility. We meant to prevent NFs from being required by States to provide specialized services, not to bar them from providing it if they choose to do so and are staffed and equipped to provide these services. Nothing in this rule should be interpreted to prohibit the State from arranging with a consenting NF for the provision of specialized services to its residents who need these services. However, NFs may not be required to take on these responsibilities against their will. We would also note that, under the existing IMD guidelines, NFs which undertake provision of specialized services to large numbers of residents do so at the risk of becoming IMDs.

Comment: A final set of concerns of the States, with respect to the psychiatric rehabilitation issue, centered around whether the NF can discharge or not admit someone so as not to have to provide psychiatric rehabilitation. They noted that PASARR only indicates who may be admitted or retained by a NF. There is no requirement that the NF admit or retain those whom the State's PASARR approves for NF residence. They believed that requiring psychiatric rehabilitation while allowing NFs to exclude residents who need such services would increase access problems for patients with mental illnesses. They, therefore, asked who has the ultimate decision-making power concerning whether a NF can meet a resident's needs, the NF or the State Medicaid agency? They also noted that the proposed system of wrapping specialized services around the NF core of services can work only if the NF cooperates. States feared that NFs could use the excuse that "the State has to provide it" and that anything the State expects the NF to do by way of mental health services would be viewed by the NF as being beyond "the practical limitations" of what can be provided in a NF, given its staffing and funding.

Response: We believe that the commenters overestimate both the ability and inclination of NFs to avoid residents who may require mental health rehabilitation services and fail to take account of the protections available to residents and prospective residents. Finally, we do not believe that commenters' assertions about limited access to care have been documented.

While facilities do have some latitude in determining who they will admit, they are bound by Federal, State, and local laws against discrimination. The law and our regulations limit the reasons for which a resident may be transferred, and the law provides for an appeal to the State when a resident (or his or her representative) questions the appropriateness of a facility's decision. Moreover, the survey process we design to implement the regulations will enable surveyors of the State (and Federal surveyors, where a Federal survey is done) to determine whether the residents were properly assessed, had proper care planning, and, where specialized rehabilitation is needed, whether it was provided. Thus, as a practical matter, these issues are subject to oversight by both the States and the Federal government.

On the issue of specialized services, we would note that States are subject to Federal oversight to determine if they are meeting their obligations with respect to the provision of services to residents of nursing facilities and individuals who have been discharged to receive specialized services in other settings. States which fail to meet these requirements are subject to the compliance process established under section 1904 of the Act to deal with situations in which the State is out of compliance with its plan.

Sections 483.122 and 483.124—Availability of FFP

Proposed § 483.122 provided that, except as otherwise provided in an ADP, FFP is available for NF services provided to a Medicaid eligible individual only if the individual has been determined to need NF care, or not to need NF services but to need specialized services under § 483.118(c)(1) and elects to stay in the NF. Also, FFP cannot remain available if the State has not conducted a timely annual review of an individual with MI or MR to reevaluate NF and specialized services needs.

In § 483.124, we proposed that FFP is not available for specialized services furnished to NF residents as NF services.

Comment: A large number of States requested that, in addition to specifying the conditions under which FFP is available for NF services, the regulation specify that 75 percent FFP is available under administration for PASARR costs. Several commenters also asked that the regulation clarify that FFP is available for screening non-Medicaid, especially private pay, individuals. Others wanted us to specifically prohibit charging private pay individuals for screening costs.

Response: We agree with the commenters. Our omission was inadvertent and we are amending 42 CFR 433.15(b) to add a new paragraph which specifies that expenditures for PASARR activities conducted by the State (including the use of subcontractors) are matchable at 75 percent. Because the regulations governing PASARR require that the system be operated by the State and apply to all individuals with MI or MR who are seeking admission to or residing in NFs that participate in Medicaid, this matching authority extends to State expenditures for the entire PASARR population. It does not, however, extend to activities not required under these regulations.

On the issue of whether States are prohibited from charging private pay individuals for costs associated with PASARR evaluations, we believe that the State Medicaid program must pay the unique costs of PASARR evaluations. Operating a PASARR system for all applicants and residents with MI or MR is a Medicaid requirement, and the expense must be borne by that program. Of course, a State need not pay for the cost of underlying examinations which would have been performed in any case (and the State may have general requirements for examinations applicable to all NF applicants or residents).

Comment: Funding for Level I activities raised considerable controversy. Some States asked that we clarify in the regulation that if Level I is done by a NF, the costs may be included in the NF rate. It was not clear from their comments, however, whether these States did or did not wish to supplement the NF's per diem for these Level I activities. By contrast, some State commenters asserted that there is no justification for making different levels of FFP available for Level I screens. These commenters believed that Medicaid should pay NFs separately for doing them and that the State should get 75 percent FFP no matter who the State designates to do the Level I screens.

A number of NFs objected strenuously to having to do Level I screens without specific reimbursement for these activities. They attested that their costs for performing Level I are substantial. They felt that if NFs are required to do Level I there must be a mechanism for payment for these additional services.

A number of hospitals also complained that, apart from the costs produced by delays in placement, the cost of doing Level I has been significant for acute care hospitals. One hospital reported that in the first year its hospital staff and physicians completed 350 Level I screens and that the staff time required to complete these was significant. Another large hospital concurred in the view that doing Level I screens consumes considerable staff time, involving social workers, nurses, physicians, and on a consulting basis, psychiatrists, neurologists and neuropsychologists. None of the Level I screening costs are reimbursed, they claimed. Other hospital commenters noted that State Medicaid Manual, Transmittal 63, which we quoted in the proposed rule at length, says that if hospital dischargers do Level I screens, the State's reimbursement rate is 75 percent. Their States have, however, refused to reimburse hospitals for doing Level I screens. Like the NFs, these commenters believed there should be a mechanism for them to bill the State for this service when they have contracted to do it.

Response: With regard to whether a State may require a facility to perform a Level I screen, we believe it is well within the authority of a State to require that hospitals and NFs identify individuals who require screening under PASARR. Thus, we do not agree with the commenters who challenged States' ability to do so. As to whether a facility must be paid for doing so, and, if so, whether the State's matching payment would be at 75 percent or 50 percent (the usual administrative match) if it made an explicit payment for the service, we believe that section 1903(a)(3)(C) of the Act indicates that the enhanced matching rate is for PASARR activities "conducted by the State." Thus, the enhanced matching rate is not available for activities of NFs, even if in support of a PASARR program. On the other hand, such costs can be built into the State's NF rates where they will be recognized at the Federal Medical Assistance Percentage (FMAP), the matching rate applied to the State's Medicaid benefit payments.

Comment: Commenters had numerous questions about the availability of the 75 percent FFP for various other PASARR-related activities such as discharging residents who are determined not to need NF care, handling appeals, and record keeping/tracking activities. Both the NFs and the States claimed that these activities created costs for them. Transmittal No. 63 to the State Medicaid Manual clarified the State's eligibility for FFP for some types of PASARR-related activities but not others. NFs, however, felt they were disadvantaged because they are being expected to absorb all these extra activities within their per diem payment rates.

Response: It is neither possible nor appropriate to answer all the questions that may arise in this context in this preamble.

Commenters cannot assume that functions required by this and other regulations must be separately priced and separately recognized for payment in the context of the rule. A number of the expenses associated with the operation of a PASARR program are appropriate Medicaid administrative costs as, for example, appeals of determinations and the record-keeping and tracking needed to operate the program. NF expenses associated with discharge planning and required under the NF requirements and funding for these services would be an expected part of the State's payment rates for NF care. Other expenses may well be outside the Medicaid program entirely, for example, provision of specialized services to individuals who are permitted to remain in NFs because they have resided there for more than 30 months. We expect that we will be clarifying a number of these issues in the State Medicaid Manual, which is the appropriate vehicle for such detailed discussions. Basic existing procedures for administering State Plans, including payment for medical assistance, embrace the whole range of allowable expenses even though they are not

specifically discussed in this or other regulations.

Comment: For both the States and NFs, the proposed denial of FFP for the entire stay was a very heated issue, eliciting responses which referred to these penalties as "draconian," "grossly unfair," or "punitive." Over 150 NF and hospital commenters and nearly all of the States, sometimes through more than one State agency, responded. These groups were joined by a number of consumer advocates and a variety of other commenters.

As noted in the comments discussed under the timeliness standard at § 483.112(c), States believed that our requests were excessive and timeframes unrealistic, resulting in our punishing the States for failing to meet our expectations. They felt that we should provide for occasional lapses that occur for legitimate reasons.

As discussed under § 483.114(c), some States were very concerned about the possibility of future disallowances for their continuing resident population (all those with MI or MR who entered NFs prior to January 1, 1989 and were not subjected PAS) if they had not completed their initial reviews by April 1, 1990. If the group that a State had not yet screened by that date were sizable, denial of all FFP for these residents from April 1, 1990 henceforth to the time of some future disallowance could be great. They felt that the application of penalties to the first year of implementation of ARR would be highly unrealistic and unfair.

A number of commenters noted that such harsh penalties would be unwise because of the adverse impacts they would produce. Some said the residents would suffer from the denial of FFP for their care. Others asserted that the penalties would only drive the NF to discharge a resident whose stay had been disallowed and then readmit him or her to get FFP. NFs were concerned that they might honestly miss identifying someone with MI or MR in doing a Level I because they must rely on records from the referral facility until they can thoroughly assess all transferring information on the resident through their own assessment. They also believed it is unfair to penalize the resident or the facility for the failure of the State to complete ARRs on time. For their part, hospitals were concerned that the threat of these penalties would paralyze the system and would exacerbate the hospital back up problem.

A number of State commenters noted that while Congress did not specifically permit intermediate penalties, it did not preclude them. Nor, they also argued, does the statute even discuss timeliness. It only says there shall be no FFP if a PASARR which is required is not done. They believed that the use of the present tense is significant. The law does not say there can be no FFP if a PAS or an ARR was not done at some point in the past when it should have been performed, without any possibility of ever rectifying an error. In their view, HCFA should take a broad and proactive view of what is best for NF applicants and residents, NFs, and State agencies.

A number of States, therefore, indicated that we should either restrict the loss of FFP to days beyond the allowable time period until the PASARR is done or devise some type of intermediate sanctions or plans of correction. Some proposed that FFP should be available absent a finding of substantial non-compliance by the State. One commenter suggested that penalties should only be applied if a person is inappropriately placed. Another proposed that FFP be denied for twice the number of days that the PAS or ARR was late.

NFs overwhelmingly agree that provision of FFP should begin or resume as soon as the PASARR has been done. They felt that in the event of a PAS error, loss of income for the penalty days only would be punishment enough. One NF thought that FFP should start as soon as a PAS is done and be retroactive to admission if the PAS is done within 14 days of admission. Another mentioned that emergency admissions are sometimes necessary for the well-being of the resident and screening is done as soon after admission as possible. This should not result in permanent denial of FFP. A large number of NFs recommended that the rules allow PAS to be conducted after admission if it is anticipated that the individual will meet requirements for admission.

Response: While we believe that the proposed language is supportable under the law in that the statute requires "preadmission" screening which, by definition, can only occur prior to admission, we have been persuaded by the counter-arguments presented by commenters. We found particularly compelling their contention that the present tense in which the statutory language is written is significant. That is, the law only says there shall be no FFP if a determination that is required is not done. It does not prohibit FFP if a PAS or an ARR was not done when it should have been performed but the error has been corrected. Furthermore, the use of the term "determination" to refer to both the PAS and the ARR implies that Congress meant to refer to the underlying questions of need for NF services and for specialized services, rather than to the specific timing requirements. We also agree with the commenters that the proposal, under which FFP would not be available at all if a preadmission screen was not performed before admission or a resident review was not performed timely, would create financial difficulties for States and facilities to the detriment of residents. By adopting this interpretation, we allow past errors and omissions to be rectified.

Having, thus, reconsidered the issue in light of the comments, we have added a new paragraph (b) to § 483.122 to read as follows—

(b) When a preadmission screening has not been performed prior to admission or an annual review is not performed timely, in accordance with section 483.114(c); but either is performed at a later date, FFP is available only for services furnished after the screening or review has been performed, subject to the provisions of paragraph (a) of this section.

We do not believe that the law provides for any intermediate sanctions save for the denial of FFP for the period during which a review has not been performed and so we have not attempted to develop such sanctions. Given the revised language, a State which fails to perform a PAS would lose FFP from the date of admission until the date the review is performed, and for an ARR, from the end of the quarter in which it is due until the date it is performed.

We recognize that adoption of this policy does allow States to receive FFP for persons admitted without the required preadmission screening but we do not believe that this change will materially affect the incentives States have to comply with these regulations for the following reasons. First, NFs themselves continue to be subject to the requirement that they not admit any individual for whom a screening is required but for whom it has not been accomplished. Thus, an admission may jeopardize the NF's certification. Second, a State which permits such admissions to occur as a matter of policy would be in violation of these regulations and would be subject to a compliance action under section 1904 of the Act. We view this change primarily as an incentive to States and facilities to rectify any errors as soon as possible and as a means to assure that FFP is available for necessary NF care, the need for which is identified by such screenings.

We note that OBRA '90 contained revisions to section 1919(e)(7)(D) concerning denial of payment for failure

to conduct PAS and ARR and for certain residents not requiring NF care. The original OBRA '87 language provided explicitly only for denial of payment in cases in which no PAS was performed; our proposed rule also indicated FFP would be unavailable for individuals who did not need NF care. This statutory change confirms the correctness of our proposed FFP exclusion.

Comment: A large number of commenters objected to the fact that FFP is not available for specialized services. Most of these commenters recognized that this provision is statutory; however, they registered their objections for the record.

Response: We understand the concern of the commenters but we believe that the law is clear on this issue. As we noted in the proposed rule the prohibition against FFP for specialized services relates to NF services specifically, not to other services that may be covered under the State plan. Thus, a State may be able to obtain FFP for otherwise covered services provided to NF residents as part of a specialized services program.

Section 483.126—Definition of Appropriate Placement

In § 483.126, we proposed that placement of an individual with MI or MR in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and the individual's needs for treatment do not exceed the level of services which can be delivered in the NF to which the individual is admitted either through NF services alone or, when necessary, through NF services supplemented by specialized services provided by or arranged by the State.

Comment: A number of commenters expressed appreciation for the elaboration on the definition of appropriate placement which we provided in § 483.126 and the preamble discussion which accompanied it. These commenters particularly welcomed the discussion of the concept of a vertical continuum of care in which the NF level of care is analogous to a layer in a layer cake, being joined above and below by other levels of care which are more or less intensive than that which is capable of being provided by the NF. Noting the change from some of the previous drafts of the criteria, some of these commenters also applauded clarification of the point that the need for specialized services should not bar a person from NF admission.

By contrast, another group of commenters, appeared to believe that if the individual needs specialized services, he or she should not be in NF except under very limited circumstances. This was the position that was taken in the PASARR draft criteria, which were circulated informally in September 1988. However, the subsequent Manual issuance and proposed rule did not take this position. These commenters wished us to return to our earlier position.

Taking a broad view across several different points in the regulation, they believed that we were, instead, sending out mixed messages. One commenter claimed that §§ 483.126 and 483.116 appeared to contradict each other. Section 483.116 permits (but does not require) an individual to be admitted or retained in a NF if he or she needs a NF level of care, whether or not specialized services are needed. Section 483.126 states that an individual can only be appropriately placed in a NF if his or her needs can be met in that setting, with or without the provision of extra services provided or arranged for by the State.

Similarly, a group of MR/DD commenters claimed that at times we said that the two determinations with respect to specialized services and NF needs must be made together (§§ 483.126(d) and 483.126) but at other times we made it seem as though the two determinations are separable (§§ 483.130(p) (1 and 3) and 483.116(b)). They were concerned that many States have broad criteria for determining need for NF level of care. The question should be not whether NF care is appropriate but in what type of residential setting can the individual's documented service needs be best met. They believed that this involves a summary judgment based on careful weighing of evidence from both assessments (the need for NF care and for specialized services).

Some developmental disabilities advocates also objected that § 3.126 offers States no specific criteria for determining when placement or continued residence in NF is appropriate. Viewing this task as the raison d'etre of Congress' requirement that HCFA produce criteria, these commenters recommended that the final rule contain statements concerning explicit circumstances under which NF placement is or is not appropriate. For example, they wanted a statement that indefinite placements in NFs are inappropriate if the individual requires specialized services except in narrowly defined circumstances (e.g., where an individual has extensive ongoing medical care needs that largely define the types of specialized services he/she requires). Quoting our statement from the preamble that we believe specialized services can be delivered in a NF only with great difficulty, these commenters asked that the rules reflect this belief.

They also asked that we make this rule consistent with the State Medicaid Manual section 4395 on appropriate placement for individuals with MR (which was most recently revised in September 1986). This would preclude a NF from admitting such an individual found to need specialized services, unless he or she has a serious, potentially life-threatening medical condition and requires inpatient skilled medical care and supervision. In that instance, the NF must be capable of meeting both the physical care and developmental needs of the individual, with or without supplementary State services. (These commenters would except those subject to advance group determinations under § 483.130 (c) and (d) and individuals of advanced years who freely elect not to receive specialized services under § 483.130(j)).

Response: Many of the commenters supported their assertions with discussion of specific sympathetic cases; however, their comments as well as our own experience demonstrate that the level of care concept, which entails labeling for practical convenience areas on a continuum of care, is not susceptible to distinct definitions. Individuals whose needs are at the margins of the continuum, either on the high or low end, must be judged both on their specific needs and upon the capability of the facility to which admission (or for which continued stay) is proposed.

We noted in the preamble to the proposed rule that we believe it is difficult to provide specialized services in the NF setting, and we reiterate that belief here. However, in response to the comments suggesting that we prohibit admission or continued stay of individuals who need specialized services, we note that the language in the law does not provide a basis for such a prohibition. The law simply requires that determinations be made about the need for NF care and the need for specialized services. We therefore do not believe we have the authority to require that States deny admission to individuals who need specialized services.

The difficulty of providing specialized services (formerly known as active treatment) in a NF setting was raised historically in the context of comments on our existing manual instructions regarding the placement of persons with mental retardation in the NF setting. The instruction asserts that such placements

are seldom appropriate and asserts the strong need for concomitant medical diagnoses to support such an admission. We published that instruction in 1986, before the enactment of OBRA '87, and we believe we will now need to revise it to take account of the PASARR provisions in that law. For the same reason we were advised by legal counsel to revise our earlier views as to the PASARR criteria, which were based in the same conceptual framework as the earlier instruction.

We do not believe that the Congress sent a mixed message by permitting some individuals who need only specialized services to remain in NFs. It is clear from the law that this provision extends only to individuals who have resided in the NF for 30 months or more and was intended to assure that longstanding arrangements that predated the legislation not be disrupted by it. For both longstanding and new residents, the law permits admission and continued stay for individuals who require both NF care and specialized services.

It is impossible to distinguish individuals suitable for NF admission from those who are unsuitable simply on the basis of a diagnosis of one particular mental disorder or another. This is partially why, in developing our definition of serious MI (as required in OBRA '90), we looked at other factors such as severity or impairment in addition to diagnosis. Having MI, as it is currently defined, does not necessarily preclude NF admission although, given the narrow scope the term MI now has (i.e., serious mental illness), a larger proportion of the individuals subject to PASARR may be found unsuitable for NF residence. Having MI also does not automatically mean that the individual needs specialized services, although the likelihood that specialized services will be needed is greater for persons found to have a serious mental illness than for persons found to have a mental illness under the OBRA '87 definition. As with the previous term "active treatment," a need for specialized services does not necessarily exclude an individual from NF placement. Specialized services may be provided in an NF or in other settings, albeit with some difficulty. Determinations about appropriate placement need to be made on an individualized basis, taking into account the needs of the individual and the capability of the facility to which admission is proposed.

By the same token, it would be difficult to develop general Federal criteria with respect to the need for specialized services. We recognize the commenters' concern that the lack of uniform criteria could lead to different decisions in different cases but we do not believe that this is a problem that we can solve by writing specific guidelines because of the need for individual determinations in the many cases where individuals may be near the upper or lower ranges of a particular level of care or where individual functional abilities may lead to a different conclusion than, for example, a consideration of the diagnosis.

We strongly agree with the commenters who indicated that determinations as to the need for NF care and determinations as to the need for specialized services should not be made independently. We believe that such determinations must often be made on an individual basis, taking into account the condition of the resident and the capability of the facility to which admission is proposed to furnish the care needed. While we have provided for categorical determinations in some cases, we believe that other situations clearly call for integrated determinations. We have not attempted to specify the manner in which States should accomplish this result because we believe that the state of the art for making these determinations is now in a dynamic state and its development should not be hampered by mandated procedures which cannot reflect the variety of current practice.

Comment: Commenters also frequently asked whether mental health needs alone can qualify an individual for an NF level of care, given the statutory definition of an NF at section 1919(a)(1) of the Act. This definition would appear to cover almost anything from just above the level of room and board on up. One commenter extrapolated from the preamble discussion that if a person who only needs specialized services can be downgraded to an NF level of care when his or her intensity of need drops below the specialized services treatment level, then mental health needs alone must qualify an individual for admission to or continued residence in an NF.

Several other commenters echoed this same view by asking us to clarify whether it is physical and mental needs or physical or mental needs that qualify for NF placement. These commenters believed that the preamble discussion at several points appeared contradictory Moreover, they felt that allowing individuals to qualify for NF level of care solely on basis of mental needs would appear to violate the intent of these PASARR provisions which is to get individuals who only need specialized services out of NFs. They argued that earlier the draft of the criteria which prohibited anyone who needs specialized services from being in an NF with only limited exceptions is closer to the spirit of OBRA. They strongly urged that the regulations be revised to clarify that physical needs alone are what gets an individual into the NF or allows him or her to stay there, not just needing some degree of supervision.

Response: In response to the comments on whether NF care can be approved for an individual whose needs flow primarily from their mental condition, we would note that the law defining a nursing facility indicates that they are (in part), facilities that provide—

> "On a regular basis, health-related care and services to individuals who because of their *mental or physical* condition require care and services (above the level of room and board) * * *." (Section 1919(a)(1)(C) of the Act, emphasis added.)

We believe that there are a number of individuals whose frailty due to age, when combined with, for example, mild depression and dementia, suit them for residence in a NF, especially if there are no other supports that would enable them to live safely and successfully outside a NF.

Sections 483.128 and 483.130 General Comments on PASARR Evaluation and Determination Process

Comment: A general criticism was that the data requirements are too extensive, although almost no commenters really singled out any particular items which they thought were excessive. Instead, the critics appeared to be addressing a more fundamental question: What is the purpose and role of PASARR? Several commenters indicated that they felt the collection of all the data we specified might be appropriate for developing a plan of care but they thought it was excessive for making a simple yes/no determination about placement.

Other commenters who objected to the data requirements as overly burdensome expressed the view that we were asking for too much in too little time. Some felt that because of the excessive data requirements, the entire process was also confusing to clients. While they acknowledged that we advocate the use of existing data, they noted that the data requirements are so extensive that there are almost always gaps which must be filled by additional assessments. Some commenters professed that the States should rightly establish the content of screenings.

Response. We had hoped that commenters would focus on the specific requirements we proposed and offer suggestions as to additions or deletions Only one such suggestion was received from one commenter. (See discussion of functional assessments under the PASARR/MI at § 483.134.) We did not find a basis in the comments to make such changes and we have not done so

As to the issue of the scope and complexity of the assessments, we disagree with the commenters As we have noted repeatedly in this preamble, decisions about admission and retention of individuals must be made with a knowledge of the individual's condition and functional status Even though PASARR determinations are not made with the purpose of care planning, they must be made with sufficient knowledge of the needs of the individual being screened so that they can reflect the ability of the individual to receive needed treatment in the NF or in another setting. We do not believe that such determinations can be made in the absence of an effective assessment, and we interpret the lack of substantive comments on our proposed requirements as evidence that the commenters were primarily concerned about the need to make the assessment and not the appropriateness of the data-elements we required to be used as the basis for it

By the same token, we do not wish these requirements to impose any unnecessary burdens on States and we will continue to monitor the process to determine if future changes in the requirements are needed.

Comment. A number of commenters offered general criticisms on the requirements for the PASARR evaluation process in proposed § 483.128. Several commenters pointed out a number of omissions in the requirements First, they noted that the rules should require involvement of the resident or applicant, his or her legal representative (if applicable), and the family in the screening process.

Secondly, some commenters felt that we had ignored the need for coordination at various stages of the PASARR process. They urged us to require interdisciplinary coordination during the conduct of the evaluation(s). Also, they believed that the rules should require coordination between the Level II evaluators and the personnel at the State mental health or mental retardation authorities (or their delegates) who make the determinations Several commenters complained that the roles of each are not distinguished adequately in the regulations.

Response. We agree with the commenters that involvement of the resident and any legally designated representative is necessary. We believe that the laws establishing such representatives already clearly require that such representatives, rather than the persons they legally represent, should be the ones consulted (although the resident, even though incompetent or incapacitated, should still be informed of what is happening to him or her)

We also believe that family involvement is often desirable However consistent with the resident's rights section of the February 2, 1989 rule, particularly § 483.10(a) which deals with the exercise of rights of adjudicated and non-adjudicated residents in NFs, we believe that participation by family members in the screening process should be with the consent of the individual being screened or his or her legal representative. Thus, if a competent individual does not want family involvement, he may bar its participation We are therefore amending § 483.128 by adding a new paragraph (c) to require involvement of the individual; his or her legal representative, if one has been designated under State law and, with the consent of the individual or legal representative, of the family if available.

We are also adding a new paragraph (d) to § 483.128 to provide that when multiple evaluators are used to perform different portions of a PASARR evaluation (for instance, in order to utilize different professional expertise), the State must ensure that there is interdisciplinary coordination.

We do not agree with the comment that we have not adequately spelled out the roles of individuals who make evaluations and those who make determinations in the PASARR process or that we need to require further coordination between the evaluation and determination functions In the case of evaluations for individuals with MI, the determinations must be based on independent evaluations All that needs to be required is that the evaluators submit their evaluation reports to the individuals who make determinations in such a way as to allow the determinations to be made timely (See new requirement added at § 483.128(1), which is discussed under other changes to § 483.128.)

Section 483.128—PASARR Evaluation Criteria

Comment Basic questions concerning the nature and purpose of Level I screens were at the heart of a number of comments on § 483.128(a), which requires the State to have a mechanism for performing Level I identifications of individuals with MI or MR For instance, a few commenters questioned our authority to require the State to have a Level I process They noted that the statute does not require, or even mention, a Level I screen or any other process to rule out MI or MR It simply requires NFs not to admit such people These commenters believed that a fair interpretation of the law would be that if there is a known diagnosis of MI or MR, a PAS must be required They alleged that the proposed rule and the previous instructions had gone beyond the statute in requiring States and NFs to actively rule out the possibility of MI or MR

By contrast, another commenter who apparently believed that the screening process should more actively seek to identify individuals with MI or MR, was concerned that the Level I process was not designed to rule out MI or MR. Instead, the commenter asserted, it assumes that a person does not have MI or MR unless information in the individual's medical history indicates otherwise.

Still another commenter an organization which actually performs PASARR evaluations in one State, requested that the Level I screen include a validation of MR (IQ of less than 70). This organization complained that it was receiving a large number of referrals of individuals that physicians have suspected having MR because, the commenter alleged, a majority of physicians are not aware of the criteria for developmental disabilities and refer cognitively impaired individuals regardless of etiology.

Response: We do not agree with the commenters who suggest that requiring Level I screens is not within the scope of our authority. We have elsewhere noted, and courts have accepted, the fact that the requirement in section 1919(e)(7) of the Act for screening presupposes the existence of a mechanism for identifying persons for whom a screening is necessary We also believe that it is within the authority of States implementing these regulations to require that this review be done by NFs

We have already responded in several places in this preamble to the suggestion that "known diagnosis" be the basis for the screen It is clear to us that reliance on known diagnosis would cause the process to miss individuals whose mental illness or mental retardation had not been specifically identified either through lack of physician care (when the individual is proposed for admission by his or her family without prior consultation with a physician or mental

health professional) or when a physician has avoided articulating the diagnosis out of consideration for the individual or the family.

It is also clear to us that some commenters misunderstood the purpose of the Level I screening step. Its purpose is to identify for further screening those individuals for whom it appears that a diagnosis of mental illness or mental retardation is likely. Thus, we would respond to the commenter who complained of Level II referral of individuals whose physicians had incorrectly suspected mental retardation in cases where cognitive impairment is present that such referrals are appropriate. It is the purpose of Level II screening to make the appropriate finding based on an expert evaluation. Of course, we do not dispute the need for increased awareness of general practitioners as to the proper diagnosis of these impairments, but that is an issue outside the purpose of these regulations.

Comment: Commenters reacted both favorably and unfavorably to the degree of flexibility we had given States in designating their Level I systems. On the one hand, a number of States expressed appreciation for being given so much flexibility in deciding how it would accomplish the identification function. On the other hand, a few States asked for more specific instructions concerning how to design or operate their Level I systems.

One hospital-based commenter, writing from a large metropolitan center located in a multi-State area, objected to allowing each State to implement Level I as it sees fit. Asking for a greater degree of interstate consistency, the commenter claimed that allowing States so much flexibility results in so much variation from State to State that it is difficult for a hospital in a multi-State area to refer patients to NFs in surrounding States. The commenter noted that in his area some of the States are not screening patients who are in a private pay status while other States are and that each State is using a different form.

Response: We believe that the flexibility permitted in this regulation is appropriate, given the state-of-the-art in operating PASARR systems. We would note that the law requires that these systems be established and operated by the States and does not require either reciprocity among States or a central Federal management. In our view, States operating PASARR systems should have the flexibility to individualize them to fit with the operations of their mental health and mental retardation service systems. While we recognize that placements from one State to another may present a greater challenge than intrastate placements, we do not believe there is an appropriate regulatory solution for this challenge. States that routinely do not apply their PASARR process to all applicants and residents with MI or MR, regardless of their method of payment for care, invite compliance actions.

Comment: A number of commenters also reacted both favorably and unfavorably toward allowing States to use hospital discharge planners to perform Level I screens. Several hospitals or hospital associations strongly supported the proposal to utilize hospital discharge planners. However, they voiced concern over the usage of general terminology of "discharge planner". They wanted us to specify qualifications for those performing this function (i.e., licensed social worker with BS or MS or RN providing discharge planning services on a regular basis).

Another group of hospital-based commenters felt that we had not gone far enough. While we permitted States to utilize hospital discharge planners, we did not require them to do so. These commenters wanted us to require States to permit hospitals to do Level I screens if the hospital so desires.

A few NFs, however, objected to having hospital discharge planners perform Level I evaluations. They stated that hospital discharge planners are more motivated by the need to move people out of hospitals than by a desire to thoroughly review patients for mental health needs. They asserted that they have found a basis for questioning the status of a large number of people being referred to them by hospitals as not needing Level II screens. Consequently, the NF found it necessary to rescreen the individuals to assure accurate Level I determinations and appropriate referrals.

Response: As we have stated in previous responses, we believe that States should have the latitude to involve hospitals in the Level I screening process. We have not specified who should perform these screens in any setting and do not believe it is necessary to do so in the hospital setting. If a State's system results in incorrect Level I findings, we believe it is the State's responsibility to remedy any shortcomings in the process. States have an incentive to do so because they share in the funding of the process and ultimately pay for its inefficiencies. NFs that screen prospective admissions to assure that they are appropriate for NF care, including whether they may have mental illness or mental retardation, are acting appropriately and we encourage this behavior, which is a key behavior in assuring that only appropriate admissions are made.

Comment: Several nursing facilities objected to having to stigmatize applicants or residents in their performance of Level I screens. They note that the suggestion of MI or MR is embarrassing for the resident or family. It can lead to anger at the NF for being the government's vehicle for wasting taxpayers' money by sending someone to suggest that they need help with their mental problems. Moreover, the cost and effort of screening may well be wasted if the resident or family refuses any treatment that is recommended.

Response: We recognize that mental illness and mental retardation can be sensitive family issues and that objections by family members and others may arise in the course of PASARR reviews at both Level I and Level II. Moreover, although commenters have suggested that great tact is needed in handling the screening, section 1919(e)(7)(F) of the Act requires that individuals be given appropriate notices of the findings, which may be appealed. We believe that section 1919(e)(7) of the Act is clear and that these final regulations correctly interpret the Act.

We note that OBRA '90 contained two provisions which may be perceived to impact on the Level I process. We, therefore, offer our thoughts on these topics here by way of guidance to the States in operating their PASARR programs. First, OBRA '90 prohibited States from delegating any of their PASARR responsibilities to NFs. We do not believe that this provision in any way hinders States from using NFs to perform Level I identifications. The actual PASARR is accomplished through Level II. Second, the change in the definition of MI for PASARR purposes may alleviate some of the States' and NFs' concerns about missing individuals with MI on whom documentation of their mental condition may be scanty or nonexistent. Serious mental illness, such as we have defined MI to be, is not so likely to have gone unnoticed and undocumented. Large numbers of individuals with only minor mental disorders will not risk possible embarrassment by being referred for Level II screening.

Section 483.128(a) Level I Notices

Comment: On the one hand, commenters raised a variety of technical concerns relating to the requirement that the State's performance of Level I function must provide for issuance of written notice of referral for Level II.

These technical questions may be summarized as follows:

- How often do Level I notices have to be sent;
- Who must receive them;
- Is it a resident right to receive a notice or a State responsibility to issue it;
- Who has responsibility for developing and issuing the notice, the NF or the State;
- What form or style should the notices have and in what manner should they be delivered to applicants or residents;
- Should informed consent be required or could it substitute for Level I notice.

On the other hand, commenters also addressed the issue of Level I notices in relation to Level I appeals, questioning whether formal written Level I notices would be needed if Level I appeals are eliminated. As discussed later under the appeals section, commenters were overwhelmingly opposed to having Level I determinations subject to appeals. In response to our specific request for comment on negative Level I notices, commenters indicated strongly that negative Level I notices are unneeded and would constitute an enormous burden if required. The question remains, then, whether formal Level I notices are needed if positive Level I determinations are not subject to appeal.

Response: To a degree, the need for a Level I notice was linked to the position that we took in the proposed rule that Level I determinations were appealable and that formal notice would have to be given, advising the person being referred for a screening of his or her appeal rights. (See our discussion on Level I appeals in the appeals section) Since we are persuaded by commenters that Level I determinations should not be subject to appeal, there is now no need for a negative Level I notice When an applicant or resident is referred to the State for Level II evaluation, however he or she (and his or her legal representative) still needs to be advised of what is happening to him or her even though the Level I determination is not appealable Under the resident rights section of the February 2, 1989 rule (§ 483.10(b)), a resident has a right to be informed of treatments to which he or she is to be subjected However, applicants to a NF would not be protected by these provisions until after admission, if admission is determined to be appropriate Therefore, we believe that our requirement that the State's exercise of the Level I function must provide for issuance of written notice to individuals being referred for Level II screening, at least for the first time, is appropriate.

Having determined that positive Level I notices are needed, we must address the many technical questions raised by commenters These are addressed in separate comments and responses below.

Comment: Concerning the frequency of Level I notices, one State reported that its current process allows for Level I to be performed only once, at intake to the NF, unless illness occurs or information is uncovered which would alter the original Level I determination. Due to the notice of appeal rights and interfacility transfer requirements presented in the proposed rule, the State noted that each time an individual is referred for a Level II screening a new notice would have to be sent. For example, any time a resident with MI or MR sought a transfer, which would have required a new PAS as proposed in the NPRM, and any subsequent year that the NF's routine annual resident assessment triggered a Level II ARR (as required by the requirement for coordination of resident assessments and PASARR), the resident would have to be sent a new Level I notice. The State claimed that this process would be cumbersome, unwieldy, and unnecessarily bureaucratic. Moreover, the State would have to increase its staff to handle the notice function.

Response. We direct readers to our discussion of coordination of PASARR with the NF's resident assessment at § 483.108. In this section we described the way in which the RA may function as a Level I to identify new individuals with MI or MR who need to be included in the State's tracking system. We do not believe that individuals who are already in the tracking system would have to be issued a Level I notice every year when it comes time for their next ARR. They already know that they are in the system. Only when an individual is being referred for the first time to the State authorities should a Level I notice be required We also call readers' attention to the fact that we have eliminated the need for a PAS in the case of interfacility transfers (See discussion of § 483.106(b)). We are amending the regulation by inserting the phrase, "at least in the case of first time identifications," into the requirement for written Level I notices States which choose to give individuals more frequent notices may do so

Comment Some commenters asked that the regulation specify that the legal representative, if one has been appointed, must receive a copy.

Response. We are adding a reference to the individual's or resident's legal representative in § 483.128(a).

Comment. Another commenter, noting that Level I as proposed in the NPRM carried with it appeal rights, wanted the regulation text to state this requirement in another way: that persons subject to Level I must receive written notice rather than that the State's Level I function must provide for notices to be given. Apparently the commenter felt that the notice requirement should be considered a resident's right rather than a State responsibility and wanted the regulations text to be structured to reflect this reality.

Response. Since appeal rights are no longer involved, we do not believe it is critical whether the right to notice is couched in the regulation as an individual right or a State responsibility. The effect is the same We, therefore, are not restructuring the requirement at § 483.128(a).

Comment. Concerning whether the State or the NF is responsible for developing and issuing the Level I notice, most commenters believed that whomever the State has designated as the Level I evaluators should actually issue the written notice but that the State should develop a model statement for NFs, hospital discharge planners, or other Level I evaluators to use so that there would be uniformity to the notices issued in the State Others noted that the State Medicaid agency should periodically monitor this process.

Response. We agree with commenters that, since the State has responsibility for overseeing the Level I process in the State, it should take a leadership role in the development of a model statement even though the Level I evaluator would issue the notice A common notice form would ensure consistency throughout the State and facilitate monitoring. However, to permit States flexibility in operating their Level I mechanisms, we are not requiring this.

Comment. With respect to the form and style of the notice, some commenters suggested that the notice should be in large print and simple English. Another commenter noting that communication disorders are a prevalent problem among individuals with MI and MR, proposed that the regulation take into account the individual's language and means of communication

Response. We believe that the concerns raised by some commenters over style of the notice and recognition of the communication needs of the audience to which the notice is directed are relevant concerns in designing these

Level I notices which States may wish to incorporate into the notices they adopt.

Comment: One State expressed the view that there is no need for a separate notice for Level I. To go on to Level II, their State requires informed consent. They claimed that the informed consent papers serve as the notice and any other notice would be redundant.

As a related issue, a few commenters expressed the belief that we should require informed consent prior to evaluation. Since the screening includes functional, neurological and psychiatric assessments, these commenters felt that the invasiveness of the testing and the need for cooperation by the individual warrant the client's documented understanding of what is happening.

Response: We do not believe that an informed consent requirement is needed for Level II screens because the law requires that screening be accomplished by the State in all cases where a person with mental illness or mental retardation is proposed for admission to an NF, and the law prohibits an NF from admitting any individual with mental illness or mental retardation who has not been screened and found to need NF care. Thus, the individual who desires to be admitted to an NF has no choice as to whether to undergo a screen except to forego admission. To introduce an apparent choice for such an individual would not increase his or her actual choices with respect to the issue.

We believe that States may choose to require informed consent, but we are not requiring States to do so. Since we are not specifying the form of the Level I notice, States which require informed consent may, we believe, substitute their consent forms for positive Level I notices.

Section 483.128(b)—Language and Cultural Background

Comment: Concerning the requirement that PASARR evaluations must be adapted to the cultural background, language, ethnic origin and means of communication used by the individual being evaluated, several States asked for clarification of how far the State and the NF must go. They recommended that we add language requiring the State to "make reasonable efforts" to adapt PASARR evaluations and notices to individual differences. They noted that some States have very small minority groups such as Southeast Asian immigrants for whom it would be very difficult to obtain interpreters with comprehensive enough technical language skills. Since the information that must be gathered for PASARR is often very technical, the commenters believed that they could not rely on interpreters such as other family members with only rudimentary English language skills. One State asked how the State could meet the timeliness standard if it has to look for an interpreter.

Response: We recognize that this requirement may present challenges to a State. We note that similar questions were addressed in the February 2, 1989 rule concerning the resident's right to be informed of his or her rights in language that the resident understands (See the discussion of § 483.10(b)(1) at 55 FR 5320). In that instance, we held that the facility should have copies of the rights statement in foreign languages commonly encountered in its area and make the services of an interpreter available. For foreign languages that are seldom encountered in the area, the assistance of a representative of the individual could explain the rights and sign for the individual. We also required the facility to accommodate the needs of hearing and sight-impaired individuals in advising them of their rights.

We would expect that, in adapting PASARR evaluations and notices to individual differences, the State should make similar efforts to see that interpreters are used where necessary and that the screening instruments used do not contain recognizable cultural biases. Also, communication deficits noted in the physical examination and medical history should be taken into account by the evaluator in conducting the other elements of the screening.

Section 483.128(d)—Relationship Between NF and Specialized Services Determinations

Comment: A number of commenters applauded the holistic approach taken in § 483.128(d). In that section we required that the two determinations concerning the need for a NF level of care and for specialized services be interrelated and based upon a comprehensive analysis of all data, gathered throughout all applicable portions of the PASARR evaluation (i.e., PASARR/NF, PASARR/MI and PASARR/MR).

As indicated in our discussion of appropriate placement at § 483.126, other commenters believed we were giving mixed messages. They claimed that, on the one hand, we were saying that the two determinations must be made together while, on the other hand, we were making it seem as though the two determinations are separable.

Response: Because the comments on the interrelatedness of the two determinations are part of the larger question of appropriate placement, we have discussed these issues under that section at 483.126.

Section 483.128(g)(4)—Report Must Identify NF Needs and Specialized Services Needs

Comment: Several States advocated that we delete the requirement that the PASARR evaluation report identify the NF level mental health services which the person being screened needs. They believed that it is the NF's job to assess these needs. Having to go into such depth of needs analysis, the States claimed, makes meeting the timeliness standard impossible.

Response: We refer readers to the discussions of the purpose of PASARR under general comments on PASARR evaluations and determinations at § 483.128 and of the need for two assessment processes under coordination of PASARR with resident assessments at § 483.108. Congress intended that there be two systems of assessment for the mentally ill and the mentally retarded populations. We believe Congress gave the State mental health and mental retardation authorities responsibility for PASARR determinations presumably in order to call in the appropriate specialists for something akin to a second opinion on the needs of individuals in these two populations. We do not perceive of the PASARR process as merely serving a directive purpose. It must perform a classifying function; and, thus, there must be reasons presented for why an individual should go one direction or another and the overall process should result in appropriate care in whatever setting the individual is directed toward. Therefore, we believe the evaluation report must contain enough detailed information about the individual's mental health or mental retardation needs to be able to explain why NF placement is or is not appropriate and, if it is determined that the individual may enter or remain in this setting, to enrich the care planning process in the NF.

On this point, we would note that coordination between the NF's resident assessment process and the State's PASARR process is required at § 483.106(a). We believe that, for ARRs, it would be thoroughly appropriate for the PASARR evaluator(s) to review the NF's plan of care on the resident, which flows from the RA, and comment on it in the evaluation report, ratifying the care plan or suggesting changes or additions. For PASs, the evaluator could make recommendations which could serve as a basis for the NF's plan of care until the NF has had the opportunity to conduct its first assessment on the resident

(which it must do within the first 14 days of admission). Likewise, the NF may use data developed under PAS in conducting its first RA on the new resident.

Section 483.128(h)—Abbreviated Written Report for Categorical Determinations

Comment: A couple of States expressed the opinion that the requirements for issuing an abbreviated written evaluative report in cases where categorical determinations are made were much too detailed. They claimed that these requirements would create a paperwork burden for the States. These States also noted that tracking categorically determined individuals will be difficult because these determinations are made at the NF level.

Response. Categorical determinations are not exemptions from PASARR. They are determinations by the State even though they are applied locally and at the Level I stage We believe that the requirements listed are the minimum elements necessary to complete the PASARR process in those easy-to-identify cases for which a categorical determination is possible We do not believe these requirements are overly burdensome. It is the State's responsibility to keep track of the individuals for whom categorical determinations are made and to monitor the manner in which the State's designated Level I evaluators are making these determinations. We note that categorical determinations, like individualized Level II determinations, are appealable. Therefore, the action by the State (and its agent, the NF or other Level I evaluator in applying the categorical determination) must provide the basis for such action The evaluation report does this.

Section 483.128(i)—Findings Must Be Interpreted to Individual or Legal Representative and the Individual or Legal Representative Must Receive a Copy of the Report

Comment. A few commenters felt that the requirement that the findings of the evaluation be interpreted to the individual or his or her legal representative was too burdensome and time consuming. They thought the evaluator should only be required to deliver a copy of the written report to the individual or his or her legal representative. One commenter felt that requiring delivery of the full evaluative report to the individual or legal representative was excessive and that provision of the findings should be enough Other commenters believed it was inappropriate to have the evaluator tell the person being screened what the results of the screening were before the determiner had made a decision. They thought it would make better sense to have a face-to-face discussion after the determination is known.

Response: We are not specifying how or when or by whom the State must provide an interpretation and explanation of the findings of the evaluation to the individual being screened or his or her legal representative States vary considerably in the way they have their screening systems organized. Also, the individuals being screened present several different types of situations, depending upon whether they can be dealt with categorically or not and whether they are competent to understand an explanation or whether the explanation must be given to a legal representative.

Since categorical determinations are applied at the Level I stage, the evaluator will likely be different from the evaluator who performs the individualized Level II evaluation. For individualized evaluations, some States may use standardized forms which the evaluator fills out during the course of the evaluation. In such a case, the evaluator could provide an explanation during or at the conclusion of the screening and could provide the individual with a photocopy of the report Under other State processes, the evaluation report may not be written up until a day or two after the screening has been completed. Some States may use evaluation teams who move from one facility or locality to another on a routine basis In such a case, the evaluator may not be available to provide a face to face interpretation after the screening is completed. Telephone calls might be a possible alternative means of communication. We also agree that in some cases, especially the more complex ones, it may make sense to have the explanation given after the determination of the SMHMRA is known.

While we are not specifying how, when or by whom the explanation must be given and the copy of the report provided, we believe it is essential that the person being screened or his or her legal representative receive a layman's explanation and a copy of the full evaluation report for several reasons These are sensitive issues for the person being screened and the results of the screening may have great impact on the individual's options for future care. These are disabled populations for whom extra care must be given to allow them to exercise their rights Since PASARR Level II determinations are appealable, they must understand the basis on which the determinations were made in order to assess whether they should submit an appeal. If they seek the advice of an advocate, the first thing an advocate would want to see would be the evaluation report. Therefore, we believe the individual or legal representative must be informed both orally and in writing and that the full evaluation report must be provided.

Because we are identifying other recipients of the evaluative report at § 483.128(l) (i.e., the SMHMRA; the NF; the individual's attending physician; and the discharging hospital, in cases in which NF admission is being sought from a hospital), we are relocating the language at § 483.128(k) that requires that the individual or legal representative must receive a copy of the report to a new § 483.128(l) so that States and evaluators will readily understand exactly to whom copies of the report must be sent and under what circumstances (See also discussion of § 483.134 personnel requirements.) Because the attending physician and the discharging hospital (in non-exempt cases) also need to know the outcome of the PASARR process for their patient, we are also adding a corresponding requirement at § 483.130(n) that a copy of the determination made by the SMHMRA be sent to them

Other Changes to § 483.128

In response to comments we received on the timeliness standard at § 483.112(c) that we not establish a separate timeframe for evaluations under PAS, but rather leave it to the States to establish whatever timeframes they need to meet the overall timeframe required by § 483.112(c) for making a determination once referral to the State authorities is received, we are removing specific timeframes for evaluations in proposed § 483.128(j).

We are also adding a new provision in paragraph (1) that the evaluator must submit the evaluation report to the State authorities in sufficient time for the State authorities to meet the timeframe for PASs established in § 483.112(c) and for ARRs in § 483.114(c). These additions are consistent with our discussions elsewhere in this preamble.

Section 483.130—PASARR Determination Criteria Categorical Determinations

Comment: A number of State agencies and other commenters supported the use of categorical determinations and reacted favorably to the degree of latitude the proposed regulation gave States in devising categorical

determinations. Most of these commenters expressed appreciation for this opportunity to restrict the broad statutory definition of MI, which existed at the time, to serious MI and thereby reduce PASARR costs and avoid unnecessary inconvenience to clients who are not likely to need specialized services. To assure national uniformity in how PASARR is applied, however, other commenters urged us to dictate the categories States may use or even must use.

Response: Originally we devised the system of categorical determinations primarily as a means of allowing States to reduce the number of extensive, individualized screenings they would have to perform on individuals who fit the OBRA '87 definition of MI by making presumptions about individuals with certain diagnoses. This definition encompassed all individuals who have a primary or secondary diagnosis of a mental disorder described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised (DSM–III–R) and do not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder). Because DSM–III–R catalogs virtually every known mental affliction, whether or not severe or disabling, the net cast by this definition was very broad indeed. In making determinations about individuals with MI, States could speedily deal with clear-cut cases in a cost efficient manner by using presumptions. They could then focus their resources on the more seriously mentally ill for whom active treatment (now known as specialized services) or an alternative placement might be needed. We also allowed States to create categories of physical need which would enable them to deal quickly with individuals whose need for NF care was readily apparent (i.e., convalescent care following an acute hospital stay; terminal illness; severe chronic and debilitating illnesses).

As noted elsewhere in this preamble, OBRA '90 restricted the definition of MI for PASARR purposes to serious mental illnesses as defined by the Secretary in consultation with the National Institute of Mental Health. It also excluded non-primary dementias from the definition of MI. In addition, OBRA '90 allowed for certain admissions from hospitals for convalescent purposes. All of these statutory changes had an impact upon our system of categorical determinations, rendering several of them superfluous and requiring others to be altered. These changes are discussed below under each separate heading.

We disagree with those commenters who wanted us to impose a uniform national system of categorical determinations. States vary in how their mental health and mental retardation systems are structured and how they approach service delivery to these populations. We believe that States should have some degree of flexibility in determining how the categories are designed. We have indicated certain types of categories which may or may not be used or placed limitation on their use. We believe these strictures are sufficient.

Comment: One commenter asked that the regulation clarify that categorical determinations should be done as part of Level I and that any errors can be picked up in NF's resident assessment.

Response: We believe that the preamble discussions in the proposed rule presented sufficient explanation that categorical determinations are State determinations applied at the Level I stage in clear-cut cases and have not amended the regulation.

Comment: The statements of some commenters appear to indicate that some States continue to view categorical determinations as exemptions to PASARR screenings rather than as determinations by the State. For instance, one commenter stated that the rules appear to allow temporary placements (for respite or provisional placement) yet state that if an individual is admitted without PASARR, FFP will be denied. We also heard allegations that the convalescent care category has been used to admit people to NFs while it takes the State up to 120 days to do evaluations. Another State explained that it is using the respite category to avoid individual screenings for admissions that are expected to last less than 30 days. The State did not mention any other criteria such as proof that there is a caregiver who needs temporary relief and to whom the individual being admitted to the NF will return. It only stated that if a stay exceeds 30 days, the State screens the individual. Moreover, the State recommended this strategy to reduce paperwork.

Response: As we noted above under § 483.128(h), categorical determinations are determinations by the State and not exemptions from screening. Therefore, FFP is available for NF care provided in accordance with these determinations. We note, however, that we recognize the potential for abuse by States in creating and applying a system of categorical determinations. In doing future reviews of State PASARR programs, we will evaluate the reasonableness of the categories a State has established and the manner in which they have been applied. When categorical determinations are being used inappropriately, for example, to avoid the need for screenings, the State would be subject to compliance actions.

We hope that the OBRA '90 provisions which redefine MI to reduce the size of the population needing screening and which permit admission to NFs without PAS of hospital patients being discharged to NFs for short-term (less than 30 days) convalescence from a condition for which they were hospitalized will reduce the temptation for States to use categorical determinations inappropriately.

Section 483.130(d)(1) Convalescent Care and Section 483.130(d)(2) Terminal Illness

Comment: Commenters supported the use of these categories. Their main objection was that they wanted us to dispense with the requirement that an MI or MR evaluation still be performed.

Response: As discussed elsewhere in this preamble, categorical determinations are not exemptions and for those for whom a determination is required both questions must be asked and answered, either categorically or individually. By contrast, OBRA '90 now permits certain individuals being discharged from hospitals to NFs for brief convalescent care to be exempt from PAS. Because not all individuals being discharged from hospitals to NFs will be able to meet all the statutory criteria for exemption from PAS (e.g., the 30 day projected limit for such a stay), we are retaining the proposed convalescent care category and have added only the following qualifying phrase: "which does not meet all the criteria for admission as a PAS-exempt hospital discharge identified at § 483.106(b)(1)(ii).

Section 483.130(d)(3)—Severe Illness

Comment: Several commenters made suggestions about conditions or diagnoses which they felt should or should not be included under the severe illness category. For instance, one State questioned the inclusion of congestive heart failure (CHF) and the omission of cardiovascular accident (CVA) from the list. Other commenters suggested the addition of CVA with aphasia or Niemann-Pick disease. One medical society recommended inclusion of quadriplegia, advanced multiple sclerosis, muscular dystrophy, cerebellar degeneration, stroke, and stage renal disease, severe diabetic neuropathies, and refractory anemias.

Also, these commenters favored retention of the "such as" language to indicate that the list is not all-inclusive.

Response: We do not wish to dictate to States which conditions they must include on a list of severe illnesses. States may wish to use these suggestions.

Section 483.130(d)(4)—Provisional Placements and (d)(5)—Respite

Comment: A number of commenters addressed specific categorical groups, either by making suggestions or asking questions. One commenter expressed appreciation for the provisional admissions category at § 483.130(d)(4), noting that it would be useful for people who cannot be screened due to effects of anesthetic, medication, unfamiliar environment, severity of illness or electrolyte imbalance until these effects clear. Other commenters applauded inclusion of the respite category at § 483.130(d)(5) but asked that we clarify that the individual must still meet NF level of care. Several noted that the minor mental disorders category at § 483.130(f) would be very helpful.

Although we had proposed that brief admissions could be made to permit alternative arrangements for long term care in emergency situations requiring protective services, one commenter noted that, as drafted, the proposed rules would make it virtually impossible to admit children with MR who need a NF level of services on an emergency basis. The main obstacle to admitting, for example, medically fragile children brought to the commenter's NF because of abuse and neglect is the requirement that even though the NF level of care question can be dealt with categorically, the rules still require that the specialized services determination be made individually.

The commenter also noted that this requirement delays admission of children with MR for very brief stays under the respite care category, for instance, when the parents must take care of other needs, sometimes on short notice. The commenter asserted that in an emergency situation, there is no time to meet the requirements of § 483.130(h), as proposed, which provide that the SMRA must make a determination based on an individualized evaluation by professional staff, including a licensed psychologist. For respite cases, where the individual will be in the NF only a few days, it is not feasible to implement a detailed specialized services program for MR. Therefore, the commenter thought, it makes little sense to hold up admission to the NF in order to obtain the detailed screening which would lay the basis for development of such a program.

The commenter noted that his State had adopted rules which allow a mentally ill or mentally retarded child under age 21 who needs NF care to be admitted pending determination of placement for longer term care. The State's rules also allow individuals who need NF care and are not a danger to themselves or others to be admitted to a facility for respite care for up to 14 days, twice a year. In both of these cases, the commenter noted, the State rules recognize that it is not reasonable or appropriate to require a detailed individualized screening process or provision of highly specialized MR services while the individual is in the NF on an emergency basis or for only a brief respite stay.

Response: We believe that many of the concerns expressed by commenters arise from a misunderstanding of the nature of the determinations required under the PASARR process. Assessment of the need for specialized services must necessarily take account of the time and effort needed to assess the individual and implement a specialized services regimen. In the case of a mentally retarded individual living at home who is proposed for a brief respite stay in a NF, for example, the lack of time to develop and implement a plan may lead the State mental retardation authority to conclude that specialized services are not necessary for the individual. A different decision would be dictated by a longer stay. In still another example, an individual with severe behavioral symptoms may require specialized services even during a short stay because of the potential danger to the patient or others.

We do not believe that the resolution of the problems raised by the commenters lies in providing exemptions from the need to make determinations about the need for specialized services (either detailed or categorical—see the following discussion of § 483.130(h)) but, rather, in viewing the need for specialized services in the context of the proposed stay. Clearly, it would not be appropriate to order an assessment and development of a treatment program when that activity would require virtually as long as the stay itself so that it would not, as a practical matter, be possible to implement the treatment program during the stay.

While we recognize that there are numerous examples of situations in which an NF admission could be appropriately made on an emergency basis without the types of screening and determinations required under these regulations, we must note that the law does not provide for any exceptions. All individuals with MI or MR must be screened, either individually or categorically. Thus, measures we suggest here are the least intrusive possible under current law.

Comment: As indicated under our discussion of the timeliness standard under § 483.112(c), a sizable number of commenters asked for a provisional admissions category for cases in which record availability is a problem or the case was unusually complex yet it appears that NF care is needed. A number of commenters also asked for an emergency admissions category or an expansion of the provisional admissions or respite categories to encompass such situations.

Response: In response to comments, we are revising section 483.130(d) to provide that the State may make an advance group determination that NF services are needed in the case of provisional admissions pending further assessment in emergency situations requiring protective services with placement in an NF not to exceed 7 days. We had proposed such an idea in the proposed rule as part of the respite category, but commenters appeared not to have noticed it. It now stands on its own as a separate category at § 483.130(d)(5).

Section 843.130(e)—Required Individualized Evaluations for Major Mental Illnesses and Section 483.130(f) Minor Mental Disorders.

Since OBRA '90 changed the definition of MI to "serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)," there is no longer a need for the minor mental disorders category originally proposed at § 483.130(f). Such individuals are no longer subject to PASARR, so we have removed this provision.

We are also eliminating § 483.130(e), which proposed that the State's PASARR system must assure that at least all individuals with diagnoses of schizophrenia, paranoia, mood disorders, schizoaffective disorders, and atypical psychosis receive individualized screens to determine if they require specialized services. Individuals with diagnoses of serious mental illnesses such as these are now the very group to which the definition of MI is restricted. To retain this categorical group would be superfluous, on the one hand, and, on the other hand, would require individualized screens in all cases, thus, prohibiting the use of any

categorical determinations for individuals with MI.

Because of the seriousness of MI as it is now defined, we believe that as a general rule, individuals with these diagnoses should receive individualized screens. Except as noted below, the only exceptions to the performance of a complete evaluation which deals with both questions on an individualized basis should be when there is a clear physical need for NF care or a need to act quickly. In the case of a clear physical need for NF care (e.g. need for convalescent care or very severe or terminal illness), but no emergency, a categorical determination that NF services are required could be made as identified in § 483.130(d)(1–3) accompanied by an individualized MI or MR specialized services evaluation as required by § 483.134 or 483.136. In cases in which there is a need to act quickly, as identified in § 483.130(d)(4–6) (e.g. provisional, emergency or respite placements), a categorical determination could be accompanied by either an individualized MI or MR screen or a categorical determination, as permitted in § 483.130(e).

As noted earlier under the discussion of the dementia exclusion at § 483.102(b)(2), the statute and the legislative history speak only of an exclusion from MI for dementias. There is no statutory exclusion from MR for dementia. Many commenters, including disabilities advocates and professionals involved in treatment of individuals with MR, asked that we permit a dementia/MR exclusion from PASARR. Some commenters proposed that we create a categorical determination which would permit such individuals to be dealt with without extensive screening. We have added such a provision at § 483.130(g). Along with the provisional admission, emergency or respite situations which are available for both individuals with MI and those with MR, this dementia/MR categorical determination would permit a negative categorical finding that specialized services are not needed. Application of this categorical determination would need to be based on the same level of diagnostic certainty as the application of the dementia exclusion from MI (i.e., physician's diagnosis).

Sections 483.130 (g) and (h)—Limitations on Categorical Specialized Services Determinations

Comment: One commenter representing mental retardation professionals asserted that §§ 483.130(b)(1) and 483.130(g) or 483.130(h) appear to contradict each other Paragraph (b)(1) permits advance group determinations by category that take into account that certain diagnoses or levels of severity of illness clearly indicate that admission to or residence in a NF or the provision of specialized services is or is not normally needed.

Paragraph (g) states that the State mental health or mental retardation authority must not make categorical determinations that specialized services are needed without requiring that such a determination be followed by a more individualized evaluation through a PASARR/MI or a PASARR/MR. In other words, there can be no positive specialized services determinations made categorically. Paragraph (h), as proposed, states that the State mental retardation authority must not make categorical determinations that specialized services are not needed for individuals with MR and that a negative active treatment determination must be based on a more extensive individualized PASARR/MR. Taken together these two provisions mean that only negative determinations for specialized services/MI may be made categorically and that no categorical determinations with respect to the need for specialized services, either positive or negative, can be made for individuals with MR. Yet paragraph (b)(1) indicates that both positive and negative categorical NF care and specialized services determinations are possible. Once a categorical determination on NF needs is made, it must be followed by an individualized PASARR/MR.

Response: We agree that an inconsistency exists in the rule as proposed and are revising § 483.130(b)(1) to provide that determinations may be advance group determinations, in accordance with this section, by category, that take into account that certain diagnoses or levels of severity of illness clearly indicate that admission to or residence in a NF is normally needed or that the provision of specialized services is not normally needed. Paragraph (g) then emphasizes that only negative categorical specialized services determinations can be made. (See the following discussion of § 483.130(h).)

We have also clarified this position further by removing the phrase "without requiring that the determination be followed by a more extensive individualized evaluation * * *" because this language suggested that positive categorical determinations with respect to specialized services could initially be made so long as a more thorough screen was later performed. We have substituted instead a statement that more clearly requires all positive determinations concerning the need for specialized services to be based on the more extensive individualized evaluation.

Our reason for prohibiting positive categorical specialized services determinations is that, for individuals who need specialized services, we do not believe it is sufficient to simply say that they need them. If they need specialized services, the State must do something about this need. The screening process should, therefore, take a close look at the individual's specialized services needs for any bearing it may have on the NF level of care determination and to lay the groundwork for coordination of care between the NF and the State if NF placement is approved.

As noted elsewhere in this preamble, individualized determinations are needed to establish an individualized list of specialized services. For each individual who is subjected to PASARR and found to need specialized services, the PASARR report holds the key for surveyors to use when surveying the NF. The NF cannot be held responsible for supplying those services identified as being within the realm of the State's responsibility. Anything else, which is not listed as a State responsibility, is a responsibility of the NF. Additionally, whether or not specialized services are needed, the PASARR report should provide information about the other mental health or mental retardation needs the individual has which are below the specialized services level of intensity.

As discussed under the definition of specialized services at § 483.120, we are reluctant to establish a generic list of specialized services. We are, however, allowing States, if they so choose, to develop such a list and include it in their State plan preprint. Whether the SMHMRAs have in hand a State-established list of specialized services to draw from or not, the PASARR report identifies what the list of specialized services is for this particular individual. The report should also identify, for the benefit of the NF as well as of surveyors, the types of NF services which the SMHMRA thought the individual needed. Surveyors could then look to see if the NF were providing these mental health or mental retardation NF services.

Because of the reduced need for categorical determinations as a result of the change in the definition of MI and because of the need to have the PASARR report serve as a linchpin in the care planning and surveying process, we have considerably reduced the scope

of applicability for categorical determinations. We continue to believe that categorical determinations have utility in some situations as identified above, but the use of individualized screens should be the norm.

Section 483.130(h)—State MR Authority Must Not Determine Categorically That Specialized Services Are Not Needed

Comment: Several commenters objected to the requirement at § 483.130(h) (as proposed) that, for individuals with MR, the State mental retardation authority must not determine categorically that specialized services are not needed. Some commenters who opposed this restriction stated that the ability to use categorical determinations for both types of determinations (specialized services and NF care) should be equal for both groups, (individuals with MI and MR). However, a few other disabilities advocates strongly supported the emphasis placed on individualized determinations for individuals with MR in all cases.

Response: We originally proposed this requirement because the definition of MR was not as broad as the definition of MI. As noted earlier, the system of categorical determinations was devised, at least in part, in an effort to assist States in reducing the numbers of individuals with MI who would have to be screened individually by eliminating from intensive evaluation all those who had only minor mental disorders which would probably never need specialized services. The definition of MR, while it does include mild retardation, did not potentially encompass a major share of the nursing home population in the way the original statutory definition of MI did. We were concerned that if we permitted use of categorical determinations for individuals with MR that active treatment is not needed, some States could establish a category which would deprive individuals with milder levels of mental retardation from receiving an individualized screening to identify those services they might need.

We are persuaded by commenters, however, that it is not equitable to have negative active treatment categorical determinations available for individuals with MI but not for those with MR, at least in the two or three instances in which they are urgently needed, (i.e., in provisional admission, emergency and respite situations). In all other instances (except as identified in § 483.130(g)), we believe that individualized screens concerning the need for specialized services for MR should be required. We have, therefore, amended the proposed § 483.130(h) (now located at § 483.130(e)) to convert it from a prohibition against MR categorical determinations of the need for specialized services in all circumstances to an explicit, but limited, permission to use categorical determinations in these limited situations.

Because of the change in the definition of MI and the reduced need for MI categorical determinations of the need for specialized services, we have also amended the proposed § 483.130(h) to place these same limitations on categorical determinations concerning the need for specialized services for individuals with MI made by the SMHA. Both groups, thus, will be subjected to the same rules and limitations at § 483.130(e).

Section 483.130(i)—Severity of Mental Illness

Comment: One commenter objected to § 483.130(i) which permitted the State to establish a categorical determination that individuals with certain mental conditions or levels of severity could normally not be accommodated in a NF because their care needs would be too heavy, even with supplemental active treatment services provided by the State. The commenter thought that this category discriminated against these individuals on the basis of diagnosis.

Response: We disagree. Medicaid regulations relating to sufficiency of amount, duration, and scope of services at § 440.230(c) prohibit a State from "arbitrarily" discriminating on the basis of diagnosis. The provision of this regulation explicitly authorizes categorical determinations when they are based on the medical condition of the patient and the care needs to which such conditions give rise. By using such a category, a State would not be barring such individuals from entering a NF solely on the basis of diagnosis of MI or MR. The State would simply be acknowledging that certain individuals with severe mental illness or profound retardation have needs that are so great that a service delivery system for that individual would be difficult to construct or cost prohibitive. In the best interests of the individual, he or she should be accommodated in another setting where the more intensive services the individual needs can be provided more completely and efficiently.

In the process of reconsidering all the categorical determinations in light of the OBRA '90 changes, however, we have concluded that § 483.130(i), as proposed, is both unnecessary and contrary to the statute. The statute clearly indicates that if NF services are needed, the individual may be admitted to the NF; and, if specialized services are also needed, they must be provided in the NF if the individual is admitted. This provision is not consistent with the statute because it would allow States to determine that, even though NF services are needed, some active treatment needs might dictate placement in another setting.

The key to resolution of the problem lies in the definition of appropriate placement at § 483.126 and in the requirement at § 483.128(f) that both determinations, because of their interrelated nature, must be made in tandem. The NF level of care is, as we discussed in the NPRM, analogous to a layer cake. If an individual's service needs are above a level which can be accommodated in a NF, with or without the specialized services which the State can effectively and efficiently bring into the NF or take the individual from the NF to, then the individual should be considered not to need a NF level of services. He or she needs a higher level of services, not NF services. In such cases, a negative finding on the question of whether NF care is needed should be used to direct the individual toward those other more appropriate settings instead of accomplishing the same end by means of this categorical determination. We are, therefore, deleting § 483.130(i) as proposed.

Section 483.130(j)—Categorical Determinations Based on Advanced Years, Right To Refuse Active Treatment

Comment: We proposed that the State may make a categorical determination that certain individuals of advanced years be allowed to decline specialized services in a NF under certain circumstances.

A number of commenters strongly objected to this category on the grounds that limiting the right to refuse treatment is contrary to existing Medicaid regulations at § 483.10(b)(4). These commenters felt that compelling a resident to receive specialized services just because he or she needs NF services is a fundamental violation of his or her rights. Another indicated that many court decisions have established that an individual cannot be forced to receive psychiatric treatment against his or her will unless he or she presents a danger to him or herself or others.

Those who favored use of an advanced years category suggested a number of changes in it. Whether or not there should be a fixed age for the category was a particularly contentious issue. Some commenters wanted a fixed age so that evaluators would be

consistent. A number of other commenters supported the position that no set age should be used while, as indicated above, some wanted no set age, but a lower limit. Still others asked that we clarify that anyone of any age can refuse specialized services.

Describing the preamble discussion in the proposed rule as unnecessarily inflammatory, one commenter objected to the prohibition against a blanket use of advanced years category. Others agreed with the preamble's concern that an advanced years category could be easily misused, but noted that individuals with MI or MR of any age vary in their ability to benefit from specialized services. One developmental disabilities advocate, who particularly appreciated the reference in the proposed rule to the special needs of persons with Downs Syndrome, strongly supported inclusion of a limited option to decline specialized services on an individualized basis without creating rigid age ranges.

Other disabilities advocates, however, while supporting the concept of an advanced years category, found the provision, as drafted, confusing. They asked that we specify that the State must establish specific criteria governing circumstances under which persons of advanced years may be permitted to decline specialized services. However, they urged that in no case should a State be able to offer this categorical choice to groups who are less than 60 years of age. Also, they asked that the State continue to be required to individually determine specialized services needs before offering the choice of refusing treatment and to be required to provide or arrange for specialized services for all persons falling into this category who elected to receive such services, regardless of age.

Another DD advocate noted that this provision leaves the resident potentially susceptible to highly injurious manipulation. Since FFP is not available for specialized services in the NF and frail, elderly people are afraid of being discharged or transferred, the SMHMRAs could easily pressure the resident to sign away his or her rights to specialized services. This commenter advocated that we revise this provision to state that as a person ages, the components of a specialized services program must be tailored to the individual's changing needs. Moreover, we should state that the decision to forego specialized services must be left up to the individual resident; that the State must provide sufficient information to the resident that services can be adjusted for age-related concerns; and that the choice is the resident's to make. This advocate further urged that the State should have to prove that these conditions have been met whenever a resident is said to have refused specialized services on the basis of age. To prevent abuse of the concept that older people should be allowed to retire, this commenter also advocated that in no case should the State be allowed to set the age level below 60.

Response: We are persuaded by a review of the comments to delete the "advanced years" category because we recognize that the regulations otherwise permit a resident to refuse treatment and that this category is not needed. In deleting it, we are conscious of the concerns of advocates who fear that permitting any option to refuse treatment is susceptible to abuse; however, we believe that the overall right to refuse treatment, conferred in the resident's rights language in § 483.10(b)(4), cannot be limited.

In the survey guidelines which accompany the February 2, 1989 rule we indicated that,

> A resident's refusal of treatment must be persistent and consistently documented in the resident's record. Refusals of treatment should also be countered by discussions with the resident of the health and safety consequences of the refusal and the availability of any therapeutic alternatives that might exist * * *

Individual probes which are to be used by surveyors involve asking residents: Have you ever refused a medication or treatment? What happened? How did the staff react? Has the facility offered alternative treatments to the ones you've refused? (Tag No. F157, p. 32, State Operations Manual, Transmittal No. 232, September, 1989). We note that the survey guidelines for the ICF/MR regulations contain similar provisions to assure that the right to refuse treatment is not abused. These include instructions to surveyors to question whether the facility repeatedly offered alternative treatment to the treatment refused and whether the resident's record documents this fact. While we recognize that abuse is possible, we do not believe that we can require anyone to receive treatment, including specialized services.

Section 483.130(l)—State May Not Waive Specialized Services Determination if Making Physical NF Categorical Determination

Comment: A number of commenters objected to this provision because they believe it seriously undermines the utility of categorical determinations based on physical needs such as the convalescent care, terminal illness or severity of illness groups. They also indicated that, as noted above, this requirement senselessly hampers the application of the respite category and prevents creation of an emergency placement category, especially for individuals with MR (See discussion of § 483.130(h)).

One association of mental retardation professionals noted that it is wasteful to require the specialized services determination when the physical need categorical determinations are time limited and the assumption is that, because the physical need is so debilitating, the individual cannot be expected to benefit from a specialized services program. This commenter noted that most States have been exempting persons in these categories from Level II assessments, including the specialized services assessment.

Another commenter, apparently wanting the specialized services determination waived so that acutely psychotic patients with skilled care needs (e.g. ventilator dependent, CHF, terminal illness) could be accommodated in NFs, indicated that such individuals are not likely to be taken in by psychiatric facilities because of their heavy physical care needs. This commenter asserted that if these individuals cannot be admitted to NFs, they would have to stay in regular hospitals where their specialized services needs are not met any better than in an NF and their care is much more expensive.

Response: It is clear to us that the Act does not permit us to waive either of the determinations required of the State under PASARR. We have provided for categorical determinations, discussed extensively elsewhere in this preamble and in the preamble to the proposed regulation, to assist States in dealing with clear and obvious situations. Thus, we could not make the changes recommended by the commenters. In addition, despite the many compelling examples presented by commenters, we were not persuaded that there are many, if any, situations in which it can always be assumed from a resident's diagnosis whether specialized services are or are not needed. Moreover, as discussed earlier in this preamble, the specialized services determination would likely vary depending on the reason for admission and the proposed length of stay.

Comment: One commenter suggested that § 483.130(l) be rephrased. As drafted, it states that if the State mental health or mental retardation authority makes a categorical determination with regard to need for NF services (which

could be either positive or negative according to § 483.130(b)(1)), it may not waive the specialized services determination. The commenter asserted that if NF care is determined categorically not to be needed, this provision, as it applies to applicants, conflicts with § 483.118(a) concerning applicants who do not need NF care and § 483.112(b) which requires the specialized services determination for applicants only in cases in which the need for NF care has been established. The commenter suggested that we revise § 483.130(l) to state that if the State mental health or mental retardation authority determines categorically that NF services are needed, it cannot waive the specialized services determination.

Response: We agree with the point made by the commenter that the specialized services determination is not required for applicants to NFs if it has been determined that there is no need for NF care. (See § 483.112 as opposed to § 483.114). However, the technical revision proposed by the commenter would not be appropriate for cases involving residents of NFs for whom both questions must be asked, regardless of the response to the NF level of care question. A requirement can only be waived if it is indeed applicable to a given situation. For applicants to NFs who are determined not to need NF care, the requirement for a specialized services determination is not applicable.

Section 483.130(m)—Determination Must Be Entered in Individual's Record

Comment: A few commenters asked us to clarify what records must be included in an individual's record: the Level I determination, the Level II evaluation report, or the Level II determination notice?

Response: We believe that the record of the individual, if admitted to or residing in an NF, should contain as many of these documents as apply to him or her. As we indicated under the earlier discussions of the need for integrated care planning to result from the two assessment processes which are required for individuals with MI or MR, the NF must receive a copy of the evaluation and the determination. These documents are needed for care planning in the facility and also to demonstrate the status of these residents to surveyors. For individuals who are not admitted to an NF or are discharged as a result of PASARR, other treatment settings to which they go will likely wish to have these documents on file as part of their client records. Our primary concern here, however, is that the NF have copies of all PASARR records pertaining to the resident with MI or MR on file (see § 483.128(l)).

Sections 483.130 (n); (o); and 483.204(a)(2)—Content Requirements for Written Level II Notices

Comment: One State objected to written notices because it believed that face-to-face explanations were in order.

Response: We refer readers to the discussion of the need to provide an interpretation and explanation of the evaluation report to the person being screened or his or her legal representative at § 483.128(i). We believe that the State could meet these two requirements in either a one-step or two-step process and have accordingly provided States considerable latitude for working out what they believe to be the most sensible procedure for informing persons being screened both orally and in writing of the findings of the evaluation and of the determinations that have been made concerning them. Because the Level II determinations carry with them appeal rights, the individual must be notified in writing and advised of how and to whom he or she may appeal (See the appeals discussion). Since the notice of determinations made by the State mental health or mental retardation authority must present placement options (see following discussion of § 483.130(p)), the State will certainly need to engage in face-to-face encounters with individuals who fall into the long or short term group who need only specialized services if the State has an ADP in effect.

Comment: Some commenters asked who is responsible for the transfer and discharge notices that may be required in conjunction with these Level II notices in cases in which residents must be transferred or discharged.

Response: We believe that establishing procedures for giving notices is part of the State's responsibility under its PASARR program. That is, a State may establish procedures under which it gives notices or under which NFs give the notices on behalf of the State. In either case, the State is responsible for assuring that alternative arrangements for care are actually available before discharge from the NF. As noted at § 483.128(e), we added a conforming amendment to § 483.130(n) to ensure that the attending physician and the discharging hospital (in non-exempt cases) receive copies of the SMHMRA's determination.

Section 483.130(p)—Inclusion of Placement Options

Comment: One commenter noted that when some of these options that must be presented are community placement options which are covered under an ADP and have not yet been developed, it is difficult to list or describe them. This commenter urged that the regulation take this problem into account.

Response: We agree that it is difficult for a resident or his or her representative to choose among options when one of them has not been created at the time the choice is made. States that have ADPs under which non-institutional alternatives to NF care are being established may also receive FFP for NF services pending the establishment of the alternatives. We would anticipate that States would offer residents choices of actual alternatives available at the time the choice is made, so that an individual for whom continued residence in an NF is permissible would be able to exercise the choice to remain there or accept an alternative placement at the time the alternative has been created. We are not specifying in the regulation the time at which the choice must be made because we believe that is a decision that should be left to the State, based on its actual ability to offer choices consistent with these regulations and its ADP.

Comment: One commenter asserted that the regulation fails to deal with situations in which a person is dangerous. Such individuals, the commenter thought, should not be allowed to remain in the facility.

Response: The law and regulations permit the facility to discharge a resident immediately (see 42 CFR 483.12) if the safety of individuals in the facility is endangered. We believe that this authority overrides the statutory requirement that long-term residents be allowed the choice to remain in the facility. Thus, we agree with the commenter and believe that regulations already are responsive to the comment.

Section 483.130(q) Specialized Services Needed in an NF

We proposed that if a determination is made to admit or allow to remain in an NF an individual who requires specialized services, the determination must be supported by assurances that the needed specialized services can and will be provided or arranged for by the State while the individual is in the NF.

Comment: One State recommended that States rely on their survey and certification procedures or state licensure process in order to determine that facilities generically are appropriate for arranging specialized services.

Response: The regulatory requirement does not specify how a State must meet

this need and the expedient suggested by the commenter is one way it could do so. We would note, however, that we would expect that a State would support any assurance with a discussion of how the requirement will be met.

Section 483.130(r)—Record Retention and Section 483.130(s)—Tracking Systems

Comment: A few States asked for guidelines about record retention: what should be retained, by whom, and for how long? Two other States were of the opinion that the record keeping and tracking requirements are more extensive than they should be. These commenters thought the Level I decision records and supporting documentation should be filed at the NF and not be made part of the State's PASARR records. They also felt that the records on categorical determinations should be kept locally at the NF since these decisions are made there. Another commenter noted that the State's tracking system should include records on the provision of services that are identified as needed.

Response: Regulations for retention of records under State Medicaid programs may be found at 45 CFR part 74. States have considerable latitude in deciding on the physical location of the records they must retain and, of course, may retain them for longer periods than required under the regulations.

Section 483.132 Evaluating the Need for NF Services and NF Level of Care

In § 483.132(a)(1), we proposed that the evaluator must assess whether an individual's needs can be met on an institutional basis and that the NF is the appropriate institutional setting.

Comment: The few comments which we received on the PASARR/NF portion of the evaluation were closely related to those we addressed under the discussion of appropriate placement at § 483.126 and of the definitions of specialized services for MR and MI at § 483.120. Commenters who objected in general to what they perceived to be an institutional bias in the regulations expressed the view that in § 483.132(a)(1) we offered no justification nor provided any standards for making the determination called for in this section regarding whether an individual's needs can only be met on an institutional basis. These commenters were concerned that, in addressing (a)(1), States would foreclose further inquiry about appropriate community placements. Commenters also felt that a similar institutional bias was revealed by raising the question of the viability of community care while making no corresponding reference to viability of institutional care. They are concerned that institutional placements will continue to be considered more viable. These commenters, therefore, want strong incentives built into the regulation to ensure that community placements will not only be considered, but created. They also agreed that the institutional versus community placement is appealable.

Response: Quite to the contrary of these commenters' views, we intended that § 483.132 (a) and (b), taken together, should result in a consideration of community versus institutional placement for an individual and that the NF placement would be selected only after less restrictive settings had been rejected because the individual's care needs are so extensive that the individual requires institutional care. Then, if institutional care is the option of choice, the PASARR/NF evaluations should also explore further whether the NF setting is appropriate or whether another more intensive type of care such as would be provided by an ICF/MR (or waiver program), a psychiatric hospital, or an IMD is needed.

The essential question which must be answered by the PASARR/NF is whether the individual being evaluated needs a NF level of services. Section 1919(a)(1)(C) makes consideration of whether the individual's needs can only be met on an institutional basis an inherent part of the definition of what a NF is—

> "An institution * * * which is primarily engaged in providing to residents skilled nursing care * * * rehabilitation services * * * or on a regular basis health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) *which can be made available to them only through institutional facilities* * * *." (Emphasis added.)

In enacting OBRA '87, Congress moved this language verbatim into the new NF requirements from section 1905(c) of the law, where it had previously defined ICF services. Moreover, section 1905(f) defines nursing facility services, in part, as services which "* * * *as a practical matter can only be provided in a nursing facility on an inpatient basis.*" (Emphasis added.)

Because of these statutory requirements, it is not possible to delete references to institutions or institutional care from this section of the regulation. We have, however, revised the section in an attempt to respond to commenters' concerns about an individual being "marked" as needing institutional care. These revisions require consideration of community settings first and at subsequent points in the consideration of alternative appropriate settings. For instance, placement in a home and community-based waiver is an option for individuals determined to need institutional care because, in order to be eligible for the waiver, individuals must, but for the waiver, need institutionalization (e.g., in a NF or an ICF/MR).

Section 483.134—Evaluating Whether an Individual with Mental Illness Requires Specialized Services

(b) Minimum Data Required

Comment: One professional association recommended that the minimum data measures for MI include evaluation of the individual's speech, language, and hearing. The commenter noted that studies indicate that 45–65% of adult psychiatric patients have speech and language disorders compared to 5–6% in the general adult population.

Response: We agree that a more detailed evaluation of an individual's speech, language, and hearing may well be appropriate in connection with assessment and care planning in an NF. We continue to believe, however, that the current requirements in (b)(1) relating to physical examination will generally result in data that are adequate to support the screening activity required in PASARR.

Comment: The only specific criticism we received on the data requirements for individualized screenings concerned the mandatory functional assessment of individuals with MI at § 483.134(b)(5). As proposed, this assessment would examine the individual's ability to engage in the activities of daily living, the level of support that would be needed to assist the individual to perform these activities while living in the community, and whether this level of support can be provided in the community rather than in a NF. Factors to be considered are self-monitoring of health status, medication treatment and compliance, nutritional status, handling money, dressing appropriately and grooming. In line with the comments we discussed earlier concerning the purpose of PASARR evaluations, this commenter thought that the requirement was appropriate for care planning but not for supplying a simple yes or no answer with respect to admission. Noting that appropriate grooming would not likely be the threshold upon which a NF admission decision would be made, the commenter believed that the expected outcomes of such a functional

assessment do not merit the cost, time and paperwork of such an effort.

Response: We believe that an assessment of how well an individual with MI functions is very important to making determinations concerning community versus institutional placement for an individual. We have therefore not altered or deleted this requirement.

Comment: Noting that the data collection requirements to determine if specialized services for MI are needed are very comprehensive, one commenter suggested that rather than having the independent evaluator rewrite a complete history and physical exam, information from the psychiatric hospital where the patient is completing treatment should be acceptable. The commenter noted that most patients requiring a Level II evaluation are being discharged from a inpatient psychiatric facility to a NF.

Response: As we indicated in redesignated § 483.128(e), evaluators may use relevant evaluative data obtained prior to the initiation of PAS or ARR if the data are considered valid and accurate and reflect the current functional status of the individual.

Comment: One medical society requested that the rule explicitly state that physical examinations and drug histories performed by a physician are to be adequately reimbursed by the proper authority.

Response: As we indicated above, existing data may be used if it is still current, so a new physical examination or drug history may not be needed. We have also indicated that Federal Medicaid funding is available at the 75 percent rate for PASARR activities performed by the State and at the State's FMAP rate for PASARR activities performed by the NF. If a new physical examination and drug history are needed, the responsible State agency must arrange for (or provide) them, and reimbursement to physicians will depend on the arrangements made by the State. For example, if a State contracted with a physician, there would be a contractual payment rate.

Comment: Concerning the drug history, one commenter asked that we clarify that mere use of psychotropic drugs is not, by and of itself, an indication that MI is present or that specialized services are needed.

Response: We refer readers to our previous discussion of drug indicators.

Section 483.134—Personnel Requirements

We proposed that a board-eligible or board-certified psychiatrist must review and concur with conclusion of psychiatric evaluation if it is not performed by a physician. Based on the data compiled, a board-certified or board-eligible psychiatrist must validate the diagnosis of MI and determine whether a program of psychiatric specialized services is needed.

Comment: Virtually all States responded to the issue of credentials as it relates to the use of psychiatrists in reviewing PASARR/MI evaluations performed by non-physicians and in validating a diagnosis of MI and determining if specialized services are needed. We also heard from over 60 psychologists or psychological associations and some members of Congress on the role of psychologists.

Only a small minority of States and the other commenters favored the requirement as proposed. Psychiatrists were among this group. Because the data being collected is comprehensive—including a complete medical history, physical examination, neurological evaluation, psychosocial evaluation, drug history, functional assessment and a comprehensive psychiatric evaluation—psychiatrists believe that non-physicians do not have the necessary skills to conduct a comprehensive psychiatric evaluation much less interpret and evaluate such medical data to validate the diagnosis of MI and determine whether a program of psychiatric specialized services is needed. In their view, only physicians have the education, training and experience to make or confirm a medical diagnosis. Therefore, they believe that the confirmation of a psychiatric diagnosis and determination of specialized services should remain within medicine and specifically within the expertise of psychiatry. They also noted that there are over 29,000 board-eligible psychiatrists. This, they believe, forms a sufficient core of psychiatrists nationwide to provide the confirmation of diagnosis and specialized services determinations required under the proposed rule.

The vast majority of commenters requested that we allow any registered, accredited or certified (as the case may be in the State) mental health professional, as designated by the State, to perform the psychiatric evaluation, validate the diagnosis of MI, and determine whether a program of specialized services is needed. The many psychologists and their associations also requested that they be allowed to supervise a program of specialized services without the oversight of a psychiatrist or physician. (This comment was dealt with under the discussion of the definition of specialized services for MI at § 483.120(a)(2).)

Those who favored allowing non-physician mental health professionals, and particularly doctoral-level psychologists, to conduct the evaluations, validate a diagnosis of MI, and determine the need for specialized services presented a variety of reasons for allowing this change. Their arguments included:

- Manpower considerations (62 percent of counties nationwide have no psychiatrists);
- Documentation of the specialized training and qualifications of doctoral-level licensed psychologists to perform these evaluations;
- Recognition by a number of other Federal programs of licensed psychologists' competence to practice independently; and
- Practical considerations such as budgetary constraints and the desirability of avoiding paper reviews.

Commenters advocating an independent role for psychologists under PASARR indicated that a large number of Federal programs afford psychologists the status of independent mental health professionals. For example, psychologists' mental evaluations and expert testimony are accepted to the same degree as psychiatrists' in determining eligibility for disability benefits based on mental impairment under SSI and SSDI. Similarly, the Vocational Rehabilitation Act permits assessments to be made by a licensed psychologist in accordance with State laws and regulations. Psychologists are recognized in both the Federal Rules of Criminal and Civil Procedure to perform mental examinations and provide expert testimony on issues such as competency to stand trial and in civil commitment proceedings and to perform court-ordered mental examinations.

Also, under CHAMPUS, Veterans Administration programs, and the Federal Employees Health Benefits Program (FEHBP), psychologists may independently diagnose and treat patients, both in hospital and outpatient settings. The Federal Employees Compensation Act includes clinical psychologists within its definition of "medical, surgical, and hospital services." In OBRA '89 Congress recently granted elderly Medicare beneficiaries direct access to qualified psychologists' services "as would otherwise be covered if furnished by a physician," limited, of course, by State licensure laws. Psychologists are thus eligible to treat Medicare beneficiaries in all settings (including inpatient

psychiatric hospitals where the psychologist may supervise the active treatment plan of care) for all Medicare covered services that they are eligible to perform under State licensure laws, as long as they notify the beneficiary's attending physician about the fact of treatment. These services include diagnosis and treatment of the full range of mental disorders, including serious mental illnesses.

For all the above-stated reasons, the vast majority of commenters proposed that we permit Level II screens to be performed by qualified mental health professionals recognized by State law. To ensure interdisciplinary coordination, many commenters also suggested that we consider requiring that the results of the screen, whether performed by a psychologist, psychiatrist, or other mental health professional, be sent to the resident's primary care physician.

Response: We are persuaded by commenters who presented convincing arguments that other mental health professionals, and particularly doctoral level psychologists, are capable of performing PASARR/MI evaluations, validating diagnoses of MI, and determining whether specialized services are needed. Also, due to the expansion of the scope of practice accorded licensed psychologists in other Federal programs, we believe that we should allow States the flexibility of specifying which mental health professionals it wishes to allow to perform the PASARR/MI and under what conditions. Some States may wish to continue requiring the oversight of a psychiatrist while others may choose to allow licensed psychologists or other mental health professionals to perform the evaluations independently.

To clarify all the credential requirements for PASARR/MI evaluators we have grouped all requirements in a new § 483.134(c) and redesignated proposed paragraph (c), data interpretation, as paragraph (d). We are retaining the requirement that if the medical history and physical examination is not performed by a physician; a physician must review and concur with the conclusions, formerly located at § 483.134(b)(1), now in new paragraph (c)(1). In paragraph (c)(2), we are providing that the State may designate the mental health professionals that are qualified to perform the evaluations required under the data elements in paragraph (b)(2)–(6), which include the comprehensive drug history, the psychosocial evaluation, the comprehensive psychiatric evaluation and the functional assessment. We are deleting the credential requirements formerly proposed at paragraph (b) (3) and (4) that required the review and concurrence of a social worker on the conclusions of the psychosocial evaluation and of a board-certified or board-eligible psychiatrist on the conclusions of the comprehensive psychiatric evaluation.

We also agree with the suggestion that the regulations should specify that the results of the screen, whether performed by a psychologist, psychiatrist, or other mental health professional, be sent to the resident's primary care physician. Accordingly, we have added a new requirement at § 483.128(1) requiring that a copy of the evaluation report be sent to the individual's attending physician. This means that copies of the evaluation report must be sent to:

- The individual being screened or his or her legal representative so that he or she will know what is happening to him or her and will have this information in hand should he or she wish to appeal the subsequent determination by the State mental health or mental retardation authority;
- The State mental health or mental retardation authority or its subcontractor so that it can make the determination required at § 483.134(d) in a timely fashion as required at § 483.112(c) or 483.114(c);
- The NF so that it can incorporate recommendations from the evaluation into its care planning process and coordinate the individual's care with the State if specialized services are determined to be needed;
- The individual's attending physician so that the physician will be apprised of the mental health professional's (s') assessment of the patient's needs.
- The discharging hospital, if admission is being sought from this setting so that it will be advised of whether NF admission is likely or whether it must make other discharge arrangements.

Comment: We also received a few comments from social workers and nurses who believed that they should be accorded a larger role. Social workers asserted that licensed clinical social workers with two years of post-graduate experience should be allowed to do the comprehensive psychiatric evaluation required at proposed § 483.134(b)(4) without the review of a psychiatrist. Nursing organizations also felt that nurses with clinical specialization in psychiatric/mental health practice should be allowed to perform the psychosocial evaluation at § 483.134(b)(3), the comprehensive psychiatric evaluation at paragraph (b)(4), and the functional assessment at (b)(5).

Response: As indicated above, States may include qualified mental health professionals to perform all or parts of the evaluations.

Comment: We also received a small number of comments on the requirement at § 483.134(b)(3) that, if the psychosocial evaluation is not conducted by a licensed social worker, than a licensed social worker must review and concur with the conclusions. Psychologists felt that this requirement is clinically unnecessary, redundant, and unnecessarily costly. They contended that psychologists are specifically trained and qualified to perform the psychosocial evaluation as well as the other components of the PASARR/MI. We also heard from psychiatric nurses who believed that they are as competent as social workers to perform the psychosocial evaluation and should not have to be supervised by them.

Some States noted that they do not license social workers, but rather have a registration or certification process. They recommended that the language be changed to cover different types of credentials. Other commenters representing social workers noted that a licensed or certified social worker cannot ethically review and support conclusions of a psychosocial evaluation which is conducted by someone else, unless the social worker is familiar with that person's work. If the person completing the evaluation does not have the appropriate training, he or she must receive necessary supervision.

Response: Because we agree with commenters that, in general, the State should be allowed to designate which mental health professionals it wishes to employ for each of the components of the PASARR/MI, we are removing the requirement that the psychosocial evaluation must be either performed or reviewed by a social worker. We will defer to the State's judgment as to who is competent to perform these evaluations.

Section 483.136—Evaluating Whether an Individual With Mental Retardation Requires Specialized Services

We proposed that a licensed psychologist who meets the requirements of a qualified mental retardation professional, as defined in § 483.430(a), identifies the individual's intellectual functioning measurement and validates that the individual has MR or is a person with a related condition.

Comment: Several States asked that we delete the word "licensed" from "licensed psychologist" in § 483.136(c)(1) because in a number of States a licensed psychologist means a psychologist who holds a Ph.D. degree. They claimed that doctoral level psychologists are unlikely to also fit the qualifications of a qualified mental retardation professional since a qualified mental retardation professional must have at least one year's experience working directly with individuals with MR or other developmental disabilities. Hence, they asserted that the word "licensed" unnecessarily restricts the number of available screeners by excluding most qualified mental retardation professional psychologists who are available in the State to do the data interpretation and validation of the diagnosis of MR.

Response: We have verified with the psychologists' professional association that in all but a very few States, a doctoral-level degree is a prerequisite for licensure. Three States allow persons with Master's degrees in psychology to be licensed as psychologists. In all States, a person cannot call him or herself a psychologist without being licensed by the State. Additionally, some States have a limited license for individuals with a Master's degree with titles such as psychometrist or psychological assistant. In most States these individuals with limited licenses could administer examinations to determine the level of intellectual functioning but probably could not legally interpret the results or validate a diagnosis of MR. In almost all States, only a doctoral-level licensed psychologist may make these determinations.

We believe that the coupling of the licensed psychologist requirement with the QMRP requirement rather than the "licensed" qualification alone appears to restrict the supply of available manpower. In view of the expert information cited above, we believe that rather than eliminating the word "licensed," we should remove the requirement that the person making the intellectual functioning determination on persons with MR or a related condition also meet the qualifications of a QMRP. While a year or more's experience working specifically with persons with MR/DD or related conditions would certainly be desirable, we are not requiring it.

We are moving the requirement concerning validation of a diagnosis of MR or a related condition from (c)(1) to (c)(2) in order to restrict the exclusive role of licensed psychologists to measurement of intellectual functioning. Licensed psychologists may certainly be used in validating a diagnosis of MR or developmental disability, but they are usually not the only professionals who are permitted under State law to establish these diagnoses. For instance, a physician may also make these determinations. A licensed psychologist may be permitted to, and in fact regularly do, make diagnoses of developmental disabilities, but a more precise diagnosis of a specific related condition such as cerebral palsy or epilepsy, under most State licensure laws, could only be made by a physician. However, a physician, and even a psychiatrist, is usually not competent or authorized under State law to administer, score, and interpret an IQ test. This function, alone, is in the exclusive domain of licensed psychologists, as indicated in (c)(1). As with the credentialing issues for individuals with MI, we are allowing States in (c)(2) to specify which personnel should be used to validate a diagnosis of MR or a related condition and determine whether specialized services are needed.

Comment: As noted under the delegation issue, one commenter believed that if the State mental retardation authority delegates MR evaluations to a subcontractor, the regulation should contain safeguards to ensure that properly trained screeners are used. The commenter also noted that for MR evaluations, the proposed rule only included one credential requirement, that a psychologist who is a Qualified Mental Retardation Professional identifies the level of intellectual functioning and validates the diagnosis of MR.

Response: During the early stages of development of these criteria in the Spring and Summer of 1988 we consulted extensively with a wide variety of outside groups. At that time, the existing credential requirement was the only one proposed for MR evaluators. During further consultations with all interested groups over the next two years, no one has ever proposed any change in these MR requirements, with the exception of the previous comment which asked for less stringent rather than more stringent standards. While the MI credential issue elicited a large response, this commenter was the only one to suggest that more credential requirements should be imposed for MR evaluations. We assume that this lack of response by other commenters continues to indicate general satisfaction with the requirements (or lack of them) as proposed.

Comment. Several commenters found the data interpretation requirement at § 483.136(c)(2) confusing. They asserted that requiring comparison of data against a list of characteristics is imprecise. They asked how the presence of any or some of these characteristics is to be treated. Are they to serve as a guideline or a prescription? Moreover, what if not all indicators are present? At what point are specialized services needed?

Response: We agree with these commenters that the language of this section is imprecise. We are revising it accordingly. In the course of revising this section, we also noted that the PASARR/NF regulations text at proposed § 483.132 did not contain a determination requirement similar to §§ 483.134(d) and 483.136(c)(2). We are, therefore, amending section 483.132 by adding a new paragraph (c), which states that, based on the data compiled in § 483.132 and, as appropriate, in §§ 483.134 and 483.136, the State mental health or mental retardation authority must determine whether a NF level of services is needed. Thus, the requirements for all three evaluation processes (PASARR/NF, PASARR/MI, and PASARR/MR) end with parallel statements concerning the determination process that is to be based on the data compiled. The statement in § 483.132(c) also further stresses the interrelatedness of all parts of the evaluation process in making determinations concerning appropriate placement. (See earlier discussion of § 483.126.)

Use of Medicaid Fair Hearing Process

Comment: Commenters were almost unanimous in their support for the use of the Medicaid fair hearings process set forth at 42 CFR part 431, subpart E, for appeals of discharges, transfers and PASARR determinations. While a few commenters suggested that an entirely separate process be established, the majority, including commenters from both the States and advocacy groups, concurred that the statutory provisions at sections 1819(e)(3), 1819(f)(3), 1919(e)(3) and 1919(f)(3) of the Act and the legislative history of section 1919(e)(7)(F) contemplate the use of the Medicaid fair hearing process. Although the majority of commenters enthusiastically supported the use of the Medicaid fair hearing process, some did note that modifications should be made in the hearing process to accommodate what they believe are the special needs of nursing facility residents and the mentally ill and mentally retarded.

Response: We believe that the requirements set forth in the Medicaid

fair hearing regulations meet both the statutory requirements for the appeals process required by the Medicaid and Medicare statutes, as well as the requirements of due process. While the Medicare and Medicaid statutes require the Secretary to establish minimum standards that States must meet, sections 1819(e)(3), 1919(e)(3) and 1919(e)(7)(F) of the Act require the State to provide the required appeals process. We believe it is the State that must determine how best to implement the fair hearing process so long as it meets the requirements for fair hearings at 42 CFR part 431, subpart E. Thus, to the extent that there are concerns as to whether additional provisions should be included to meet the needs of special patient populations they should be addressed to the States.

Comment: Many of the commenters sought to have requirements added that are already provided in the fair hearing regulations. For example, many requested that the notice provisions be modified to include elements that are already required such as a statement of the action to be taken, the reasons for the action, the basis in law or regulation for the action, the right to request a hearing, how to obtain a hearing, the right to representation, and the circumstances under which Medicaid is available pending the appeal (42 CFR 431.206, 431.210).

Response: In response to concerns that individuals will not be adequately informed, § 483.128 requires that PASARR determinations be issued in the form of a written evaluation report that must be interpreted and explained to the individual.

With regard to the conduct of the hearing itself, the fair hearing regulations already require the elements listed above as well as other elements sought by the commenters such as an independent evidentiary hearing, conducted at a reasonable time, date and place, access to the record and opportunity to present witnesses and conduct cross-examination (42 CFR 431.205, 431.233, 431.240, 431.242, and 431.244).

Comment: Advocacy groups sought to have the notice include a statement concerning the ombudsman and protection and advocacy agencies and how an individual can contact those agencies.

Response: The statutory requirement for such notice by nursing facilities in the case of transfers and discharges is already provided in 42 CFR 483.12(a)(5)(ii). The statute does not require that such notices be provided in the case of PASARR determinations. While the State may wish to provide patients with information concerning the services of such agencies, the statute does not require them to do so.

Comment: Commenters also requested that individuals have access to an independent medical assessment paid for by the State agency.

Response: This is already provided for in § 431.240(b). Such an evaluation is performed at the discretion of the hearing officer. We do not believe it is appropriate, as one commenter asked, to require that every appeal contain such an evaluation if requested by the individual who has brought the appeal. However, the States are certainly free to provide such evaluations if they wish to do so.

Comment: An organization representing hospitals throughout the country requested that appeals be expedited for individuals currently in hospitals and awaiting nursing facility placement.

Response: While we encourage States to provide for expedited appeals for such individuals, we believe that the individual States must determine how best to implement this element of the appeals process based on their experience and that of providers in their area.

Comment: Comments were received concerning a variety of other issues such as methods for compelling medical experts to testify and the payment of attorneys' fees when a resident prevails in a PASARR appeal.

Response: We believe that these are issues which are properly left to the State to determine as they establish the details of the appeals processes.

Elimination of Level I Appeals

Comment: A majority of commenters, particularly State representatives, were adamantly opposed to the proposal to permit a separate appeal from the Level I identification of those individuals who are mentally ill or mentally retarded. They objected on the basis that such appeals are not required by statute, would pose difficult notice problems, result in unnecessary delays in the screening process, and impose enormous financial and administrative burdens on the State agencies responsible for PASARR and the appeals from PASARR determinations.

Response: We have reexamined the PASARR statute and legislative history and have determined that because such appeals are not required by the Medicaid statute and because consideration of such determinations can be provided as part of the Level II appeals, we are deleting this requirement.

Section 1919(e)(7)(F) of the Act requires that each State "must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B)." The phrase "determinations under subparagraph (A) or (B)" refers to section 1919(e)(7)(A) and (B) of the Act. Section 1919(e)(7)(A) requires States to have in effect a preadmission screening program for making determinations under section 1919(b)(3)(F). The specific determinations made under section 1919(b)(3)(F) are whether "the individual requires the level of services provided by a nursing facility," and if so, "whether the individual requires * * * [specialized services] for mental illness" or for "mental retardation."

Similarly, section 1919(e)(7)(B) requires that the State specifically "determine * * * whether or not the resident * * * requires the level of services provided by a nursing facility" and "whether or not the resident requires * * * [specialized services] for mental illness." Thus, the determinations referred to in the appeals requirements of section 1919(e)(7)(F) are those limited to whether the individual needs nursing facility services and whether he needs specialized services. This interpretation is reaffirmed in the legislative history of the appeals provision which describes the adverse actions subject to appeal. "[i]ndividuals could be adversely affected not only by a determination that he or she does not need nursing facility services, but also by determinations that he or she does not need * * * [specialized services]." H.R. Rep. No. 100–391, 100th Cong., 1st Sess. 462–463 (1987).

The Level I identification of the mentally ill and mentally retarded clearly is not included in the statement of adverse determinations subject to appeal. Because such a separate appeal is not required or even contemplated by the statute, we believe there is no basis for imposing this additional requirement.

Furthermore, as several commenters indicated, the only actions that could result in adverse determinations under the statute are those taken as a result of the Level II screening. The only possible consequence of a positive Level I determination is that the individual would be referred to the State for the additional Level II determination. A Level I screening alone could never result in the individual being wrongly discharged, transferred or refused admission to the nursing facility

As we discuss below, the deletion of provisions for a separate Level I appeal does not mean, however, that an

individual would be precluded from challenging a Level I determination that they are mentally ill or mentally retarded and thus subject to the PASARR requirements. What it means, simply, is that such a challenge could be raised only in the appeal of the final PASARR (Level II) determination.

Comment: Several commenters suggested that if a Level II review results in an adverse determination then an appeal from the Level II determination by the affected individual could include consideration of any allegations that the individual was not mentally ill or mentally retarded or that the individual had a diagnosis of dementia. Moreover, they contend, because the Level II determination requires a comprehensive psychiatric evaluation to determine whether an individual needs specialized services, the appeal of the Level II determination is a logical and efficient method for challenging the Level I identification of MI or MR.

Response: We agree and are clarifying that a Level II appeal may also include consideration of whether the Level I determination was correct. Because we are eliminating the requirement for a separate Level I appeal, we do not address the specific comments made with regard to how the Level I appeals should be implemented.

Comment: Commenters also noted that permitting a separate appeal of Level I determinations will result in delay in nursing facility placement. If an individual requests a hearing, he or she may have to wait up to 90 days for a decision under the Medicaid fair hearing regulations. However, under the 7-day time frame required for preadmission screening, the entire Level II determination process could easily take less time than the Level I appeal. Requiring States to hold Level I hearings would also impose significant administrative burdens on the State Medicaid agencies as they would be required to provide two separate hearings—one for Level I and then another for Level II, when all issues could easily and efficiently be heard at the Level II appeal.

Several beneficiary advocacy groups supported the provisions for notice and appeals of negative Level I determinations, although the majority of commenters opposed them. A negative Level I determination is described as a finding that the individual is not mentally ill or mentally retarded or is suffering from dementia and is thus not subject to Level II screening. While allegations concerning incorrect positive Level I determinations could be heard during a Level II appeal, negative Level I determinations will not be considered because there would be no Level II determination.

While permitting appeal of a negative Level I determination would provide no additional benefit to the individual, numerous commenters detailed the substantial burden placed on the State and nursing facilities if they are required to notify hundreds of thousands of individuals, in effect the entire nursing facility population, that they are not mentally ill or mentally retarded. As several commenters indicated, such a requirement is contrary to common sense and good practice as notification is not required to be given to individuals who will not be subject to the actions for which notification is given.

Response: We agree that there should be no separate appeals of negative Level I determinations. First, as indicated above, the only adverse determinations contemplated by the statute and legislative history are those related to the Level II determinations, determinations which would never even be made if a person is not first identified as subject to PASARR. Secondly, as several commenters noted, a negative determination would not deny the individual anything since, if the individual is not required to submit to PASARR, he will be admitted immediately, or if he is already in a nursing facility, he will be allowed to stay. To the extent an individual might conceivably have some additional rights to continued placement if he or she had been found mentally ill or mentally ill, these are issues that can be raised in the individual's appeal of any adverse determinations such as a decision that the individual must be transferred or discharged. Thus, to the extent there is even a remote possibility of an impact on an individual as a result of a negative Level I screen, the remedies available would fully meet the requirements of due process.

Application of the Appeals Process to Non-Medicaid Patients

Comment: Several commenters objected to and others sought clarification of the requirement that the appeals process be applied to non-Medicaid patients as well as Medicaid recipients.

Response: As indicated above, the statute and legislative history clearly indicate that the provisions governing transfers and discharges, as well as PASARR, apply to both groups. This is true as well of the appeals provisions which make no distinction between the Medicaid and the non-Medicaid patient as they apply to "any resident" and "any individual" and are not restricted to Medicaid applicants and recipients. These final regulations likewise reflect the fact that both groups are included (§§ 431.206 (c)(3) and (c)(4); and 431.220 (a)(3) and (a)(4)).

Furthermore, we are also revising the Medicare regulations to specifically exempt these determinations from the appeals provided for under the hospital insurance program (§ 405.705 (e) and (f)). Thus, as many of the commenters requested, all individuals seeking such appeals will have the same rights, regardless of source of payment. However, contrary to the request of several commenters, payment through the period of appeal is specifically provided for only for Medicaid recipients. In the absence of additional statutory authority, payment is available only as otherwise provided by the Medicare statute for Medicare patients and through the privately paying patient's own insurance arrangements.

Definition of Transfers and Discharges

Comment: Several advocacy groups objected to the fact that the definition of transfers and discharges subject to the appeals provisions does not include relocation within a facility (which is defined at § 483.5 as a certified entity. not as a physical plant). Movement from a certified bed to a noncertified bed or movement from a certified bed to a bed in an entity that is certified as a different provider is a transfer even though the different entities may be housed within the same physical plant. Movement from one certified bed to another bed within the same certified entity is not a transfer and is not appealable. Commenters objected that these movements caused just as much trauma for residents as transfers, as they are defined. Additionally, these advocates claimed that residents are confused when some movements within the same physical plant are appealable and others are not.

Response: As many commenters noted, and we agree, sections 1819(c)(2)(A) and 1919(c)(2)(A) of the Act and the pertinent legislative history both refer to transfer and discharge * * * from the facility. The "facility" under the law, always means the certified entity. Thus, we believe there is no authority for extending the appeal rights to movements within the same certified entity.

Definition of Adverse Determination

Comment: Several States suggested that we clarify the term adverse determination.

Repsose: In response to comments, in order to further clarify the type of

determination that can be appealed, we are adding a definition of the term "adverse determination" in § 431.201 as follows:

"Adverse determination" means a determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

Conduct of Hearing By Medicaid State Agency

Comment: Several commenters noted that it is not clear whether the State Medicaid agency itself is required to conduct the hearing. One State indicated that regulations at § 483.12(a)(5) suggest that the States have discretion regarding which State agency they wish to designate to hear appeals. A protection and advocacy group asserted that the Medicaid State agency, rather than the State mental health or mental retardation authorities, should hold the hearings in order to guard against potential abuses by these other agencies.

Response: The hearing is to be conducted by the State Medicaid agency as described in the fair hearing regulations in § 431.205. These regulations permit the conduct of a local evidentiary hearing by an agency other than the State Medicaid so long as there is a right to appeal the decision to the State Medicaid agency. Included is the right to a *de novo* hearing by the State Medicaid agency and a prohibition against participation by any person who participated in the local decision. Thus, although the State may designate another agency to provide the local hearing, such as the State mental health or mental retardation authorities, appeal of an adverse decision must be provided to and an independent judgment made by the State Medicaid agency.

We are also amending § 483.12(a)(5) in a separate regulation to delete the reference to the "agency designated by the State" for such appeals. Instead, we are specifying that the transfer or discharge notice must explain that the individual may appeal the determination to the State.

FFP for Appeals

Comment: Several States and the association of State Medicaid directors requested confirmation that FFP at the rate of 75 percent is available for the conduct of the appeals described in these regulations.

Response: FFP for the administrative costs of providing these appeals processes is available at the 75 percent rate, including the costs of appeals provided for individuals who are not Medicaid recipients, and we are revising § § 431.250(g) and 433.15 to clarify this.

Outside Scope of Regulations

Comment: One protection and advocacy group objected to the appeals process because it did not provide for the right to appeal additional State actions taken in response to the PASARR determination such as any alleged failures to inform residents of alternative institutional or non-institutional settings and failure to provide specialized services to residents following transfers or discharges.

Response: While we appreciate receiving these statements of concern, they are outside the scope of the appeals required by the statutory provisions implemented by these regulations and are therefore not addressed here.

Clarification of Advance Notice Requirement

Comment: One association of providers requested clarification with regard to § 431.213(h), which establishes an exception from advance notice requirements for cases in which the date of action will occur in less than 10 days. The organization believed the provision did not address cases in which the date of action will occur in more than 10 days, but less than 30 days specified in § 483.12.

Response: In such cases the 10-day notice requirement of § 431.211 would apply because it would then be possible to give such notice and no exemption would be necessary.

Appeals Concerning Alternative Disposition Plans

Comment: Commenters requested clarification of appeals by individuals subject to alternative disposition plans. In particular, they asked whether an individual has a right to appeal an adverse determination made in the course of an annual resident review as well as a decision made later to transfer or discharge him or her.

Response: We believe that the individual can appeal both decisions. First, they are separate decisions that may, in fact, be made at very different times and be based on different factors. Secondly, the reversal of an adverse determination made during the annual resident review would mean that the individual would not need to be transferred or discharged and thus the alternative disposition plan would be unnecessary for him or her.

Alternative Disposition Plan (ADP) Issues

Comment: Several States wanted the regulation to allow revision of alternative disposition plans (ADPs).

Response: Originally OBRA '87 did not provide for any additions to or revisions of a State's ADP after it was agreed to with the Secretary. In OBRA '90, Congress permitted States with approved alternative disposition plans (ADPs) to revise those plans, subject to the approval of the Secretary, by October 1, 1991. Under any such amendments, dispositions of inappropriately placed residents must be made no later than April 1, 1994. We are preparing a separate program instruction informing States with approved ADPs of the procedures to be followed in submitting revisions to their ADPs should they wish to make alterations.

Comment: Some States requested clarification as to who is in the ADP population, specifically whether it includes people outside of the NF who need specialized services but have already been discharged.

Response: According to our analysis of sections 1919 (e)(7)(C) and (e)(7)(E) of the Act, an ADP could potentially cover any resident found through the initial ARR process not to need NF care but to need specialized services. This includes both long-term residents who have the choice of remaining in the NF or leaving and short-term residents who must be discharged to appropriate alternative settings. Within the scope of potential coverage, who is actually covered by a particular State's ADP depends on who the ADP identified as its target population.

Comment: States also asked about the effect of an ADP on the appeals process and the required notices.

Response: Questions concerning the impact of an ADP on the appeals process are dealt with under appeals.

Comment: Another set of commenters, largely advocates for individuals with MI or MR, expressed concern over our discussion of ADPs in the preamble to the NPRM. Some suggested that we had opened up what they called "an ADP loophole" in the law. They objected to any delay in providing specialized services (formerly called active treatment) to residents who are awaiting relocation under an ADP. Believing our interpretation of the law to be overly broad, they asked that the scope and meaning of the ADP language in the law be specifically addressed in the regulation. In their view, Congress never intended that section 1919(e)(7)(E) of the

Act permit delays of up to 4 or 5 years, in some instances, in the provision of specialized services to residents whose conditions require this level of service.

Response: Section 1919(e)(7)(C)(i)(IV) of the Act indicates that the State has an affirmative obligation, regardless of the long term resident's choice of placement, to provide or arrange for the provision of specialized services. Similarly, section 1919(e)(7)(C)(ii)(III) of the Act requires the State to provide or arrange for the provision of specialized services to short term residents who are discharged from the NF. An ADP allows States to provide for "the disposition" of these residents after April 1, 1990, the deadline specified in section 1919(e)(7)(C) for the completion of the initial review of all residents who entered the NF prior to the commencement of PAS on January 1, 1989.

Apparently, some commenters believe that "disposition" refers only to the physical relocation of residents and not to the provision of specialized services to them. Hence, they dispute our interpretation of the Act that through an ADP States may obtain a time extension not only for developing alternative appropriate placements but also for developing the delivery systems they need to provide specialized services to ADP-covered residents who need them wherever they are located, including in a NF. As noted above, we view this group as including both long-term residents (whether they choose to remain in the NF or go elsewhere) and short-term residents (either awaiting transfer or already transferred).

The primary basis for our interpretation of the statutory language is found in the House Budget Committee's Report on H.R. 3545 (H.R. Rep. No. 391, Part 1, 100th Cong., 1st Sess. 462 (1987)), which states:

> The Committee is willing to tolerate continued inappropriate placement of mentally ill or mentally retarded individuals only in the case of long-term facility residents who elect to remain. At the same time the Committee is unwilling to see residents who are inappropriately placed in nursing facilities, but who require [specialized services], go without needed services. In the Committee's view, the responsibility for providing, or paying for the provision of, [specialized services] lies with the States. The Committee notes that these affirmative [specialized services] obligations do not take full effect against the States until April 1, 1990, over 2½ years from the Committee's action; this should give States ample opportunity to prepare. In addition, the Committee amendment would expressly waive the [specialized services] requirement with respect to the residents of any facility if, before October 1, 1988, the State has entered into an agreement with the Secretary relating to the disposition of the residents in that facility and if the State is in full compliance with such agreement. [Note: The October 1, 1988 date was changed to April 1, 1989 by the Medicare Catastrophic Coverage Act of 1988 (MCCA)]. The agreement could provide for the discharge of inappropriately placed residents after April 1, 1990.

Primarily on the basis of this committee language, we instructed States through a Program Memorandum, Transmittal No. 8–88, dated September 1988, as follows:

> Section 1919(e)(7)(C) of the Act, as amended by OBRA '87, specifies certain remedial steps to be taken by April 1, 1990 regarding mentally ill and mentally retarded residents of nursing facilities who have been determined not to require that level of care. If you cannot comply with the requirements of subparagraph (C) by the April 1, 1990 date, an extension can be granted if you enter into an acceptable agreement with the Secretary before April 1, 1989, relating to the disposition of mentally ill and mentally retarded residents in nursing facilities, and the State is in compliance with the agreement. This extension would only apply to meeting the requirements of subparagraph (C). An extension of the date of April 1, 1990 for complying with subparagraph (B) cannot be granted.

Among the remedial steps identified in subparagraph (C) is the requirement to provide specialized services. Therefore, at various points in the program memorandum we alluded to the provision of specialized services (formerly called active treatment). Some States incorporated into their ADPs plans, funding arrangements and time tables for initiating the provision of specialized services in various settings while other States addressed relocations only. Those States that specifically asked for time extensions to develop their specialized services delivery systems received Secretarial approval and have such extensions so long as they continue to comply with the terms of their ADPs.

Summary of Effective Dates

These regulations are effective on January 29, 1993. However, until the effective date of these regulations, only the statutory requirements governing PASARR, which appear in sections 1919(b)(3)(F) and 1919(e)(7), are effective. The statute established specific effective dates for these requirements and made them effective regardless of whether Federal PASARR criteria were available. These effective dates have already passed. The statutory requirements are, therefore, already in effect, regardless of the effective date of these regulations. These sections include—

1919(b)(3)(F), which requires that a NF not admit any new resident with MI or MR unless that person has been approved through PAS to need NF care, effective January 1, 1989.

1919(e)(7)(A), which requires the State to have a PAS process in operation, effective January 1, 1989.

1919(e)(7)(B), which requires the State to have initially reviewed all residents with MI or MR who entered NFs before the effective date of PAS by April 1, 1990 and by that same date also to have in operation in on-going ARR process for all residents with MI or MR. regardless of whether they were initially screened under PAS or ARR.

1919(e)(7)(C), which requires appropriate placement and/or initiation of appropriate treatment for residents determined not to need NF care to be accomplished by April 1, 1990 unless the State had an alternative disposition plan, pursuant to 1919(e)(7)(E) approved by the Secretary by April 1, 1989. In such cases the deadline for completing disposition of residents who need only specialized services is governed by the terms of the ADP.

1919(e)(7)(F), which requires the State to have an appeals process in effect for persons adversely affected by PAS or ARR by January 1, 1989.

Similarly, the statutory requirements governing appeals of transfers and discharges from skilled nursing facilities (SNFs) under Medicare and from NFs under Medicaid that appear in sections 1819(e)(3) and 1919(e)(3) have been in effect since October 1, 1989. These sections required States to provide a fair mechanism for hearing appeals on transfers and discharges from both types of facilities by that date regardless of whether Federal guidelines were available. These regulations, effective April 1, 1991, contain the Federal guidelines on appeals of transfer and discharges from SNFs and NFs as well as for PASARR appeals.

We note that many of the statutory changes in the PASARR provisions effected by OBRA '90 are effective as if they were part of the original OBRA '87 legislation. Others are effective as of the date of enactment of OBRA '90 (November 6, 1990). These changes are discussed in the background section at the beginning of this preamble.

Waiver of Proposed Rulemaking

We ordinarily publish notices of proposed rulemaking in the **Federal Register**, and offer the public an opportunity to comment on proposed rules. Such notices include a statement of the nature of the rulemaking proceeding, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this requirement can be waived when

we find good cause that such a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued.

With regard to the provisions of OBRA '90 that are self-executing, identified earlier in the preamble, we believe that issuance of these legislative changes for notice and comment would be unnecessary and contrary to the public interest since they are being incorporated into these regulations as they appear in the statute and are given an effective date as specified in OBRA '90, unless the provisions are otherwise authorized under current law. Therefore, we find good cause to waive the proposed rulemaking procedure with respect to these provisions.

Information Collection Requirements

Section 4214(d) of OBRA '87 provides a waiver of Office of Management and Budget review for the purpose of implementing the nursing home reform amendments.

Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any proposed regulation that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all Medicaid certified nursing facilities as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

The provisions of this rule merely conform the regulations to the legislative provisions of sections 4201(a) (for Medicare) and 4211(a) (for Medicaid) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203 and sections 4008 and 4801 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508.

The provisions of this rule set forth State requirements for preadmission and annual review of individuals with mental illness or mental retardation, who are applicants to, or residents of nursing facilities that are certified for Medicaid. These provisions also set forth an appeal system for persons who may be transferred or discharged from facilities or who wish to dispute a determination made in the preadmission screening and annual review process.

Approximately 40 percent (out of 736) of the comments we received requested that we provide an impact analysis in the final rule. Although we expect incremental costs as a result of this rule, we believe the majority of the costs alluded to by the commenters are the result of a misunderstanding of the regulations or a result of the statute. Most of the costs mentioned by comments are addressed in the comment and response section of this final rule.

As set forth by the statute, the effective dates of these provisions have already passed and States have taken actions to effect these requirements based on instructions issued. The costs associated with adhering to these provisions is minimized by the availability of 75 percent FFP. Although nursing facilities may incur some additional significant costs to ensure continued compliance with these provisions, we believe the benefits to individuals far outweigh those costs. Heretofore, individuals may have been admitted to nursing facilities where mental health needs have been generally under-identified and under-served in the past. We believe that these provisions will serve to identify those types of admissions and enhance the quality of life and care for these individuals through the provision of more appropriate services in other types of facilities.

For these reasons, we have determined that the threshold criteria under E.O. 12291 are not met and a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of effects on small rural hospitals.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Incorporation by reference, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV is amended as set forth below:

A. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405, subpart G is revised to read as follows:

Authority: Secs. 1102, 1154, 1155, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1395ff(b), 1395hh, 1395ii, and 1395pp).

2. Section 405.705 is amended by revising paragraphs (c) and (d), and adding paragraphs (e) and (f) and the introductory text is republished to read as follows:

§ 405.705 Actions which are not initial determinations.

An initial determination under part A of Medicare does not include determinations relating to:

* * * * *

(c) Whether an individual is qualified for use of the expedited appeals process as provided in § 405.718;

(d) An action regarding compromise of a claim arising under the Medicare program, or termination or suspension of collection action on such a claim under the Federal Claims Collection Act of 1966 (31 U.S.C. 951–953). See 20 CFR 404.515 for overpayment claims against an individual, § 405.374 for overpayment claims against a provider, physician or other supplier, and § 408.110 for claims concerning unpaid Medicare premiums;

(e) The transfer or discharge of residents of skilled nursing facilities in accordance with § 483.12 of this chapter; or

(f) The preadmission screening and annual resident review processes required by part 483 subparts C and E of this chapter.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

B. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart E—Fair Hearings for Applicants and Recipients

2.–3. In subpart E § 431.200 is revised to read as follows:

§ 431.200 Basis and purpose.

This subpart implements section 1902(a)(3) of the Act, which requires that a State plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly. This subpart also prescribes procedures for an opportunity for hearing if the Medicaid agency takes action to suspend, terminate, or reduce services. This subpart also implements sections 1819(f)(3), 1919(f)(3), and 1919(e)(7)(F) of the Act by providing an appeals process for individuals proposed to be transferred or discharged from skilled nursing facilities and nursing facilities and those adversely affected by the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

4. Section 431.201 is amended by revising the definitions of "action" and "date of action" and adding a definition for "adverse determination" to read as follows:

§ 431.201 Definitions.

* * * * *

Action means a termination, suspension, or reduction of Medicaid eligibility or covered services. It also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

Adverse determination means a determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the determination made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

* * * * *

5. Section 431.206(c) is revised to read as follows:

§ 431.206 Informing applicants and recipients.

* * * * *

(c) The agency must provide the information required in paragraph (b) of this section—(1) At the time that the individual applies for Medicaid;

(2) At the time of any action affecting his claim;

(3) At the time a skilled nursing facility or a nursing facility notifies a resident in accordance with § 483.12 of this chapter that he or she is to be transferred or discharged; and

(4) At the time an individual receives an adverse determination by the State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

6. Section 431.210 is amended by revising the undesignated introductory paragraph and paragraph (a) to read as follows:

§ 431.210 Content of notice.

A notice required under § 431.206 (c)(2), (c)(3), or (c)(4) of this subpart must contain—

(a) A statement of what action the State, skilled nursing facility, or nursing facility intends to take;

* * * * *

7. Section 431.213 is amended by revising paragraphs (e) and (f) and adding new paragraphs (g) and (h) and the introductory text is republished to read as follows:

§ 431.213 Exceptions from advance notice.

The agency may mail a notice not later than the date of action if—

* * * * *

(e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;

(f) A change in the level of medical care is prescribed by the recipient's physician;

(g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or

(h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(4)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(4)(i).

8. Section 431.220 is amended by revising paragraph (a) to read as follows:

§ 431.220 When a hearing is required.

(a) The agency must grant an opportunity for a hearing to:

(1) Any applicant who requests it because his claim for services is denied or is not acted upon with reasonable promptness;

(2) Any recipient who requests it because he or she believes the agency has taken an action erroneously;

(3) Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged; and

(4) Any individual who requests it because he or she believes the State has made an erroneous determination with regard to the preadmission and annual resident review requirements of section 1919(e)(7) of the Act.

* * * * *

9. Section 431.241 is revised to read as follows:

§ 431.241 Matters to be considered at the hearing.

The hearing must cover—

(a) Agency action or failure to act with reasonable promptness on a claim for services, including both initial and subsequent decisions regarding eligibility;

(b) Agency decisions regarding changes in the type or amount of services;

(c) A decision by a skilled nursing facility or nursing facility to transfer or discharge a resident; and

(d) A State determination with regard to the preadmission screening and

annual resident review requirements of section 1919(e)(7) of the Act.

10. Section 431.242 is amended by revising paragraph (a)(2) to read as follows:

§ 431.242 Procedural rights of the applicant or recipient.

* * * * *

(a) * * *

(2) All documents and records to be used by the State or local agency or the skilled nursing facility or nursing facility at the hearing;

* * * * *

11. Section 431.246 is revised to read as follows:

§ 431.246 Corrective action.

The agency must promptly make corrective payments, retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility if—

(a) The hearing decision is favorable to the applicant or recipient; or

(b) The agency decides in the applicant's or recipient's favor before the hearing.

12. Section 431.250 is amended by revising paragraphs (f) (2) and (3), and adding a new paragraph (f)(4) to read as follows:

§ 431.250 Federal financial participation.

FFP is available in expenditures for—

* * * * *

(f) Administrative costs incurred by the agency for—(1) Transportation for the applicant or recipient, his representative, and witnesses to and from the hearing;

(2) Meeting other expenses of the applicant or recipient in connection with the hearing;

(3) Carrying out the hearing procedures, including expenses of obtaining the additional medical assessment specified in § 431.240 of this subpart; and

(4) Hearing procedures for Medicaid and non-Medicaid individuals appealing transfers, discharges and determinations of preadmission screening and annual resident reviews under part 483, subparts C and E of this chapter.

13. In subpart M, a new § 431.621 is added, to read as follows:

§ 431.621 State requirements with respect to nursing facilities.

(a) *Basis and purpose.* This section implements sections 1919(b)(3)(F) and 1919(e)(7) of the Act by specifying the terms of the agreement the State must have with the State mental health and mental retardation authorities concerning the operation of the State's preadmission screening and annual resident review (PASARR) program.

(b) *State plan requirement.* The State plan must provide that the Medicaid agency has in effect a written agreement with the State mental health and mental retardation authorities that meets the requirements specified in paragraph (c) of this section.

(c) *Provisions required in an agreement.* The agreement must specify the respective responsibilities of the agency and the State mental health and mental retardation authorities, including arrangements for)—(1) Joint planning between the parties to the agreement;

(2) Access by the agency to the State mental health and mental retardation authorities' records when necessary to carry out the agency's responsibilities;

(3) Recording, reporting, and exchanging medical and social information about individuals subject to PASARR;

(4) Ensuring that preadmission screenings and annual resident reviews are performed timely in accordance with §§ 431.112(c) and 483.114(c) of this part;

(5) Ensuring that, if the State mental health and mental retardation authorities delegate their respective responsibilities, these delegations comply with § 483.106(e) of this part;

(6) Ensuring that PASARR determinations made by the State mental health and mental retardation authorities are not countermanded by the State Medicaid agency, except through the appeals process, but that the State mental health and mental retardation authorities do not use criteria which are inconsistent with those adopted by the State Medicaid agency under its approved State plan;

(7) Designating the independent person or entity who performs the PASARR evaluations for individuals with MI; and

(8) Ensuring that all requirements of §§ 483.100 through 483.136 are met.

PART 433—STATE FISCAL ADMINISTRATION

C. Part 433 is amended as follows:

1. The authority citation for part 433 is revised to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), 1912 and 1919(e) of the Social Security Act (42 U.S.C. 1302, 1320b–7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), 1396k, and 1396r(e), unless otherwise noted.

2. Section 433.15 is amended by adding a new paragraph (b)(9) to read as follows:

§ 433.15 Rates of FFP for administration.

* * * * *

(b) Activities and rates. * * *

(9) Preadmission screening and annual resident review (PASARR) activities conducted by the State: 75 percent. (Sections 1903(a)(2)(C) and 1919(e)(7); 42 CFR part 483, subparts C and E.)

C. Part 483 is amended as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 is revised to read as follows:

Authority: Secs. 1102, 1819(a)–(f), 1861 (j) and (l), 1863, 1871, 1902(a)(28), 1905 (a), (c) and (d), and 1919 (a)–(f) of the Social Security Act (42 U.S.C. 1302, 1395i–3(a)–(f), 1395x (j) and (l), 1395z, 1395hh, 1396a(a)(28), and 1396d (a), (c) and (d), and 1396r(a)–(f)), unless otherwise noted.

2. Part 483 is amended by adding a new subpart C containing §§ 483.100 through 483.138, and new subpart E containing §§ 483.200 through 483.206 to read as follows:

Subpart C—Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals

Sec.

483.100 Basis.
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483.112 Preadmission screening of applicants for admission to NFs.
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483.120 Specialized services.
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483.126 Appropriate placement.
483.128 PASARR evaluation criteria.
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483.132 Evaluating the need for NF services and NF level of care (PASARR/NF).
483.134 Evaluating whether an individual with mental illness requires specialized services (PASARR/MI).
483.136 Evaluating whether an individual with mental retardation requires specialized services (PASARR/MR).
483.138 Maintenance of services and availability of FFP.

Subpart E—Appeals of Discharges, Transfers, and Preadmission Screening and Annual Resident Review (PASARR) Determinations

483.200 Basis.
483.202 Definitions.

483.204 Provision of a hearing and appeal system.
483.206 Transfers, discharges and relocations subject to appeal.

Subpart C—Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals

§ 483.100 Basis.

The requirements of §§ 483.100 through 483.138 governing the State's responsibility for preadmission screening and annual resident review (PASARR) of individuals with mental illness and mental retardation are based on section 1919(e)(7) of the Act.

§ 483.102 Applicability and definitions.

(a) This subpart applies to the screening or reviewing of all individuals with mental illness or mental retardation who apply to or reside in Medicaid certified NFs regardless of the source of payment for the NF services, and regardless of the source of payment for the NF services, and regardless of the individual's or resident's known diagnoses.

(b) *Definitions.* As used in this subpart—

(1) An individual is considered to have a serious mental illness (MI) if the individual meets the following requirements on diagnosis, level of impairment and duration of illness:

(i) *Diagnosis.* The individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987.

Incorporation of the 1987 edition of the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 that govern the use of incorporation by reference.[1]

This mental disorder is—

(A) A schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability; but

(B) Not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined in paragraph (b)(1)(i)(A) of this section.

(ii) *Level of impairment.* The disorder results in functional limitations in major life activities within the past 3 to 6 months that would be appropriate for the individual's developmental stage. An individual typically has at least one of the following characteristics on a continuing or intermittent basis:

(A) *Interpersonal functioning.* The individual has serious difficulty interacting appropriately and communicating effectively with other persons, has a possible history of altercations, evictions, firing, fear of strangers, avoidance of interpersonal relationships and social isolation;

(B) *Concentration, persistence, and pace.* The individual has serious difficulty in sustaining focused attention for a long enough period to permit the completion of tasks commonly found in work settings or in work-like structured activities occurring in school or home settings, manifests difficulties in concentration, inability to complete simple tasks within an established time period, makes frequent errors, or requires assistance in the completion of these tasks; and

(C) *Adaptation to change.* The individual has serious difficulty in adapting to typical changes in circumstances associated with work, school, family, or social interaction, manifests agitation, exacerbated signs and symptoms associated with the illness, or withdrawal from the situation, or requires intervention by the mental health or judicial system.

(iii) *Recent treatment.* The treatment history indicates that the individual has experienced at least one of the following:

(A) Psychiatric treatment more intensive than outpatient care more than once in the past 2 years (e.g., partial hospitalization or inpatient hospitalization); or

(B) Within the last 2 years, due to the mental disorder, experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.

(2) An individual is considered to have dementia if he or she has a primary diagnosis of dementia, as described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, Revised in 1987, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined in paragraph (b)(1)(i)(A) of this section.

(3) An individual is considered to have mental retardation (MR) if he or she has—

(i) A level of retardation (mild, moderate, severe or profound) described in the American Association on Mental Retardation's Manual on Classification in Mental Retardation (1983). Incorporation by reference of the 1983 edition of the American Association on Mental Retardation's Manual on Classification in Mental Retardation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 that govern the use of incorporations by reference;[2] or

(ii) A related condition as defined by § 435.1009 of this chapter.

§ 483.104 State plan requirement.

As a condition of approval of the State plan, the State must operate a preadmission screening and annual resident review program that meets the requirements of §§ 483.100 through 438.138.

§ 483.106 Basic rule.

(a) *Requirement.* The State PASARR program must require—(1) Preadmission screening of all individuals with mental illness or mental retardation who apply as new admissions to Medicaid NFs on or after January 1, 1989;

(2) Initial review, by April 1, 1990, of all current residents with mental retardation or mental illness who entered Medicaid NFs prior to January 1, 1989; and

(3) At least annual review, as of April 1, 1990, of all residents with mental illness or mental retardation, regardless of whether they were first screened under the preadmission screening or annual resident review requirements.

(b) *Admissions, readmissions and interfacility transfers.*—(1) *New admission.* An individual is a new admission if he or she is admitted to any NF for the first time or does not qualify as a readmission. With the exception of certain hospital discharges described in paragraph (b)(2) of this section, new admissions are subject to preadmission screening.

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[1] The Diagnostic and Statistical Manual of Mental Disorders is available for inspection at the Health Care Financing Administration, room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland, or at the Office of the Federal Register, suite 700, 800 North Capitol St. NW., Washington, DC. Copies may be obtained from the American Psychiatric Association, Division of Publications and Marketing, 1400 K Street, NW., Washington, DC 20005.

[2] The American Association on Mental Retardation's Manual on Classification in Mental Retardation is available for inspection at the Health Care Financing Administration, Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland, or at the Office of the Federal Register Information Center, Suite 700, 800 North Capitol St. NW., Washington, DC. Copies may be obtained from the American Association on Mental Retardation, 1719 Kalorama Rd., NW., Washington, DC 20009.

(2) *Exempted hospital discharge.* (i) An exempted hospital discharge means an individual—

(A) Who is admitted to any NF directly from a hospital after receiving acute inpatient care at the hospital;

(B) Who requires NF services for the condition for which he or she received care in the hospital; and

(C) Whose attending physician has certified before admission to the facility that the individual is likely to require less than 30 days nursing facility services.

(ii) If an individual who enters a NF as an exempted hospital discharge is later found to require more than 30 days of NF care, the State mental health or mental retardation authority must conduct an annual resident review within 40 calendar days of admission.

(3) *Readmissions.* An individual is a readmission if he or she was readmitted to a facility from a hospital to which he or she was transferred for the purpose of receiving care. Readmissions are subject to annual resident review rather than preadmission screening.

(4) *Interfacility transfers.*—(i) An interfacility transfer occurs when an individual is transferred from one NF to another NF, with or without an intervening hospital stay. Interfacility transfers are subject to annual resident review rather than preadmission screening.

(ii) In cases of transfer of a resident with MI or MR from a NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent PASARR and resident assessment reports accompany the transferring resident.

(c) *Purpose.* The preadmission screening and annual resident review process must result in determinations based on a physical and mental evaluation of each individual with mental illness or mental retardation, that are described in §§ 483.112 and 483.114.

(d) *Responsibility for evaluations and determinations.* The PASARR determinations of whether an individual requires, the level of services provided by a NF and whether specialized services are needed—(1) For individuals with mental illness, must be made by the State mental health authority and be based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority; and

(2) For individuals with mental retardation, must be made by the State mental retardation or developmental disabilities authority.

(e) *Delegation of responsibility*—(1) The State mental health and mental retardation authorities may delegate by subcontract or otherwise the evaluation and determination functions for which they are responsible to another entity only if—

(i) The State mental health and mental retardation authorities retain ultimate control and responsibility for the performance of their statutory obligations;

(ii) The two determinations as to the need for NF services and for specialized services are made, based on a consistent analysis of the data; and

(iii) The entity to which the delegation is made is not a NF or an entity that has a direct or indirect affiliation or relationship with a NF.

(2) The State mental retardation authority has responsibility for both the evaluation and determination functions for individuals with MR whereas the State mental health authority has responsibility only for the determination function

(3) The evaluation of individuals with MR cannot be delegated by the State mental health authority because it does not have responsibility for this function. The evaluation function must be performed by a person or entity other than the State mental health authority. In designating an independent person or entity to perform MI evaluations, the State must not use a NF or an entity that has a direct or indirect affiliation or relationship with a NF

§ 483.108 Relationship of PASARR to other Medicaid processes.

(a) PASARR determinations made by the State mental health or mental retardation authorities cannot be countermanded by the State Medicaid agency, either in the claims process or through other utilization control/review processes or by the State survey and certification agency. Only appeals determinations made through the system specified in subpart E of this part may overturn a PASARR determination made by the State mental health or mental retardation authorities.

(b) In making their determinations, however, the State mental health and mental retardation authorities must not use criteria relating to the need for NF care or specialized services that are inconsistent with this regulation and any supplementary criteria adopted by the State Medicaid agency under its approved State plan.

(c) To the maximum extent practicable, in order to avoid duplicative testing and effort, the PASARR must be coordinated with the routine resident assessments required by § 483.20(b).

§ 483.110 Out-of-State arrangements.

(a) *Basic rule.* The State in which the individual is a State resident (or would be a State resident at the time he or she becomes eligible for Medicaid), as defined in § 435.403 of this chapter, must pay for the PASARR and make the required determinations, in accordance with § 431.52(b)(1).

(b) *Agreements.* A State may include arrangements for PASARR in its provider agreements with out-of-State facilities or reciprocal interstate agreements.

§ 483.112 Preadmission screening of applicants for admission to NFs.

(a) *Determination of need for NF services.* For each NF applicant with MI or MR, the State mental health or mental retardation authority (as appropriate) must determine, in accordance with § 483.130, whether, because of the resident's physical and mental condition, the individual requires the level of services provided by a NF.

(b) *Determination of need for specialized services.* If the individual with mental illness or mental retardation is determined to require a NF level of care, the State mental health or mental retardation authority (as appropriate) must also determine, in accordance with § 483.130, whether the individual requires specialized services for the mental illness or mental retardation, as defined in § 483.120.

(c) *Timeliness*—(1) Except as specified in paragraph (c)(4) of this section, a preadmission screening determination must be made in writing within an annual average of 7 to 9 working days of referral of the individual with MI or MR by whatever agent performs the Level I identification, under § 483.128(a) of this part, to the State mental health or mental retardation authority for screening. (See § 483.128(a) for discussion of Level I evaluation.)

(2) The State may convey determinations verbally to nursing facilities and the individual and confirm them in writing.

(3) The State may compute separate annual averages for the mentally ill and the mentally retarded/developmentally disabled populations.

(4) The Secretary may grant an exception to the timeliness standard in paragraph (c)(1) of this section when the State—

(i) Exceeds the annual average; and

(ii) Provides justification satisfactory to the Secretary that a longer time period was necessary.

§ 483.114 Annual review of NF residents.

(a) *Individuals with mental illness.* For each resident of a NF who has mental illness, the State mental health authority must determine in accordance with § 483.130 whether, because of the resident's physical and mental condition, the resident requires—

(1) The level of services provided by—

(i) A NF;

(ii) An inpatient psychiatric hospital for individuals under age 21, as described in section 1905(h) of the Act; or

(iii) An institution for mental diseases providing medical assistance to individuals age 65 or older; and

(2) Specialized services for mental illness, as defined in § 483.120.

(b) *Individuals with mental retardation.* For each resident of a NF who has mental retardation, the State mental retardation or developmental disability authority must determine in accordance with § 483.130 whether, because of his or her physical or mental condition, the resident requires—(1) The level of services provided by a NF or an intermediate care facility for the mentally retarded; and

(2) Specialized services for mental retardation as defined in § 483.120.

(c) *Frequency of review*—(1) A review and determination must be conducted for each resident of a Medicaid NF who has mental illness or mental retardation not less often than annually.

(2) "Annually" is defined as occurring within every fourth quarter after the previous preadmission screen or annual resident review.

(d) *April 1, 1990 deadline for initial reviews.* The first set of annual reviews on residents who entered the NF prior to January 1, 1989, must be completed by April 1, 1990.

§ 483.116 Residents and applicants determined to require NF level of services.

(a) *Individuals needing NF services.* If the State mental health or mental retardation authority determines that a resident or applicant for admission to a NF requires a NF level of services, the NF may admit or retain the individual.

(b) *Individuals needing NF services and specialized services.* If the State mental health or mental retardation authority determines that a resident or applicant for admission requires both a NF level of services and specialized services for the mental illness or mental retardation—(1) The NF may admit or retain the individual; and

(2) The State must provide or arrange for the provision of the specialized services needed by the individual while he or she resides in the NF.

§ 483.118 Residents and applicants determined not to require NF level of services.

(a) *Applicants who do not require NF services.* If the State mental health or mental retardation authority determines that an applicant for admission to a NF does not require NF services, the applicant cannot be admitted. NF services are not a covered Medicaid service for that individual, and further screening is not required.

(b) *Residents who require neither NF services nor specialized services for MI or MR.* If the State mental health or mental retardation authority determines that a resident requires neither the level of services provided by a NF nor specialized services for MI or MR, regardless of the length of stay in the facility, the State must—(1) Arrange for the safe and orderly discharge of the resident from the facility in accordance with § 483.12(a); and

(2) Prepare and orient the resident for discharge.

(c) *Residents who do not require NF services but require specialized services for MI or MR*—(1) *Long term residents.* Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, for any resident who has continuously resided in a NF for at least 30 months before the date of the determination, and who requires only specialized services as defined in § 483.120, the State must, in consultation with the resident's family or legal representative and caregivers—

(i) Offer the resident the choice of remaining in the facility or of receiving services in an alternative appropriate setting;

(ii) Inform the resident of the institutional and noninstitutional alternatives covered under the State Medicaid plan for the resident;

(iii) Clarify the effect on eligibility for Medicaid services under the State plan if the resident chooses to leave the facility, including its effect on readmission to the facility; and

(iv) Regardless of the resident's choice, provide for, or arrange for the provision of specialized services for the mental illness or mental retardation.

(2) *Short term residents.* Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, for any resident who requires only specialized services, as defined in § 483.120, and who has not continuously resided in a NF for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and caregivers—

(i) Arrange for the safe and orderly discharge of the resident from the facility in accordance with § 483.12(a);

(ii) Prepare and orient the resident for discharge; and

(iii) Provide for, or arrange for the provision of, specialized services for the mental illness or mental retardation.

(3) For the purpose of establishing length of stay in a NF, the 30 months of continuous residence in a NF or longer—

(i) Is calculated back from the date of the first annual resident review determination which finds that the individual is not in need of NF level of services;

(ii) May include temporary absences for hospitalization or therapeutic leave; and

(iii) May consist of consecutive residences in more than one NF.

§ 483.120 Specialized services.

(a) *Definition.*—(1) For mental illness, specialized services means the services specified by the State which, combined with services provided by the NF, results in the continuous and aggressive implementation of an individualized plan of care that—

(i) Is developed and supervised by an interdisciplinary team, which includes a physician, qualified mental health professionals and, as appropriate, other professionals.

(ii) Prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of serious mental illness, which necessitates supervision by trained mental health personnel; and

(iii) Is directed toward diagnosing and reducing the resident's behavioral symptoms that necessitated institutionalization, improving his or her level of independent functioning, and achieving a functioning level that permits reduction in the intensity of mental health services to below the level of specialized services at the earliest possible time.

(2) For mental retardation, specialized services means the services specified by the State which, combined with services provided by the NF or other service providers, results in treatment which meets the requirements of § 483.440(a)(1).

(b) *Who must receive specialized services.* The State must provide or arrange for the provision of specialized services, in accordance with this subpart, to all NF residents with MI or MR whose needs are such that continuous supervision, treatment and training by qualified mental health or mental retardation personnel is

necessary, as identified by the screening provided in §§ 483.130 or 483.134 and 483.136.

(c) *Services of lesser intensity than specialized services.* The NF must provide mental health or mental retardation services which are of a lesser intensity than specialized services to all residents who need such services.

§ 483.122 FFP for NF services.

(a) *Basic rule.* Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, FFP is available in State expenditures for NF services provided to a Medicaid eligible individual subject to the requirements of this part only if the individual has been determined—(1) To need NF care under § 483.116(a) or

(2) Not to need NF services but to need specialized services, meets the requirements of § 483.118(c)(1), and elects to stay in the NF.

(b) *FFP for late reviews.* When a preadmission screening has not been performed prior to admission or an annual review is not performed timely, in accordance with § 483.114(c), but either is performed at a later date, FFP is available only for services furnished after the screening or review has been performed, subject to the provisions of paragraph (a) of this section.

§ 483.124 FFP for specialized services.

FFP is not available for specialized services furnished to NF residents as NF services.

§ 483.126 Appropriate placement.

Placement of an individual with MI or MR in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and the individual's needs for treatment do not exceed the level of services which can be delivered in the NF to which the individual is admitted either through NF services alone or, where necessary, through NF services supplemented by specialized services provided by or arranged for by the State.

§ 483.128 PASARR evaluation criteria.

(a) *Level I: Identification of individuals with MI or MR.* The State's PASARR program must identify all individuals who are suspected of having MI or MR as defined in § 483.102. This identification function is termed Level I. Level II is the function of evaluating and determining whether NF services and specialized services are needed. The State's performance of the Level I identification function must provide at least, in the case of first time identifications, for the issuance of written notice to the individual or resident and his or her legal representative that the individual or resident is suspected of having MI or MR and is being referred to the State mental health or mental retardation authority for Level II screening.

(b) *Adaptation to culture, language, ethnic origin.* Evaluations performed under PASARR and PASARR notices must be adapted to the cultural background, language, ethnic origin and means of communication used by the individual being evaluated.

(c) *Participation by individual and family.* PASARR evaluations must involve—

(1) The individual being evaluated;

(2) The individual's legal representative, if one has been designated under State law; and

(3) The individual's family if—

(i) Available; and

(ii) The individual or the legal representative agrees to family participation.

(d) *Interdisciplinary coordination.* When parts of a PASARR evaluation are performed by more than one evaluator, the State must ensure that there is interdisciplinary coordination among the evaluators.

(e) The State's PASARR program must use at least the evaluative criteria of § 483.130 (if one or both determinations can easily be made categorically as described in § 483.130) or of §§ 483.132 and 483.134 or § 483.136 (or, in the case of individuals with both MI and MR, §§ 483.132, 483.134 and 483.136 if a more extensive individualized evaluation is required).

(f) *Data.* In the case of individualized evaluations, information that is necessary for determining whether it is appropriate for the individual with MI or MR to be placed in an NF or in another appropriate setting should be gathered throughout all applicable portions of the PASARR evaluation (§§ 483.132 and 483.134 and/or § 483.136). The two determinations relating to the need for NF level of care and specialized services are interrelated and must be based upon a comprehensive analysis of all data concerning the individual.

(g) *Preexisting data.* Evaluators may use relevant evaluative data, obtained prior to initiation of preadmission screening or annual resident review, if the data are considered valid and accurate and reflect the current functional status of the individual. However, in the case of individualized evaluations, to supplement and verify the currency and accuracy of existing data, the State's PASARR program may need to gather additional information necessary to assess proper placement and treatment.

(h) *Findings.* For both categorical and individualized determinations, findings of the evaluation must correspond to the person's current functional status as documented in medical and social history records.

(i) *Evaluation report: Individualized determinations.* For individualized PASARR determinations, findings must be issued in the form of a written evaluative report which—(1) Identifies the name and professional title of person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered;

(2) Provides a summary of the medical and social history, including the positive traits or developmental strengths and weaknesses or developmental needs of the evaluated individual;

(3) If NF services are recommended, identifies the specific services which are required to meet the evaluated individual's needs, including services required in paragraph (g)(4) of this section;

(4) If specialized services are not recommended, identifies any specific mental retardation or mental health services which are of a lesser intensity than specialized services that are required to meet the evaluated individual's needs;

(5) If specialized services are recommended, identifies the specific mental retardation or mental health services required to meet the evaluated individual's needs; and

(6) Includes the bases for the report's conclusions.

(j) *Evaluation report: Categorical determinations.* For categorical PASARR determinations, findings must be issued in the form of an abbreviated written evaluative report which—(1) Identifies the name and professional title of the person applying the categorical determination and the data on which the application was made;

(2) Explains the categorical determination(s) that has (have) been made and, if only one of the two required determinations can be made categorically, describes the nature of any further screening which is required;

(3) Identifies, to the extent possible, based on the available data, NF services, including any mental health or specialized psychiatric rehabilitative services, that may be needed; and

(4) Includes the bases for the report's conclusions.

(k) *Interpretation of findings to individual.* For both categorical and individualized determinations, findings

of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designated under State law.

(l) *Evaluation report.* The evaluator must send a copy of the evaluation report to the—

(1) Individual or resident and his or her legal representative;

(2) Appropriate State authority in sufficient time for the State authorities to meet the times identified in § 483.112(c) for PASs and § 483.114(c) for ARRs;

(3) Admitting or retaining NF;

(4) Individual's attending physician; and

(5) The discharging hospital if the individual is seeking NF admission from a hospital.

(m) The evaluation may be terminated if the evaluator finds at any time during the evaluation that the individual being evaluated—

(1) Does not have MI or MR; or

(2) Has—

(i) A primary diagnosis of dementia (including Alzheimer's Disease or a related disorder); or

(ii) A non-primary diagnosis of dementia without a primary diagnosis that is a serious mental illness, and does not have a diagnosis of MR or a related condition.

§ 483.130 PASARR determination criteria.

(a) *Basis for determinations.* Determinations made by the State mental health or mental retardation authority as to whether NF level of services and specialized services are needed must be based on an evaluation of data concerning the individual, as specified in paragraph (b) of this section.

(b) *Types of determinations.* Determinations may be—

(1) Advance group determinations, in accordance with this section, by category that take into account that certain diagnoses, levels of severity of illness, or need for a particular service clearly indicate that admission to or residence in a NF is normally needed, or that the provision of specialized services is not normally needed; or

(2) Individualized determinations based on more extensive individualized evaluations as required in §§ 483.132, 483.134, or 483.136 (or, in the case of an individual having both MR and MI, §§ 483.134 and 483.136).

(c) *Group determinations by category.* Advance group determinations by category developed by the State mental health or mental retardation authorities may be made applicable to individuals by the NF or other evaluator following Level I review only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits into the category established by the State authorities (see § 483.132(c)). Sources of existing data on the individual that could form the basis for applying a categorical determination by the State authorities would be hospital records, physician's evaluations, election of hospice status, records of community mental health centers or community mental retardation or developmental disability providers.

(d) *Examples of categories.* Examples of categories for which the State mental health or mental retardation authority may make an advance group determination that NF services are needed are—(1) Convalescent care from an acute physical illness which—

(i) Required hospitalization; and

(ii) Does not meet all the criteria for an exempt hospital discharge, which is not subject to preadmission screening, as specified in § 483.106(b)(2).

(2) Terminal illness, as defined for hospice purposes in § 418.3 of this chapter;

(3) Severe physical illnesses such as coma, ventilator dependence, functioning at a brain stem level, or diagnoses such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure which result in a level of impairment so severe that the individual could not be expected to benefit from active treatment;

(4) Provisional admissions pending further assessment in cases of delirium where an accurate diagnosis cannot be made until the delirium clears;

(5) Provisional admissions pending further assessment in emergency situations requiring protective services, with placement in a nursing facility not to exceed 7 days; and

(6) Very brief and finite stays of up to a fixed number of days to provide respite to in-home caregivers to whom the individual with MI or MR is expected to return following the brief NF stay.

(e) *Time limits.* The State may specify time limits for categorical determinations that NF services are needed and in the case of paragraphs (d)(4), (5) and (6) of this section, must specify a time limit which is appropriate for provisional admissions pending further assessment and for emergency situations and respite care. If an individual is later determined to need a longer stay than the State's limit allows, the individual must be subjected to an annual resident review before continuation of the stay may be permitted and payment made for days of NF care beyond the State's time limit.

(f) The State mental health and mental retardation authorities may make categorical determinations that specialized services are not needed in the provisional, emergency and respite admission situations identified in § 483.120(d) (4)–(6). In all other cases, except for § 483.130(h), a determination that specialized services are not needed must be based on a more extensive individualized evaluation under § 483.134 or § 483.136.

(g) *Categorical determinations: No positive specialized treatment determinations.* The State mental health and mental retardation authorities must not make categorical determinations that specialized services are needed. Such a determination must be based on a more extensive individualized evaluation under § 483.134 or § 483.136 to determine the exact nature of the specialized services that are needed.

(h) *Categorical determinations: Dementia and MR.* The State mental retardation authority may make categorical determinations that individuals with dementia, which exists in combination with mental retardation or a related condition, do not need specialized services.

(i) If a State mental health or mental retardation authority determines NF needs by category, it may not waive the specialized services determination. The appropriate State authority must also determine whether specialized services are needed either by category (if permitted) or by individualized evaluations, as specified in §§ 483.134 or 483.136.

(j) *Recording determinations.* All determinations made by the State mental health and mental retardation authority, regardless of how they are arrived at, must be recorded in the individual's record.

(k) *Notice of determination.* The State mental health or mental retardation authority must notify in writing the following entities of a determination made under this subpart:

(1) The evaluated individual and his or her legal representative;

(2) The admitting or retaining NF;

(3) The individual or resident's attending physician; and

(4) The discharging hospital, unless the individual is exempt from preadmission screening as provided for at § 483.106(b)(2).

(l) *Contents of notice.* Each notice of the determination made by the State mental health or mental retardation

authority must include—(1) Whether a NF level of services is needed;

(2) Whether specialized services are needed;

(3) The placement options that are available to the individual consistent with these determinations; and

(4) The rights of the individual to appeal the determination under subpart E of this part.

(m) *Placement options.* Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, the placement options and the required State actions are as follows:

(1) *Can be admitted to a NF.* Any applicant for admission to a NF who has MI or MR and who requires the level of services provided by a NF, regardless of whether specialized services are also needed, may be admitted to a NF, if the placement is appropriate, as determined in § 483.126. If specialized services are also needed, the State is responsible for providing or arranging for the provision of the specialized services.

(2) *Cannot be admitted to a NF.* Any applicant for admission to a NF who has MI or MR and who does not require the level of services provided by a NF, regardless of whether specialized services are also needed, is inappropriate for NF placement and must not be admitted.

(3) *Can be considered appropriate for continued placement in a NF.* Any NF resident with MI or MR who requires the level of services provided by a NF, regardless of the length of his or her stay or the need for specialized services, can continue to reside in the NF, if the placement is appropriate, as determined in § 483.126.

(4) *May choose to remain in the NF even though the placement would otherwise be inappropriate.* Any NF resident with MI or MR who does not require the level of services provided by a NF but does require specialized services and who has continuously resided in a NF for at least 30 consecutive months before the date of determination may choose to continue to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting. Wherever the resident chooses to reside, the State must meet his or her specialized services needs. The determination notice must provide information concerning how, when, and by whom the various placement options available to the resident will be fully explained to the resident.

(5) *Cannot be considered appropriate for continued placement in a NF and must be discharged (short-term residents).* Any NF resident with MI or MR who does not require the level of services provided by a NF but does require specialized services and who has resided in a NF for less than 30 consecutive months must be discharged in accordance with § 483.12(a) to an appropriate setting where the State must provide specialized services. The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his/her appeal rights under both PASARR and discharge provisions.

(6) *Cannot be considered appropriate for continued placement in a NF and must be discharged (short or long-term residents).* Any NF resident with MI or MR who does not require the level of services provided by a NF and does not require specialized services regardless of his or her length of stay, must be discharged in accordance with § 483.12(a). The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his or her appeal rights under both PASARR and discharge provisions.

(n) *Specialized services needed in a NF.* If a determination is made to admit or allow to remain in a NF any individual who requires specialized services, the determination must be supported by assurances that the specialized services that are needed can and will be provided or arranged for by the State while the individual resides in the NF.

(o) *Record retention.* The State PASARR system must maintain records of evaluations and determinations, regardless of whether they are performed categorically or individually, in order to support its determinations and actions and to protect the appeal rights of individuals subjected to PASARR; and

(p) *Tracking system.* The State PASARR system must establish and maintain a tracking system for all individuals with MI or MR in NFs to ensure that appeals and future reviews are performed in accordance with this subpart and subpart E.

§ 483.132 Evaluating the need for NF services and NF level of care (PASARR/NF).

(a) *Basic rule.* For each applicant for admission to a NF and each NF resident who has MI or MR, the evaluator must assess whether—(1) The individual's total needs are such that his or her needs can be met in an appropriate community setting;

(2) The individual's total needs are such that they can be met only on an inpatient basis, which may include the option of placement in a home and community-based services waiver program, but for which the inpatient care would be required;

(3) If inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs in accordance with § 483.126; or

(4) If the inpatient care is appropriate and desired but the NF is not the appropriate setting for meeting the individual's needs in accordance with § 483.126, another setting such as an ICF/MR (including small, community-based facilities), an IMD providing services to individuals aged 65 or older, or a psychiatric hospital is an appropriate institutional setting for meeting those needs.

(b) *Determining appropriate placement.* In determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition.

(c) *Data.* At a minimum, the data relied on to make a determination must include:

(1) Evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis);

(2) Evaluation of mental status (for example, diagnoses, date of onset, medical history, likelihood that the individual may be a danger to himself/herself or others); and

(3) Functional assessment (activities of daily living).

(d) Based on the data compiled in § 483.132 and, as appropriate, in §§ 483.134 and 483.136, the State mental health or mental retardation authority must determine whether an NF level of services is needed.

§ 483.134 Evaluating whether an individual with mental illness requires specialized services (PASARR/MI).

(a) *Purpose.* The purpose of this section is to identify the minimum data needs and process requirements for the State mental health authority, which is responsible for determining whether or not the applicant or resident with MI, as defined in § 483.102(b)(1) of this part, needs a specialized services program for mental illness as defined in § 483.120.

(b) *Data.* Minimum data collected must include—(1) A comprehensive history and physical examination of the person. The following areas must be included (if not previously addressed):

(i) Complete medical history;

(ii) Review of all body systems;

(iii) Specific evaluation of the person's neurological system in the areas of motor functioning, sensory functioning,

gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and

(iv) In case of abnormal findings which are the basis for an NF placement, additional evaluations conducted by appropriate specialists.

(2) A comprehensive drug history including current or immediate past use of medications that could mask symptoms or mimic mental illness.

(3) A psychosocial evaluation of the person, including current living arrangements and medical and support systems.

(4) A comprehensive psychiatric evaluation including a complete psychiatric history, evaluation of intellectual functioning, memory functioning, and orientation, description of current attitudes and overt behaviors, affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations.

(5) A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities while living in the community. The assessment must determine whether this level of support can be provided to the individual in an alternative community setting or whether the level of support needed is such that NF placement is required.

(6) The functional assessment must address the following areas: Self-monitoring of health status, self-administering and scheduling of medical treatment, including medication compliance, or both, self-monitoring of nutritional status, handling money, dressing appropriately, and grooming.

(c) *Personnel requirements.* (1) If the history and physical examination are not performed by a physician, then a physician must review and concur with the conclusions.

(2) The State may designate the mental health professionals who are qualified—

(i) To perform the evaluations required under paragraph (b) (2)–(6) of this section including the—

(A) Comprehensive drug history;

(B) Psychosocial evaluation;

(C) Comprehensive psychiatric evaluation;

(D) Functional assessment; and

(ii) To make the determination required in paragraph (d) of this section.

(d) *Data interpretation.* Based on the data compiled, a qualified mental health professional, as designated by the State, must validate the diagnosis of mental illness and determine whether a program of psychiatric specialized services is needed.

§ 483.136 Evaluating whether an individual with mental retardation requires specialized services (PASARR/MR).

(a) *Purpose.* The purpose of this section is to identify the minimum data needs and process requirements for the State mental retardation authority to determine whether or not the applicant or resident with mental retardation, as defined in § 483.102(b)(3) of this part, needs a continuous specialized services program, which is analogous to active treatment, as defined in §§ 435.1009 and 483.440 of this chapter.

(b) *Data.* Minimum data collected must include the individual's comprehensive history and physical examination results to identify the following information or, in the absence of data, must include information that permits a reviewer specifically to assess:

(1) The individual's medical problems;

(2) The level of impact these problems have on the individual's independent functioning;

(3) All current medications used by the individual and the current response of the individual to any prescribed medications in the following drug groups:

(i) Hypnotics,

(ii) Antipsychotics (neuroleptics),

(iii) Mood stabilizers and antidepressants,

(iv) Antianxiety-sedative agents, and

(v) Anti-Parkinson agents.

(4) Self-monitoring of health status;

(5) Self-administering and scheduling of medical treatments;

(6) Self-monitoring of nutritional status;

(7) Self-help development such as toileting, dressing, grooming, and eating;

(8) Sensorimotor development, such as ambulation, positioning, transfer skills, gross motor dexterity, visual motor perception, fine motor dexterity, eye-hand coordination, and extent to which prosthetic, orthotic, corrective or mechanical supportive devices can improve the individual's functional capacity;

(9) Speech and language (communication) development, such as expressive language (verbal and nonverbal), receptive language (verbal and nonverbal), extent to which non-oral communication systems can improve the individual's function capacity, auditory functioning, and extent to which amplification devices (for example, hearing aid) or a program of amplification can improve the individual's functional capacity;

(10) Social development, such as interpersonal skills, recreation-leisure skills, and relationships with others;

(11) Academic/educational development, including functional learning skills;

(12) Independent living development such as meal preparation, budgeting and personal finances, survival skills, mobility skills (orientation to the neighborhood, town, city), laundry, housekeeping, shopping, bedmaking, care of clothing, and orientation skills (for individuals with visual impairments);

(13) Vocational development, including present vocational skills;

(14) Affective development such as interests, and skills involved with expressing emotions, making judgments, and making independent decisions; and

(15) The presence of identifiable maladaptive or inappropriate behaviors of the individual based on systematic observation (including, but not limited to, the frequency and intensity of identified maladaptive or inappropriate behaviors).

(c) *Data interpretation*—(1) The State must ensure that a licensed psychologist identifies the intellectual functioning measurement of individuals with MR or a related condition.

(2) Based on the data compiled in paragraph (b) of this section, the State mental retardation authority, using appropriate personnel, as designated by the State, must validate that the individual has MR or is a person with a related condition and must determine whether specialized services for mental retardation are needed. In making this determination, the State mental health authority must make a qualitative judgment on the extent to which the person's status reflects, singly and collectively, the characteristics commonly associated with the need for specialized services, including—

(i) Inability to—

(A) Take care of the most personal care needs;

(B) Understand simple commands;

(C) Communicate basic needs and wants;

(D) Be employed at a productive wage level without systematic long term supervision or support;

(E) Learn new skills without aggressive and consistent training;

(F) Apply skills learned in a training situation to other environments or settings without aggressive and consistent training;

(G) Demonstrate behavior appropriate to the time, situation or place without direct supervision; and

(H) Make decisions requiring informed consent without extreme difficulty;

(ii) Demonstration of severe maladaptive behavior(s) that place the

person or others in jeopardy to health and safety; and

(iii) Presence of other skill deficits or specialized training needs that necessitate the availability of trained MR personnel, 24 hours per day, to teach the person functional skills.

§ 483.138 Maintenance of services and availability of FFP.

(a) *Maintenance of services.* If a NF mails a 30 day notice of its intent to transfer or discharge a resident, under § 483.12(a) of this chapter, the agency may not terminate or reduce services until—(1) The expiration of the notice period; or

(2) A subpart E appeal, if one has been filed, has been resolved.

(b) *Availability of FFP.* FFP is available for expenditures for services provided to Medicaid recipients during—(1) The 30 day notice period specified in § 483.12(a) of this chapter; or

(2) During the period an appeal is in progress.

Subpart E—Appeals of Discharges, Transfers, and Preadmission Screening and Annual Resident Review (PASARR) Determinations

§ 483.200 Basis.

This subpart implements sections 1819(e)(3), 1819(f)(3), 1919(e)(3), 1919(f)(3), and 1919(c)(7) of the Act.

§ 483.202 Definitions.

For purposes of this subpart and subparts B and C—

Discharge means movement from an entity that participates in Medicare as a skilled nursing facility, a Medicare certified distinct part, an entity that participates in Medicaid as a nursing facility, or a Medicaid certified distinct part to a noninstitutional setting when the discharging facility ceases to be legally responsible for the care of the resident.

Individual means an individual or any legal representative of the individual.

Resident means a resident of a SNF or NF or any legal representative of the resident.

Transfer means movement from an entity that participates in Medicare as a skilled nursing facility, a Medicare certified distinct part, an entity that participates in Medicaid as a nursing facility or a Medicaid certified distinct part to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility.

§ 483.204 Provision of a hearing and appeal system.

(a) Each State must provide a system for:

(1) A resident of a SNF or a NF to appeal a notice from the SNF or NF of intent to discharge or transfer the resident; and

(2) An individual who has been adversely affected by any PASARR determination made by the State in the context of either a preadmission screening or an annual resident review under subpart C of part 483 to appeal that determination.

(b) The State must provide an appeals system that meets the requirements of this subpart, § 483.12 of this part, and part 431 subpart E of this subchapter.

§ 483.206 Transfers, discharges and relocations subject to appeal.

(a) "Facility" means a certified entity, either a Medicare SNF or a Medicaid NF (see §§ 483.5 and 483.12(a)(1)).

(b) A resident has appeal rights when he or she is transferred from—(1) A certified bed into a noncertified bed; and

(2) A bed in a certified entity to a bed in an entity which is certified as a different provider.

(c) A resident has no appeal rights when he or she is moved from one bed in the certified entity to another bed in the same certified entity.

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance Program.)

Dated: April 29, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 30, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-28425 Filed 11-27-92; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-44; RM-7914]

Radio Broadcasting Services; Hattiesburg, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 226A to Hattiesburg, Mississippi, in response to a petition filed by Community Broadcasting Company, Inc. See 57 FR 9530, March 19, 1992. There is a site restriction 2.5 kilometers (1.5 miles) southwest of the community. The coordinates for Channel 226A are 31-18-28 and 89-18-07. With this action, this proceeding is terminated.

DATES: Effective January 7, 1993. The window period for filing applications for Channel 226A at Hattiesburg will open on January 8, 1993 and close on February 8, 1993.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-44, adopted October 21, 1992, and released November 23, 1992. 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, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

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 Mississippi, is amended by adding Channel 226A at Hattiesburg.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-28843 Filed 11-27-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-594; RM-7250, RM-7660]

Radio Broadcasting Services; Oakdale and Campti, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition for reconsideration filed by D&B Communications of that portion of the *Report and Order* in this proceeding which made an allotment of Channel 253C3 to Campti, Louisiana pursuant to

a petition filed by Fred Hannel, d/b/a Campti Broadcasting. *See* 57 Fed. Reg. 5993, February 14, 1992. We delete Channel 253C3 from Campti, Louisiana, after determining on reconsideration that there is no longer an interest in the allotment at that community. We simultaneously substitute Channel 254C1 for Channel 254C2 at Oakdale, Louisiana, and modify the license of Station KICR–FM, Oakdale, Louisiana, to reflect the higher powered channel. The coordinates for Channel 254C1 at Oakdale are North Latitude 30–57–47 and West Longitude 92–35–02. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 7, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 90–594, adopted October 21, 1992, and released November 23, 1992. 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, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., Washington, DC 20036.

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 Campti, Channel 253C3, and by substituting Channel 254C1 for Channel 254C2 at Oakdale.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–28844 Filed 11–27–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–172; RM–6965]

Radio Broadcasting Services; Leland, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 232C2 for Channel 232A at Leland, Mississippi, in response to a petition filed by Interchange Communications, Inc., and modifies the license for Station WBAD(FM) to specify operation on Channel 232C2. *See* 57 FR 82491, August 24, 1992. The coordinates for Channel 232C2 are 33–24–55 and 90–59–18. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 7, 1993.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–172, adopted October 26, 1992, and released November 23, 1992. 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, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452–1422.

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 Mississippi, is amended by removing Channel 232A and adding Channel 232C2 at Leland.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–28848 Filed 11–27–92; 8:45 am]

BILLING CODE 6712–01–M

PART 73—[AMENDED]

[MM Docket No. 90–466; RM–7327, RM–7987, RM–7988]

Radio Broadcasting Services; Hondo, Hollywood Park, and Dilley, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses the petition filed by Radio Medina, Inc., proposing the substitution of Channel 254C3 for Channel 253A at Hondo, Texas, at petitioner's request. See 55 FR 45625, October 30, 1990. The counterproposal filed by M&R Communications (RM–7987), requesting the allotment of Channel 253A to Hollywood Park, Texas, is dismissed. The counterproposal filed by Aguilar Broadcasting of Texas (RM–7988), requesting the allotment of Channel 255C2 to Dilley, Texas, is granted. The coordinates are 28–40–18 and 99–10–12. Mexican concurrence has been obtained for the allotment of Channel 255C2 at Dilley, Texas. With this action, this proceeding is terminated.

DATES: Effective Date: January 7, 1993. The window period for filing applications will open on January 8, 1993, and close on February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–466, adopted October 27, 1992, and released November 23, 1992. 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, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW, suite 640 Washington, DC. 20036.

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 Texas, is amended by adding Dilley, Channel 255C2.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–28849 Filed 11–27–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86-282; RM-5148]

Television Broadcasting Services; Santa Maria, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission allots UHF Television Channel 42 to Santa Maria, California, as that community's second commercial television channel. Channel 42 can be allotted to Santa Maria in compliance with the Commission's minimum distance separation requirements. Pappas Telecasting, Inc., requested the allotment of UHF Channel 27 to Santa Maria and the substitution of UHF Channel *68 for unused Channel *27 at Coalinga, California to accommodate its Santa Maria proposal. However, Channel 42 can be allotted without disturbing Channel *27 at Coalinga. The coordinates for Channel 42 at Santa Maria are 34–57–00 and 120–26–00. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 7, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 86–282, adopted October 22, 1992, and released November 23, 1992. 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, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments under California, is amended by adding Channel 42+ at Santa Maria.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–28845 Filed 11–27–92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 920661-2262]

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). This final rule adopts in the exclusive economic zone (EEZ) off Florida, Florida's spiny lobster trap certificate, trap reduction, and trap identification programs; requires that divers measure spiny lobsters harvested in the EEZ while in the water; requires in the EEZ the same number size for marking spiny lobster trap buoys as is required in Florida's waters; restricts divers who harvest spiny lobsters in the EEZ at night to the bag limit; specifies diving and use of a bully net, hoop net, and trap as the only authorized method/gears in the EEZ in a directed fishery for spiny lobster; establishes a catch limit of 5 percent, by weight, of all fish aboard for the incidental harvest of spiny lobsters by trawls in the EEZ; standardizes the Florida and Federal size limit for spiny lobster traps used in the EEZ off Florida; reduces the number of undersized spiny lobsters that may be retained in the EEZ for use as attractants in traps to 50 per vessel, or one per trap on board, whichever is greater; and otherwise simplifies and clarifies the regulations and conforms them to current usage. The intended effects of this rule are to enhance cooperative Florida/Federal management of the spiny lobster fishery, reduce management costs, improve effectiveness of necessary regulations, and protect the valuable spiny lobster resource.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery of the Gulf of Mexico and South Atlantic is managed under the FMP, prepared and amended by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 640, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP, as amended, contains a regulatory amendment procedure for implementing specified gear and harvest restrictions applicable to the spiny lobster fishery in the EEZ. In accordance with that regulatory amendment procedure, the Florida Marine Fisheries Commission (FMFC) requested the Director, Southeast Region, NMFS, to implement in the EEZ, with the Councils' oversight, modifications to certain gear and harvest limitations that were proposed by the FMFC and approved by the Governor and Cabinet of Florida for implementation in Florida's waters.

In addition to the modifications requested by the FMFC or related to those modifications, NMFS proposed to remove from regulations definitions no longer needed; revise and add definitions as appropriate to conform them to those contained in Florida's statutes and regulations; revise the permitting requirements to conform them, to the extent possible, with the Federal permitting requirements in other fisheries; and otherwise simplify and clarify the regulations.

The specifics, backgrounds, and rationales for the FMFC- and NMFS-initiated modifications are contained in the proposed rule published on July 24, 1992 (57 FR 32956) and are not repeated here.

Comments and Responses

Comments were received on the proposed rule from three organizations and five individuals. Comments and responses by subject matter follow. One addition has been made to the proposed rule that makes explicit the Florida regulations that are being incorporated.

Appropriateness of Federal Regulations

The Southeastern Fisheries Association, Inc., and an owner of a fish house and several shrimp vessels stated that the proposed changes should not be implemented because they are not consistent with the Magnuson Act and other applicable law and because of the President's moratorium on new regulations. It is contended that the changes have not gone through the fishery management council process.

NMFS does not agree. The changes in this rule were initiated by the FMFC, reviewed and concurred in by the Councils and NMFS, and published by NMFS in accordance with the regulatory amendment procedure established in Amendment 2 to the FMP. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), finds this rule to be consistent with the Magnuson Act and other applicable law. The President's moratorium on new regulations does not apply to regulations that foster economic growth. (Memorandum for certain department and agency heads on reducing the burden of regulation, p. 3, para. (a), January 28, 1992. Harmonizing the Florida and Federal spiny lobster regulations will contribute to long-term economic growth.

Prohibition of a Directed Trawl Fishery for Spiny Lobster

The Southeastern Fisheries Association, Inc., the Monroe County Commercial Fishermen, Inc., and an owner of a fish house and several shrimp vessels opposed the limitation on trawl-caught spiny lobster. They contend that this limitation is unnecessary because a directed fishery for spiny lobster by trawling does not exist and because use of turtle excluder devices in shrimp trawls prevents fishermen from catching large numbers of spiny lobster. The fish house owner reported that 87 pounds of lobster tails was the largest catch he recorded from a shrimp trawler.

NMFS believes this limitation is needed to prevent the development of a trawl fishery for spiny lobster and to standardize Florida and Federal regulations. As stated in the proposed rule, harvesting of spiny lobster by trawls has the potential of injury to the lobster by crushing and by breaking antennae and appendages, which can contribute to mortality or retard growth. If catches of spiny lobster by trawls is minimal, the impact of this limitation will be minimal.

Use of Undersized Spiny Lobster as Attractants in Traps

The Stuart Sailfish Club, a sport fishing club, and the owner of a commercial dive shop opposed the use of undersized spiny lobster (shorts) as attractants in traps. They contend this practice causes unnecessary mortality to juvenile lobsters.

NMFS agrees that the use of shorts contributes to the mortality of juvenile lobsters. Reducing to fifty the number of shorts that may be retained, with the existing requirement for use of a live well for holding shorts, will reduce this source of mortality.

Trap Construction Requirements

A commercial fisherman opposed use of wire traps in the lobster fishery. He contends that fishermen use wire traps to circumvent the Federal prohibitions on the use of fish traps. He provided several photographs of wire traps in the water containing tropical and other reef fish.

The Councils believe that wire traps enhance the ability to fish for lobsters in deeper water and, therefore, proposed that their use in the EEZ be allowed. NMFS concurs. The mortality of tropical and other reef fish that may enter wire spiny lobster traps has not been documented. In addition, the incidental catch limitations on snapper-grouper species taken by spiny lobster traps in the Atlantic Ocean preclude an economically viable snapper-grouper fishery using spiny lobster traps in that area.

Maximum Size Limitation for Spiny Lobster Traps

A commercial fisherman commented that implementation of the maximum size limitation for spiny lobster traps used in the EEZ should be delayed until after the current season, which ends on March 31, 1993. His traps are larger than the proposed 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm).

NMFS finds no basis for such a delay. The benefits of standardizing Florida and Federal requirements, as discussed in the proposed rule, apply equally to this and other measures. Conformance of Florida and Federal trap requirements has been discussed in public forums at least since such conformance was requested by the FMFC in December 1991. Prior knowledge of the proposed maximum size limitation and the 30-day delayed effectiveness of this final rule should suffice to allow fishermen to replace oversized spiny lobster traps in the EEZ.

Standardization of Florida and Federal Bag Limits

A recreational diver requested identical Florida and Federal bag limits during the regular season. Federal regulations allow a recreational fisherman to possess up to 6 lobsters per day; whereas, Florida regulations allow a recreational fisherman to possess up to 6 lobsters per day or 24 per vessel, whichever is greater. Thus, Florida regulations allow a recreational fisherman in a party of three or less to possess more than 6 lobsters.

NMFS believes that the Federal regulation is more conservative and should continue. In addition, a change in the Federal bag limit was not requested by the FMFC or the Councils under the regulatory amendment procedure. Accordingly, such a change is outside the scope of this rulemaking.

Changes From the Proposed Rule

In §§ 640.6 (a)(1) and (a)(2), 640.20(c)(1), and 640.22(b)(3)(i) references are made to sections of the Florida Administrative Code. For clarity, the date of publication of this final rule is added to each of those references. Subsequent changes by Florida to the referenced sections would be effective in the EEZ only upon their submission and approval under the regulatory amendment procedure of the FMP.

Classification

The Assistant Administrator has determined that this final rule is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

The Assistant Administrator has determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Councils prepared a regulatory impact review for this action and, as a part thereof, an initial regulatory flexibility analysis (IRFA). Based on the IRFA, the Assistant Administrator has determined that this rule will have significant effects on small entities. A summary of those effects is contained in the proposed rule and is not repeated here.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not participate in the coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida, Louisiana, and North Carolina agreed with the determination. The other states did not respond within the statutory time period; therefore, consistency is presumed.

This final rule restates the collection-of-information requirement for applications for commercial vessel permits and clarifies the requirement for reporting the sale or transfer of traps. These collection-of-information requirements, which are subject to the Paperwork Reduction Act, were previously approved under OMB Control No. 0648–0205. These requirements have a public reporting burden estimated to average 15 minutes 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 the collection of information, including suggestions for reducing the burden, to Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 24, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 640 is amended as follows:

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 640 continues to read as follows:

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

2. Section 640.1 is revised to read as follows:

§ 640.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson Act.

(b) This part governs conservation and management of spiny lobster and slipper (Spanish) lobster in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico.

(c) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobsters, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from the requirements of this part 640, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

3. In § 640.2, Figure 1 is redesignated as Figure 1 of this part 640 and is placed at the end of this part; the definitions for "*Degradable panel*" and "*Management area*" are removed; the definitions for "*Carapace length*" and "*Tail length*" are revised; and new definitions for "*Bully net*", "*Hoop net*", and "*Off Florida*" are added in alphabetical order to read as follows:

§ 640.2 Definitions.

* * * * *

Bully net means a circular frame attached at right angles to the end of a pole and supporting a conical bag of webbing. The webbing is usually held up by means of a cord which is released when the net is dropped over a lobster.

Carapace length means the measurement of the carapace (head, body, or front section) of a spiny lobster from the anteriormost edge (front) of the groove between the horns directly above the eyes, along the middorsal line (middle of the back), to the rear edge of the top part of the carapace, excluding any translucent membrane.

* * * * *

Hoop net means a frame, circular or otherwise, supporting a shallow bag of webbing and suspended by a line and bridles. The net is baited and lowered to the ocean bottom, to be raised rapidly at a later time to prevent the escape of lobster.

* * * * *

Off Florida means the area from the Florida coast to the outer limit of the EEZ between the Georgia/Florida boundary (30°42'45.6"N. latitude) and the Alabama/Florida boundary (87°31'06"W. longitude).

* * * * *

Tail length means the lengthwise measurement of the entire tail (segmented portion), not including any protruding muscle tissue, of a spiny lobster along the top middorsal line (middle of the back) to the rearmost extremity. The measurement is made with the tail in a flat, straight position with the tip of the tail closed.

* * * * *

4. Section 640.4 is revised to read as follows:

§ 640.4 Permits and fees.

(a) *Applicability.* (1) During the commercial and recreational fishing season specified in § 640.20(a), for a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster in or from the EEZ or for a person to be exempt from the daily bag and possession limit for spiny lobster in or from the EEZ specified in § 640.23(a), a Federal vessel permit must be issued to the harvesting vessel and be on board.

(2) During the commercial and recreational fishing season specified in § 640.20(a), for a person to possess aboard a fishing vessel a separated spiny lobster tail in or from the EEZ, a tail-separation endorsement must be included on the vessel's Federal vessel permit, which must be on board.

(3) For a vessel owned by a corporation or partnership to be eligible for a Federal vessel permit specified in paragraph (a)(1) of this section, the earned income qualification specified in paragraph (b)(2)(vi) of this section must be met by, and the statement required by paragraph (b)(2)(vi) of this section must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Application for a permit.* (1) An application for a Federal vessel permit must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address including zip code, telephone number, social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been assigned by the Internal Revenue Service, and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(2)(vi) of this section and the operator does meet that qualification, the name, mailing address including zip code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the Regional Director and included on the application form.

(vi) A sworn statement by the applicant certifying that at least 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, during the calendar year preceding the application.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(3) of this section.

(viii) If a tail-separation endorsement is desired, a sworn statement by the applicant certifying that his fishing activity—

(A) Is routinely conducted in the EEZ on trips of 48 hours or more; and

(B) Necessitates the separation of carapace and tail to maintain a quality product.

(ix) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (h) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the Regional Director within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. An application for a Federal vessel permit with tail-separation endorsement, combined, is considered one application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(vi) of this section. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued pursuant to this section is not transferable or assignable. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale.

(h) *Display.* A permit issued pursuant to this section must be carried on board the vessel, and such vessel must be identified as required by § 640.6. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

5. Section 640.6 is revised to read as follows:

§ 640.6 Vessel and gear identification.

(a) *Traps and diving in the EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobsters by traps in the EEZ off Florida must comply with the vessel and gear identification requirements applicable to the harvesting of spiny lobsters by traps in Florida's waters, as specified on November 30, 1992 in Sections 370.14 and 370.142, Florida Statutes, and in Rule 46-24.006 (2), (3), and (40, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code.

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters, as specified on November 30, 1992 in Rule 46-24.006(5), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code. If the owner or operator of such vessel does not have a current Florida crawfish license or trap number, the Federal vessel permit number must be shown in the location specified in Rule 46-24.006(5) for the Florida number.

(b) *Other gears and areas.* (1) The owner or operator of a vessel for which a Federal vessel permit has been issued under § 640.4 that is used to harvest spiny lobsters in the EEZ off Florida by other than spiny lobster traps or diving, or that is used to harvest spiny lobsters in the EEZ other than off Florida, must meet the following vessel and gear identification requirements:

(i) The vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number must be permanently and conspicuously displayed horizontally on the uppermost structural portion of the vessel in numbers at least 10 inches (25.4 cm) high so as to be readily identifiable from the air and water;

(ii) If the vessel uses spiny lobster traps in the EEZ, other than off Florida—

(A) The vessel's color code, as assigned by Florida or, if a color code has not been assigned by Florida, as assigned by the Regional Director, must be permanently and conspicuously displayed above the number specified in paragraph (b)(1)(i) of this section so as to be readily identifiable from the air and water, such color code being in the form of a circle at least 20 inches (50.8 cm) in diameter on a background of colors contrasting to those contained in the assigned color code;

(B) A buoy or timed-release buoy of such strength and buoyancy to float must be attached to each spiny lobster trap or at each end of a string of traps;

(C) A buoy used to mark spiny lobster traps must bear the vessel's assigned color code and be of such color, hue,

and brilliancy as to be easily distinguished, seen, and located;

(D) A buoy used to mark spiny lobster traps must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number in numbers at least 2 inches (5.08 cm) high; and

(E) A spiny lobster trap must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number permanently and legibly affixed.

(2) A spiny lobster trap in the EEZ, other than off Florida, will be presumed to be the property of the most recently documented owner. Upon the sale or transfer of a spiny lobster trap used in the EEZ, other than off Florida, within 5 days of acquiring ownership, the person acquiring ownership must notify the Florida Division of Law Enforcement of the Department of Natural Resources, for a trap that bears a Florida crawfish license or trap number, or the Regional Director, for a trap that bears a Federal vessel permit number, as to the number of traps purchased, the vendor, and the crawfish license or trap number, or Federal vessel permit number, currently displayed on the traps, and must request issuance of a crawfish license or trap number, or Federal vessel permit, if the acquiring owner does not possess such license or trap number or permit.

(c) *Unmarked traps and buoys.* An unmarked spiny lobster trap or buoy in the EEZ is illegal gear. Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties.

6. Section 640.7 is revised to read as follows:

§ 640.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster in or from the EEZ without a Federal vessel permit, as specified in § 640.4(a)(1).

(b) Falsify information specified in § 640.4(b)(2) on an application for a permit.

(c) Fail to display a permit, as specified in § 640.4(h).

(d) Falsify or fail to display and maintain vessel and gear identification, as required by § 640.6 (a) and (b).

(e) Possess a spiny lobster trap in the EEZ at a time not authorized, as specified in § 640.20 (c)(1) and (c)(2).

(f) Possess a spiny lobster in or from the EEZ at a time not authorized, as specified in § 640.20(d).

(g) Fail to return immediately to the water a berried spiny lobster or slipper lobster; strip eggs from or otherwise molest a berried spiny lobster or slipper lobster; or possess a spiny lobster or slipper lobster, or part thereof, from which eggs, swimmerettes, or pleopods have been removed or stripped, as specified in § 640.21(a).

(h) Possess or fail to return immediately to the water unharmed a spiny lobster smaller than the minimum size limits specified in § 640.21 (b)(1) and (b)(3), except as provided in § 640.21(c).

(i) Harvest or attempt to harvest a spiny lobster by diving without having and using in the water a measuring device, or fail to release an undersized spiny lobster in the water, as specified in § 640.21(b)(2).

(j) Possess an undersized spiny lobster for use as an attractant in a trap in quantities or under conditions not authorized in § 640.21(c).

(k) Possess a separated spiny lobster tail, except as specified in § 640.21(d).

(l) Possess a spiny lobster harvested by prohibited gear or methods; or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 640.22 (a)(1) and (a)(3).

(m) Use or possess in the EEZ a spiny lobster trap that does not meet the requirements specified in § 640.22(b)(1).

(n) Pull or tend a spiny lobster trap other than during daylight hours, as specified in § 640.21(b)(2).

(o) Pull or tend another person's spiny lobster trap, except as authorized in § 640.22(b)(3).

(p) Possess spiny lobsters in or from the EEZ in an amount exceeding the daily bag and possession limit specified in § 640.23(a), except as authorized in § 640.23 (b) and (c).

(q) Possess spiny lobsters aboard a vessel that uses or has on board a net or trawl in an amount exceeding the limits, as specified in § 640.23(c).

(r) Operate a vessel that fishes for or possesses spiny lobster in or from the EEZ with spiny lobster aboard in an amount exceeding the cumulative bag and possession limit, as specified in § 640.23(f).

(s) Transfer or receive at sea spiny lobster in or from the EEZ caught under the bag and possession limits, as specified in § 640.23(g).

(t) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

7. Subpart B of part 640 is revised to read as follows:

Subpart B—Management Measures

Sec.

640.20 Seasons.
640.21 Harvest limitations.
640.22 Gear and diving restrictions.
640.23 Bag and possession limits.
640.24 Authorized activities.

Subpart B—Management Measures

§ 640.20 Seasons.

(a) *Commercial and recreational fishing season.* The commercial and recreational fishing season for spiny lobster in the EEZ begins on August 6 and ends on March 31.

(b) *Special non-trap recreational fishing season.* There is a 2-day special non-trap recreational fishing season in the EEZ on Saturday and Sunday on the first full weekend preceding August 1.

(c) *Possession of traps.* (1) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters, as contained on November 30, 1992 in Rule 46-24.005 (3), (4), and (5), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida.

(2) In the EEZ, other than off Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season specified in paragraph (a) of this section beginning on August 1 and must be removed from the water after such season not later than April 5.

(3) A spiny lobster trap, buoy, or rope in the EEZ during periods not authorized in paragraphs (c)(1) and (c)(2) of this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(d) *Possession of spiny lobsters.* A spiny lobster or part thereof in or from the EEZ may be possessed only during the periods specified in paragraphs (a) and (b) of this section, unless accompanied by proof indicating lawful harvest outside the EEZ. A spiny lobster in a trap in the water during a time such trap is authorized to be in the EEZ under paragraph (c)(1) or (c)(2) of this section will not be deemed to be possessed provided such spiny lobster is returned immediately to the water unharmed

when a trap is removed from the water during such time.

§ 640.21 Harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) spiny lobster or slipper lobster in or from the EEZ must be returned immediately to the water unharmed. If found in a trap in the EEZ, a berried spiny lobster or slipper lobster may not be retained in the trap. A berried spiny lobster or slipper lobster in or from the EEZ may not be stripped of its eggs or otherwise molested. The possession of a spiny lobster or slipper lobster, or part thereof, in or from the EEZ from which eggs, swimmerettes, or pleopods have been removed or stripped is prohibited.

(b) *Minimum size limits.* (1) Except as provided in paragraph (c) of this section—

(i) No person may possess a spiny lobster in or from the EEZ with a carapace length of 3.0 inches (7.62 cm) or less; and

(ii) A spiny lobster, harvested in the EEZ by means other than diving, with a carapace length of 3.0 inches (7.62 cm) or less must be returned immediately to the water unharmed.

(2) No person may harvest or attempt to harvest a spiny lobster by diving in the EEZ unless he or she possesses, while in the water, a measuring device capable of measuring the carapace length. A spiny lobster captured by a diver must be measured in the water using such measuring device and, if the spiny lobster has a carapace length of 3.0 inches (7.62 cm) or less, it must be released unharmed immediately without removal from the water.

(3) Aboard a vessel authorized under paragraph (d) of this section to possess a separated spiny lobster tail, no person may possess in or from the EEZ a separated spiny lobster tail with a tail length less than 5.5 inches (13.97 cm).

(c) *Undersized attractants.* A live spiny lobster under the minimum size limit specified in paragraph (b)(1) of this section that is harvested in the EEZ by a trap may be retained aboard the harvesting vessel for future use as an attractant in a trap provided it is held in a live well aboard the vessel. No more than fifty undersized spiny lobsters, or one per trap aboard the vessel, whichever is greater, may be retained aboard for use as attractants. The live well must provide a minimum of ¾ gallons (1.7 liters) of seawater per spiny lobster. An undersized spiny lobster so retained must be released to the water alive and unharmed immediately upon leaving the trap lines and prior to one hour after official sunset each day.

(d) *Tail separation.* The possession aboard a fishing vessel of a separated spiny lobster tail in or from the EEZ is authorized only when the possession is incidental to fishing exclusively in the EEZ on a trip of 48 hours or more and a Federal vessel permit specified in § 640.4(a)(1) that contains a tail-separation endorsement has been issued to and is on board the vessel.

§ 640.22 Gear and diving restrictions.

(a) *Prohibited gear and methods.* (1) A spiny lobster may not be taken in the EEZ with a spear, hook, or similar device, or gear containing such devices. In the EEZ, the possession of a speared, pierced, or punctured spiny lobster is *prima facie* evidence that prohibited gear was used to take such lobster.

(2) A spiny lobster may not be taken in a directed fishery by the use of a net or trawl. See § 640.23(c) for the bycatch limits applicable to a vessel that uses or has on board a net or trawl.

(3) Poisons and explosives may not be used to take a spiny lobster or slipper lobster in the EEZ. For the purposes of this paragraph (a)(3), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster or slipper lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

(b) *Traps.* (1) In the EEZ, a spiny lobster trap may be no larger in dimension than 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm), or the volume equivalent. A trap constructed of material other than wood must have a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap. Such panel must be located in the upper half of the sides or on top of the trap, so that, when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

(2) A spiny lobster trap in the EEZ may be pulled or tended during daylight hours only, that is, from 1 hour before official sunrise to 1 hour after official sunset.

(3) A spiny lobster trap in the EEZ may be pulled or tended only by the owner's vessel, or by a vessel for which permission to pull or work traps belonging to another person has been granted—

(i) For traps in the EEZ off Florida, by the Florida Division of Law Enforcement, as specified on November 30, 1992 in Rule 46-24.006(6), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code; or

(ii) For traps in the EEZ, other than off Florida, by the Regional Director, as may be arranged upon written request.

§ 640.23 Bag and possession limits.

(a) The daily bag and possession limit of spiny lobster in or from the EEZ is six per person and applies—

(1) During the commercial and recreational fishing season specified in § 640.20(a), except as provided in paragraphs (b) and (c) of this section; and

(2) During the special non-trap recreational fishing season specified in § 640.20(b).

(b) During the commercial and recreational fishing season specified in § 640.20(a), a person is exempt from the bag and possession limit specified in paragraph (a) of this section, provided—

(1) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(2) The person is aboard a vessel that has on board a Federal vessel permit specified in § 640.4(a)(1).

(c) During the commercial and recreational fishing season specified in § 640.20(a), aboard a vessel with a vessel permit specified in § 640.4(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (c), the term "net or trawl" does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(d) The provisions of paragraph (b) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (a) of this section, whether or not a Federal vessel permit specified in § 640.4(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(e) A person who fishes for or possesses spiny lobster in or from the EEZ under the bag and possession limits specified in paragraphs (a) or (c) of this section may not combine such bag and possession limits with any bag or possession limits applicable to state waters.

(f) The operator of a vessel that fishes for or possesses spiny lobster in or from the EEZ is responsible for the

cumulative bag and possession limit specified in paragraph (a) of this section applicable to that vessel, based on the number of persons aboard.

(g) A person who fishes for or possesses spiny lobster in or from the EEZ under the bag and possession limits specified in paragraph (a) or (c) of this section may not transfer a spiny lobster at sea from a fishing vessel to any other vessel, and no person may receive at sea such spiny lobster.

§ 640.24 Authorized activities.

The Secretary may authorize, for the acquisition of information and date, activities otherwise prohibited by the regulations in this part.

[FR Doc. 92-28985 Filed 11-27-92; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 646

[Docket No. 920811-2211]

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Emergency interim rule; extension of effectiveness.

SUMMARY: An emergency interim rule is in effect through November 30, 1992, that establishes a definition of "sea bass pot", applicable in the exclusive economic zone (EEZ) off North Carolina and South Carolina, and that removes the possession limits for snapper-grouper applicable to fishermen using sea bass pots aboard commercially permitted vessels in the EEZ off North Carolina and South Carolina. NMFS extends the emergency interim rule for an additional 90 days because conditions justifying the emergency action remain unchanged and to prevent a lapse in these management measures prior to completion of action to address permanent changes to the regulations. The intended effect is to respond to an economic emergency without jeopardizing the rebuilding program for those snapper-grouper species that are overfished.

EFFECTIVE DATES: December 1, 1992, through February 28, 1993.

ADDRESSES: Copies of documents supporting this action may be obtained from Peter J. Eldridge, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813-893-3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states, including sea bass, are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Under section 305(c)(2)(B) and (c)(3) of the Magnuson Act, NMFS published an emergency interim rule (57 FR 39365, August 31, 1992) effective for 90 days (August 31 through November 30, 1992) to establish a definition of "sea bass pot", applicable in the exclusive economic zone (EEZ) off North Carolina and South Carolina, and to remove the possession limits for snapper-grouper applicable to fishermen using sea bass pots aboard commercially permitted vessels in the EEZ off North Carolina and South Carolina. The Council requested extension of the emergency interim rule because conditions justifying the emergency action remain unchanged and to prevent a lapse in these management measures prior to completion of action under the framework procedure for adjusting management measures to address permanent changes to the regulations. NMFS concurs and extends the emergency interim rule for an additional 90 days in accordance with section 305(c)(3)(B) of the Magnuson Act.

Details concerning the basis for the emergency interim rule and the classification of the rulemaking are contained in the initial emergency interim rule and are not repeated here.

Classification

This extension of the emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided for in section 8(a)(1) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: November 23, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-28986 Filed 11-27-92; 8:45 am]
BILLING CODE 3510-22-M1

Proposed Rules

Federal Register
Vol. 57, No. 230
Monday, November 30, 1992

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 302, 317, 352, 359, 534, 550, and 610

RIN 3206-AE77

Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to implement the Senior Executive Service Improvements Act and to make certain other changes intended to assure proper actions under the Improvements Act, enhance employee rights, strengthen merit principles, and eliminate obsolete references.

DATES: Written comments will be considered if received no later than January 29, 1993.

ADDRESSES: Send or deliver written comments to the Assistant Director, Office of Executive and Management Policy, Human Resources Development Group, room 6R48, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, 202-606-1610.

SUPPLEMENTARY INFORMATION:

Implementation of the Senior Executive Service Improvements Act

The Senior Executive Service Improvements Act was signed and became effective December 2, 1991 (Pub. L. 102-175). The proposed regulations cover those provisions of the Act dealing with (1) the limitation on the authority of agencies to involuntarily reassign career Senior Executive Service (SES) members and (2) pay setting upon entering the SES.

The Act also contains two other provisions for which no change in OPM regulations is necessary. One provides that OPM shall provide informational services and otherwise encourage career SES appointees to take advantage of sabbaticals and other forms of professional development. Guidance on this provision will appear in the Federal Personnel Manual. The other provision permits mitigation of penalties in adverse actions affecting career SES appointees. Regulations on this provision would be issued by the Merit Systems Protection Board.

(1) Involuntary Reassignments

The Act made two changes in the authority of agencies to involuntarily reassign a career SES member that affect current regulations at 5 CFR 317.501. Previously, the law (5 U.S.C. 3395(e)) provided that a career SES member could not be involuntarily reassigned within 120 days of the appointment of (a) a new agency head or (b) a noncareer supervisor who has the authority to reassign the career appointee. The first change concerned the definition of noncareer supervisor. Under the Act, the supervisor is now defined as a noncareer appointee who has the authority to make an initial appraisal of the career appointee's performance.

Under the old definition, it was possible for the agency head to rescind, either permanently or temporarily, a reassignment authority previously delegated to the noncareer supervisor and to make an involuntary reassignment once the agency head had served 120 days even if the noncareer supervisor had not. Under the new definition, this would not be possible. The 120-day moratorium still would be in effect following the appointment of the noncareer supervisor since it is based on the supervisor's appraisal authority rather than reassignment authority.

It should be noted that the moratorium applies only in cases where the noncareer supervisor gives the initial performance appraisal. For example, if the noncareer supervisor is a bureau director and gives the initial appraisal for an SES career division chief, the division chief could not be involuntarily reassigned within 120 days after the appointment of the noncareer supervisor. If the division chief, however, gives the initial appraisal of an SES section chief, the 120-day moratorium would not be applicable to the reassignment of the section chief even if the action was taken by the noncareer bureau director.

The second change made by the Act was in the calculation of the 120-day period. The Act provides that any days, not to exceed a total of 60, during which the career appointee is on detail or other temporary assignment apart from the appointee's regular position shall not be counted toward the 120 days. Therefore, it is possible that in some cases the moratorium could extend to 180 days.

There is no restriction in the Act on how long the detail or other temporary assignment may be, only that the first 60 days of the detail or temporary assignment (or combination of details or temporary assignments) shall not count against the 120 days. Thus, for example, if the employee was detailed for 90 days, only 30 days of the detail would be counted against the 120 days.

The cautions that OPM has published in FPM Supplement 920-1, Operations Handbook for the Senior Executive Service, on details are still applicable. The Supplement (section S5-8b(3)) states that details should not be used to circumvent the 120-day moratorium. It adds that any detail during this period "should be made judiciously and only when there is a clear, bona-fide need for the individual to serve in the position." It also provides that the reasons for any detail during the period should be documented.

In addition to revising the regulations to incorporate the provisions of the SES Improvements Act, we also are proposing to revise the regulations to explain the effect of "acting" assignments on the application of the 120-day moratorium. Under the statute, a moratorium is initiated following the "appointment" of a new agency head or noncareer supervisor. The designation of an "acting" agency head or noncareer supervisor is not legally considered an appointment (except in the case of a recess appointment), and therefore the statutory moratorium is not technically applicable. For example, a deputy agency head or deputy office head generally acts in and performs the duties of the top position when that position is vacant even though not appointed to the position. Further, under 5 U.S.C. 3347 the President can detail an individual who has received Senate confirmation to act in a vacant position requiring Senate conformation in the same or another

agency, including the position of head of an agency.

In these situations, the moratorium currently is not applicable because there has not been an "appointment" even though the individual who is acting is performing all the duties of the position. If the individual who is acting later receives a permanent appointment to the position, however, then the moratorium does become applicable.

We are proposing to amend the regulations to state that the moratorium is applicable upon the acting assignment. If the individual is later appointed permanently to the position without a break in service, any time spent in the acting capacity would be credited toward the 120-day moratorium period applicable to the appointment. The purpose of the moratorium in law is to prevent peremptory reassignments of career appointees by a new agency head or noncareer supervisor without adequate knowledge of the appointees. We believe the proposed change is in keeping with this purpose.

Note that the changes in the Improvements Act and the regulations affect only the 120-day moratorium on involuntary reassignments. They do not affect the 120-day moratorium on the removal of career appointees from the SES under 5 U.S.C. 3592(b)(1) and 5 CFR part 359.

(2) Pay Setting

The second change in the Act affects pay setting upon the entry to the SES of a career appointee. Previously, under law and regulation an agency could set a new appointee's pay at any of the six pay rates, even if it resulted in a pay reduction.

Under the Act, new career appointees may not have their pay reduced if they have at least 5 years of current continuous service in the competitive service (a) immediately before the SES career appointment and there is no break in service upon entry to the SES, or (b) at the time their competitive service position is converted to an SES career reserved position (e.g., by a statute converting their position or by the termination of a statutory or presidential exclusion from the SES). We are proposing to revise 5 CFR 534.401(b) to reflect these changes. Note that the current subpart C of 5 CFR part 317 continues to cover conversion procedures in general.

The revised regulations also provide a definition of "rate of basic pay" for application of the pay provision. It includes any applicable interim geographic adjustment (currently payable to covered employees in the San Francisco, Los Angeles, and New York City areas), locality-based comparability payment under 5 U.S.C. 5304, or special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990, but not additional pay of any other kind. Thus, for example, it does not include annual premium pay for administratively uncontrollable overtime work.

Other Changes

In addition to changes resulting from the Senior Executive Service Improvements Act, we are proposing certain other changes in the regulations based on our experience with SES operations. The purpose of these changes is to enhance employee rights and strengthen operations under merit principles. Changes also have been made to eliminate obsolete references to the former executive assignment system.

(1) Career Appointments

We are revising the regulations at 5 CFR 317.501 on the initial appointment of career appointees to the SES to indicate that selection must be from among the group of candidates identified as best qualified by the Executive Resources Board. There have been instances where 50 or more candidates have been rated basically qualified for an SES position. Without a requirement for selection from among the best qualified, the agency could select the lowest rated of those candidates if it wished.

We believe that in most instances agencies themselves are identifying a group of best qualified candidates for selection. In view of the critical importance of SES positions to the efficient and effective operations of the Government, however, we believe that this requirement should be applied in all agencies. The requirement is in keeping with the merit system principles in 5 U.S.C. 2301(b)(1), which state that for positions in the Government, selection and advancement should be determined on the basis of *relative* ability, knowledge, and skills (emphasis added) and with the stated purpose of the SES in 5 U.S.C. 3131 to ensure that the executive management of the Government is of the *highest* quality (emphasis added).

Since in the SES there is no "rule of three" requiring selection from among the highest three numerically rated candidates, each agency would have the authority to determine how to identify the best qualified group. Agencies could use numerical rating and ranking, or they could group candidates into broad categories, such as highly qualified, well qualified, and qualified. Agency written staffing procedures would have to indicate what procedures will be used to determine the best qualified group. The number of individuals in the best qualified group could vary between staffing actions depending on the number and relative qualifications of the eligible candidates.

For example, if there were 10 highly qualified candidates, 20 well qualified candidates, and 30 qualified candidates the agency might determine to place only the 10 highly qualified candidates in the best qualified group. If in another action there were 2 highly qualified candidates, 7 well qualified candidates, and 20 qualified candidates the agency might determine to place both the highly and well qualified candidates in the best qualified group to provide the selecting official an adequate choice.

(2) Employees on Transfer to an International Organization

Although individuals are not Federal employees while on transfer to an international organization, in certain circumstances they are entitled under 5 U.S.C. 3581–3584 to retain Federal retirement and insurance coverage, rights, and benefits based on their current rate of pay.

Under current regulations at 5 CFR 352.314, an agency must consider each employee on transfer or detail to an international organization for all promotions for which the employee would be considered were the employee not absent. The new rate of pay resulting from a promotion is used in determining benefits while on transfer or detail, as well as pay upon exercise of reemployment rights by transferred employees.

SES employees, however, are in a pay system where there are no grades and thus no promotions. Senior-level (SL) and scientific and professional (ST) employees paid under 5 U.S.C. 5376, and certain other employees, also are in upgraded pay systems. Therefore, these employees are not covered by the current regulatory provision on promotions. Further, there is no other regulatory provision that permits these employees to receive pay increases (e.g., from ES–3 to ES–4 in the SES) while on transfer to an international organization. (Employees on detail to international organizations can have their pay increased under current regulatory authority since they remain Federal employees while on detail.)

In order to provide equitable treatment for employees in ungraded pay systems and to encourage them to take assignments with international organizations with the knowledge that

their pay will not be frozen while on the assignments, we are proposing to revise 5 CFR part 352. The revision would require agencies to consider employees in ungraded pay systems on transfer or detail for all pay increases for which the employees would be considered were they not absent. Under the change, agencies would be able to increase the pay of employees currently on transfer to international organizations, but on a prospective basis only.

(3) Reinstatement of Presidential Appointees

If a career SES appointee receives a Presidential appointment with Senate confirmation to a position in the executive branch at level V of the Executive Schedule or higher, the individual may elect under subpart H of part 317 to retain SES basic pay. 5 CFR 534.401(e)(2) provides that if the individual later is reinstated to the SES, the individual's pay rate may be adjusted only if 12 months have elapsed since the last SES pay adjustment and only in accordance with 5 CFR 534.401(c), which provides among other things that if pay is lowered at the time of an adjustment the decrease may be only one rate. The proposed regulations clarify 5 CFR 534.401(e)(2) to indicate that it applies whether the individual is being reinstated in the agency where the individual held the Presidential appointment or in another agency.

(4) Use of Credit Hours

In 1986, the Director of OPM sent a memorandum to heads of agencies stating that use of credit hours under an alternative work schedule (AWS) program was inappropriate for SES members since they are not entitled to premium pay or compensatory time off. That policy was later restated in section S12–1b of FPM Supplement 920–1, Operations Handbook for the Senior Executive Service. We are proposing to incorporate the policy in 5 CFR part 610, subpart D. SES members still could use credit hours accumulated prior to their SES appointment.

(5) Executive Assignment System

We are proposing to revise 5 CFR 302.101, 302.102, 359.303, and 550.703 to remove references to the former executive assignment system, which was abolished by Executive Order 12748 of February 1, 1991, and implementing regulations published on April 23, 1991 (56 FR 18658).

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

List of Subjects

5 CFR Parts 302 and 317

Government employees.

5 CFR Parts 352 and 359

Administrative practice and procedure, Government employees.

5 CFR Part 534

Government employees, wages.

5 CFR Part 550

Administrative practice and procedure, claims, Government employees, wages.

5 CFR Part 610

Hours of duty.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is proposing to amend 5 CFR parts 302, 317, 352, 359, 534, 550, and 610 as follows:

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

1. The authority citation for part 302 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 et seq.

§ 302.101 [Amended]

2. In § 302.101, paragraph (c)(9) is removed and paragraphs (c) (10) and (11) are redesignated as paragraphs (c) (9) and (10) respectively.

3. In § 302.102, the introductory text of paragraph (b) is revised to read as follows:

§ 302.102 Method of filling positions and status of incumbent.

* * * * *

(b) Except as authorized under paragraph (c) of this section, a person appointed to an excepted position does not acquire a competitive status by reason of the appointment. When an employee serving under a nontemporary appointment in the competitive service is selected for an excepted appointment, the agency must—

* * * * *

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

4. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595.

5. In § 317.501, the introductory text in paragraph (c) is republished for the convenience of the reader, and paragraphs (c) (3), (5), and (6) are revised to read as follows:

§ 317.501 Recruitment and selection for initial SES career appointment.

* * * * *

(c) *Merit staffing requirements.* As a minimum, agencies must—

* * * * *

(3) Provide that the rating procedures sufficiently differentiate among eligible candidates on the basis of the knowledges, skills, abilities, and other job-related factors in the qualifications standard for the position so as to enable the relative ranking of the candidates. For this purpose, eligible candidates may be grouped into broad categories, such as highly qualified, well qualified, and qualified. Numerical rating and ranking are not required.

* * * * *

(5) Provide that the ERB make written recommendations to the appointing authority on the eligible candidates and identify the best qualified candidates. Rating sheets may be used to satisfy the written recommendation requirement for individual candidates, but the ERB must certify in writing the list of candidates to the appointing authority.

(6) Provide that the appointing authority select from among the candidates identified as best qualified by the ERB and certify in writing that the candidate selected meets the qualifications requirements of the position.

* * * * *

6. In § 317.901, the introductory text in paragraph (c) is revised and paragraphs (c) (4) and (5) are added to read as follows:

§ 317.901 Reassignments.

* * * * *

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee's performance under subpart C of part 430.

* * * * *

(4) For the purpose of calculating the 120-day period, any days, not to exceed a total of 60, during which the career appointee is serving on a detail or other temporary assignment apart from the appointee's regular position shall not be counted. Any days in excess of 60 days on one or more details or other temporary assignments shall be counted.

(5) The prohibition in this paragraph (c)(5) on involuntary reassignments also is applicable in the case of a detail of an individual as the head of an agency or of a noncareer appointee as a supervisor, or when a noncareer appointee in a deputy position is acting as the agency head or in a vacant supervisory position. If the individual later receives a permanent appointment to the position without a break in service, the 120-day moratorium shall include any days spent in the position on an acting basis.

PART 352—REEMPLOYMENT RIGHTS

7. The authority citation for part 352, subpart C, continues to read as follows:

Authority: 5 U.S.C. 3584, E.O. 11552, 3 CFR 1966–1970 Comp., p. 954; § 352.313 also issued under 5 U.S.C. 7701, et. seq.

8. In § 352.311, paragraph (b) is revised to read as follows:

§ 352.311 Reemployment.

* * * * *

(b) When an employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employees shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer, or if pay has been adjusted under § 352.314(c), at not less than the adjusted pay level.

9. In § 352.314, the section heading is revised and paragraph (c) is added to read as follows:

§ 352.314 Consideration for promotion and pay increases.

* * * * *

(c) Each agency shall consider each employee detailed or transferred to an international organization from an ungraded pay system for all pay increases for which the employee would be considered were the employee not absent. An increase is effective on the date it would have been made if the employee were not absent.

PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

10. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 1302 and 3596, unless otherwise indicated.

11. Section 359.303 is amended by revising paragraph (b) to read as follows:

§ 359.303 Restrictions.

* * * * * *

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filed by Schedule C, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

PART 534—PAY UNDER OTHER SYSTEMS

12. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, and 5385.

13. In § 534.401, paragraph (b) and (e)(2) are revised to read as follows:

§ 534.401 Definitions and setting individual basic pay.

* * * * *

(b) *Setting pay upon initial appointment.*

(1) An appointing authority may set the rate of pay of an individual at any ES rate upon initial appointment to the SES except under the conditions described in paragraph (b)(2) of this section.

(2) If an individual who receives an initial career appointment in the SES:

(i) Has at least 5 years of current continuous service in one or more positions in the competitive service and is appointed without any break in service, then the initial rate of pay may not be less than the rate of basic pay last payable to that individual immediately before the appointment.

(ii) Holds a position that is converted from the competitive service to a career reserved position in the SES and as of the conversion date the individual has at least 5 years of current continuous service in one or more positions in the competitive service, then the initial rate of pay may not be less than the rate of basic pay last payable to that individual immediately before the conversion of the position.

(3) For the purpose of paragraph (b)(2) of this section, "rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable interim geographic adjustment or special pay adjustment for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively, or locality-based comparability payment under 5 U.S.C. 5304, before any deductions and exclusive of additional pay of any other kind.

* * * * *

(e) *Setting pay following a break in SES service.*

* * * * *

(2) Reinstatement from a Presidential appointment requiring Senate confirmation. These provisions apply to a former career senior executive who is reinstated under 5 CFR 317.703.

(i) If the individual elected, under 5 CFR 317.801(b), to remain subject to SES pay provisions while serving under a Presidential appointment, pay may be adjusted upon reinstatement to the SES, whether in the agency where the individual held the Presidential appointment or in another agency, only if 12 months have elapsed since the last SES pay adjustment; and the adjustment must be in accordance with paragraph (c) of this section.

(ii) If the individual did not elect to remain subject to the SES pay provisions while serving under a Presidential appointment, pay may be set at any ES rate upon reinstatement.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

14. The authority citation for subpart G of part 550 continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257.

15. In § 550.703, the introductory text to the definition of "Nonqualifying appointment" is republished for the convenience of the reader and paragraph (c) of that definition is revised, and the definition of "Qualifying appointment" is amended by removing paragraph (b), redesignating paragraphs (c), (d), (e), (f) (g), and (h) as paragraphs (b), (c), (d), (e), (f), and (g) respectively, and revising newly designated paragraph (c) to read as follows:

* * * * *

§ 550.703 Definitions.

* * * * *

Nonqualifying appointment means an appointment with an intermittent work schedule, and the following appointments regardless of work schedule:

* * * * *

(c) An excepted appointment under Schedule C; a noncareer appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a); or an equivalent

appointment made for similar purposes; and

* * * * *

Qualifying appointment means:

* * * * *

(c) An excepted appointment without time limitation, except under Schedule C or an equivalent appointment made for similar purposes;

* * * * *

PART 610—HOURS OF DUTY

16. The authority citation for subpart D of part 610 continues to read as follows:

Authority: 5 U.S.C. 6133(a).

17. Section 610.403 is revised to read as follows:

§ 610.403 Definitions.

In this subpart, "Agency," "Credit Hours," and "Employee" have the meaning given these terms in section 6121 of title 5, United States Code.

18. Section 610.408 is added to read as follows:

§ 610.408 Use of credit hours.

Members of the Senior Executive Service may not accumulate credit hours under an alternative work schedule.

[FR Doc. 92-28880 Filed 11-27-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 92-126-1]

Honeydew Melons From Brazil

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of honeydew melons from an area of Brazil that is believed to be free of the South American cucurbit fly, subject to certain other conditions. We believe this action is warranted because there appears to be no significant pest risk associated with the importation of honeydew melons under these conditions. This action would relieve restrictions on the importation of honeydew melons from Brazil without presenting a significant risk of introducing injurious insects into the United States.

DATES: Consideration will be given only to comments received on or before December 15, 1992.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-126-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Staff Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within the United States.

Currently, the regulations do not provide for the importation of honeydew melons from Brazil. The South American cucurbit fly (*Anastrepha grandis*) is the only injurious insect known to attack honeydew melons in Brazil that is not readily detectable by inspection. This pest is considered a potentially destructive pest by the Animal and Plant Health Inspection Service (APHIS) and is not present in the United States. The Ministry of Agriculture of Brazil (Departamento de Defenso Sanitaria Vegetal) (DDV) has requested that we consider allowing the importation of honeydew melons from Brazil. APHIS has considered the request, and is proposing to allow honeydew melons to be imported into the United States from Brazil only if certain conditions are met to prevent the introduction of the South American cucurbit fly, and any other insect pests that may be carried by the honeydew melons. These conditions are discussed below.

Area Considered Free of South American Cucurbit Fly

We are proposing to limit the importation of honeydew melons from Brazil to melons grown in the area of Brazil considered by APHIS to be free of the South American cucurbit fly, in accordance with the regulations at § 319.56-2(e)(4) and (f).

Paragraph (e)(4) of § 319.56-2 allows the importation of a fruit or vegetable without treatment for certain injurious insects that attack it, if the fruit or vegetable is imported from a definite area or district of the country of origin that is free from those injurious insects; provided, all other injurious insects that attack the fruit or vegetable in the area or district of the country of origin have been eliminated from the fruit or vegetable by treatment or any other procedures that may be prescribed by the Administrator. The fruit or vegetable must also be accompanied by a permit issued in accordance and under compliance with the regulations. The South American cucurbit fly is the only insect pest known to attack honeydew melons in Brazil that is not readily detectable by inspection. Paragraph (f) of § 319.56-2 contains the criteria by which the Administrator designates definite areas or districts.

The following area in Brazil appears to meet the criteria of § 319.56-2(e)(4) and (f) with respect to the South American cucurbit fly: The area bounded on the north by the Atlantic Ocean; on the east by the River Assu (Acu) from the Atlantic Ocean to the city of Assu; on the south by Highway BR 304 from the city of Assu (Acu) to Mossoro, and by Farm Road RN-015 from Mossoro to the Ceara state line; and on the west by the Ceara state line to the Atlantic Ocean. Specifically, APHIS has determined that: (1) Surveys done by DDV in Brazil during the past 5 years have established the absence of infestations of South American cucurbit fly in the area described above. The Administrator has determined that the survey methods employed by DDV are adequate to detect infestations of the South American cucurbit fly. Trapping in and around the area has shown no evidence of South American cucurbit fly, and the closest reported occurrence of South American cucurbit fly is 770 miles south of the area considered free of the South American cucurbit fly; (2) DDV has adopted and is enforcing requirements to prevent the introduction of South American cucurbit fly into the area described above, and these requirements have been deemed by the Administrator to be at least equivalent to those requirements imposed under 7 CFR chapter III to prevent the introduction into the United States and interstate spread of injurious insects; and (3) DDV has submitted to the Administrator written detailed procedures for the conduct of surveys and the enforcement of requirements under § 319.56-2(f) to prevent the introduction of South American cucurbit fly into the area described above. The Administrator has reviewed these

procedures and has determined that they meet the requirements of the regulations. Information regarding these procedures is available upon written request to the Administrator, c/o International Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

APHIS Inspection

Pest risk analyses conducted by APHIS have determined that any other injurious insects that might be carried by the honeydew melons would be readily detectable by a U.S. Department of Agriculture inspector. Honeydew melons from Brazil would be subject to inspection and treatment at the port of first arrival for any injurious insects that are found, in accordance with § 319.56–6 of the regulations.

Shipping Requirements

Importation of honeydew melons from outside the designated area would be prohibited, as there is currently no approved treatment for the South American cucurbit fly. We therefore propose to require that all shipments of honeydew melons from Brazil be accompanied by a phytosanitary certificate issued by DDV that includes a declaration indicating that the melons were grown in the area considered free of the South American cucurbit fly.

We also propose that the honeydew melons must be packed in an enclosed container or vehicle or under a tarpaulin cover while in transit from the area of Brazil considered free of the South American cucurbit fly to the United States. This is to prevent exposure of the fruit to insect pests should the fruit, en route to the United States, move outside the area considered free of the South American cucurbit fly.

Labelling

We propose to require that shipments of honeydew melons from Brazil be labelled in accordance with § 319.56–2(g) of the regulations. Section 319.56–2(g) stipulates that each box of fruit or vegetables imported into the United States in accordance with § 319.56–2 (e)(4) and (f) must be clearly labelled with: (1) The name of the orchard or grove of origin, or the name of the grower; (2) the name of the municipality and state in which it was produced; and (3) the type and amount of fruit it contains. Such labelling would tell APHIS personnel whether or not the fruit comes from the area considered free of the South American cucurbit fly, and would also allow APHIS to trace the fruit to its origin in the event that any other insect pest is found on the fruit during inspection. Tracing the fruit to its origin would allow DDV to assist the grower in eliminating the infestation.

Comment Period

The Administrator of the Animal and Plant Health Inspection Service has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. There is interest in importing Brazilian honeydew melons during the shipping season that begins this fall and runs through the winter. The shortened comment period would expedite final rulemaking. This rule would provide an additional source of honeydew melons for consumers, and would benefit interested U.S. importers, shippers, and distributors by providing for the importation of Brazilian honeydew melons.

Executive Order 12291 and Regulatory Flexibility Act

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

This proposed rule, if adopted, would provide for the importation into the United States of honeydew melons from the area of Brazil that is believed to be free of the South American cucurbit fly (*Anastrepha grandis*).

In 1990, total U.S. production of honeydew melons was estimated at 452,000,000 pounds. Over 95 percent of U.S. honeydew melons are grown in Arizona, California, and Texas. APHIS experts estimate that imports of honeydew melons from Brazil would only amount to about one percent of the total honeydew melon production in the United States. Even if this estimate were doubled, Brazilian imports would comprise at most two percent of domestic production.

Consequently, the effect of this rule on U.S. producers of honeydew melons would be very small because the extra imports would cause hardly any fluctuation in honeydew melon prices. Although the exact number of honeydew melon growers who are small entities is not known, the majority of the growers would not fall under the definition of a small business (sales of less than $500,000 annually). Most of the growers produce other melons as well, such as cantaloupe and watermelon, and some have farms in all three States of Arizona, California, and Texas. Growers who constitute small entities usually produce honeydew melons for alternative markets, such as roadside markets, which should not be affected at all by Brazilian imports.

The season for honeydew melon production in the United States runs from May to November, with only a small amount of melons being grown and shipped in November. The growing/shipping season for honeydew melons in Brazil is November 15 through February 15. Honeydew melons cannot be stored for an extended length of time. Consequently, the honeydew melons from Brazil would not compete significantly with U.S. melons because the growing/shipping seasons would not overlap. Substitute domestic fruits whose markets might be affected by the importation of honeydew melons from Brazil would likely be other domestic melons, such as cantaloupe and watermelon. However, domestic cantaloupe and watermelon have the same growing/shipping season as domestic honeydew melons. Hence, their seasons also would not overlap with the season for honeydew melons from Brazil.

Therefore, it can be determined that allowing honeydew melons to be imported from Brazil would have no significant impact on U.S. producers, large or small. This is the case because the estimated amount of imports would be very small in comparison to domestic production and also would be shipped after the U.S. growing season has come to an end.

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

Executive Order 12778

This proposed rule would provide for the importation of honeydew melons from Brazil into the United States. If this proposed rule is adopted, State and local laws and regulations regarding honeydew melons imported under this rule would be preempted while the fruit is in foreign commerce. Fresh honeydew melons are generally imported for immediate distribution and sale to the consuming public, and would remain in

foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule; and this rule will not require administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads; and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this notice.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In Subpart—Fruits and Vegetables to part 319, a new § 319.56–2aa would be added to read as follows:

§ 319.56–2x Administrative instructions governing the entry of honeydew melons from Brazil.

Honeydew melons may be imported into the United States from Brazil only under permit, and only in accordance with this section and all other applicable requirements of this subpart:

(a) *Area considered free of the South American cucurbit fly.* The honeydew melons must have been grown in the area of Brazil considered by the Animal and Plant Health Inspection Service to be free of the South American cucurbit fly, (*Anastrepha grandis*), in accordance with § 319.56–2(e)(4) of this subpart. In addition, all shipments of honeydew melons must be accompanied by a phytosanitary certificate issued by the Departmento de Defenso Sanitaria Vegetal (the Ministry of Agriculture of Brazil) that includes a declaration indicating that the melons were grown in this area. The following area is considered free of the South American cucurbit fly: that portion of Brazil bounded on the north by the Atlantic Ocean; on the east by the River Assu (Acu) from the Atlantic Ocean to the city of Assu; on the south by Highway BR 304 from the city of Assu (Acu) to Mossoro, and by Farm Road RN–015 from Mossoro to the Ceara state line; and on the west by the Ceara state line to the Atlantic Ocean.

(b) *Shipping requirements.* The honeydew melons must be packet in an enclosed container or vehicle or under tarpaulin cover while in transit from the area of Brazil considered free of the South American cucurbit fly to the United States, to prevent exposure of the fruit to insect pests.

(c) *Labelling* All shipments of honeydew melons must be labelled in accordance with § 319.56–2(g) of this subpart.

Done in Washington, DC, this 23rd day of November 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service

[FR Doc. 92–28899 Filed 11–27–92; 8:45 am]

BILLING CODE 341C–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–09]

Airworthiness Directives; General Electric CT7–5A2 and –7A Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric CT7–5A2 and –7A turboprop engines. This proposal would require inspection, and replacement if necessary, of certain gas generator turbine (GGT) rotor assembly parts and Stage 3 and Stage 4 power turbine (PT) disks that may have been shotpeened during overhaul. This proposal is prompted by reports of inadvertent shotpeening of GGT rotor assembly parts and Stage 3 and 4 PT disks during overhaul. The actions specified by the proposed AD are intended to prevent fatigue cracks that can lead to an uncontained engine failure.

DATES: Comments must be received by December 30, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–09, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, Massachusetts 01910. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Barbara G. Caufield, Engine Certification Branch, ANE-141, Engine Certification Office, FAA, New England Region, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7086; fax (617) 270-2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-ANE-09." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-09, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

Discussion

The FAA has received reports that certain gas generator turbine (GGT) rotor assembly parts and Stage 3 and Stage 4 power turbine (PT) disks on General Electric (GE) CT7-5A2 and -7A turboprop engines were inadvertently shotpeened during overhaul by H & S Aviation, Division 3 (formerly Hants & Sussex), Portsmouth, England. Between March 14, 1989, and August 21, 1989, these rotor assembly parts and disks were damaged in the walnut shell cleaning process by crushed walnut shells contaminated with steel shot. Shotpeened parts can fail due to reduced low cycle fatigue (LCF) life. This condition, if not corrected, could result in an uncontained engine failure.

The FAA has reviewed and approved the technical contents of GE CT7 Turboprop Service Bulletin (SB) A72-228, Revision 2, and GE CT7 Turboprop SB A72-229, Revision 2, both dated February 7, 1991, that describe procedures for inspection, and replacement if necessary, of certain GGT rotor assembly parts and Stage 3 and Stage 4 PT disks that may have been shotpeened.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would require inspection, and replacement if necessary, of certain GGT rotor assembly parts and Stage 3 and Stage 4 PT disks as listed by serial number in GE CT7 Turboprop SB A72-228, Revision 2, and GE CT7 Turboprop SB A72-229, Revision 2, both dated February 7, 1991. The GGT rotor assembly parts and PT disks must be inspected for shotpeening. If no evidence of shotpeening is found, the GGT rotor assembly parts and PT disks must be marked with the applicable SB number and returned to service without reducing LCF limits. If evidence of shotpeening is found, the GGT rotor assembly parts and PT disks must be removed from service and replaced with serviceable parts. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 30 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are currently no engines installed on aircraft of U.S. registry. However, if an engine were to become installed on an aircraft of U.S. registry, it would take approximately 12 work hours per engine to remove and replace the GGT rotor assembly parts and Stage 3 and Stage 4 PT disks. GE has advised the FAA that H & S Aviation will inspect for shotpeening and provide new or serviceable parts and disks, if necessary, at no charge to the operator. The average labor rate is $55 per work hour. At this time the total cost impact of the proposed AD is estimated to be zero; however, if an engine were to become installed on an aircraft of U.S. registry, the estimated cost for removal and replacement is approximately $660 per engine.

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 regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

General Electric: Docket No. 92-ANE-09.

Applicability: General Electric (GE) CT7-5A2 and -7A turboprop engines, incorporating gas generator turbine (GGT) rotor assembly parts and power turbine (PT) disks as listed by serial number in GE CT7 Turboprop Service Bulletin (SB) A72-228, Revision 2, and GE CT7 Turboprop SB A72-229, Revision 2, both dated February 7, 1991, installed on but

not limited to Saab 340A, and Casa CN235-10 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks that can lead to an uncontained engine failure, accomplish the following:

(a) Inspect GGT rotor Stage 1 forward cooling plates, Stage 1 aft cooling plates, Stage 1 disks, Stage 2 forward cooling plates, Stage 2 aft cooling plates, and Stage 2 disks, in accordance with GE CT7 Turboprop SB A72-228, Revision 2, dated February 7, 1991, before exceeding the "max total cycles prior to inspect" limits listed in Tables 1 and 2 of the SB, but not later than December 31, 1995.

(1) If evidence of shotpeening is found on any of these parts, prior to further flight, replace the affected parts with serviceable parts.

(2) If no evidence of shotpeening is found, prior to further flight, mark the parts with the SB number in accordance with GE CT7 Turboprop SB A72-228, Revision 2, dated February 7, 1991, and return to service without reducing low cycle fatigue limits.

(b) Inspect Stage 3 and Stage 4 PT disks in accordance with GE CT7 Turboprop SB A72-229, Revision 2, dated February 7, 1991, prior to exceeding the "max total cycles prior to inspect" limits listed in Table 1 of the SB, but not later than December 31, 1995.

(1) If evidence of shotpeening is found, prior to further flight, replace the affected disks with serviceable disks.

(2) If no evidence of shotpeening is found, prior to further flight, mark the disks with the SB number in accordance with GE CT7 Turboprop SB A72-229, Revision 2, dated February 7, 1991, and return to service without reducing low cycle fatigue limits.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

NOTE: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 2, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-28937 Filed 11-27-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 122

[Docket No. 921057-2257]

RIN 0607-AA15

Amendments to the Foreign Trade Statistics, Vessels in Foreign and Domestic Trades, and Air Commerce Regulations

AGENCIES: Bureau of the Census, Commerce; and Customs Service, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: It is proposed to amend both the Foreign Trade Statistics Regulations (FTSR) of the Census Bureau and the U.S. Customs Regulations to change the procedure for carriers submitting Shipper's Export Declarations (SEDs) and outward cargo manifests for shipments from the United States to Puerto Rico. Pursuant to the proposal, effective January 1, 1993, exporting carriers will submit the SEDs and outward cargo manifest for such shipments to the District Director of Customs in Puerto Rico rather than at the port of departure. Furthermore, aircraft carrying merchandise on direct flights between the United States and Puerto Rico will be required to file complete manifests.

This action is being proposed as an effort to improve the accuracy and coverage of the statistics on shipments from the United States to Puerto Rico. The quality of such data is in question because some exporters and carriers treat such shipments as "domestic" and are unfamiliar with the requirements for SEDs and manifests. This program will allow both the Census Bureau and the Customs Service to better scrutinize compliance by providing for filing these SEDs and manifests in Puerto Rico rather than at the various ports in the United States. Additionally, the Census Bureau is establishing an office in Puerto Rico to process SEDs for all shipments to and from the United States. This proposed rule affects only carriers transporting merchandise between the United States and Puerto Rico. It does not change any requirements for exporters.

DATES: Comments must be received by January 29, 1993.

EFFECTIVE DATE: Address all comments concerning these proposed regulations to the Regulations Branch, Foreign Trade Division, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Harold L. Blyweiss, Chief, Regulations Branch, Foreign Trade Division, Bureau of the Census, (301) 763-5310.

SUPPLEMENTARY INFORMATION: The Census Bureau collects SEDs to compile statistics on U.S. trade with Puerto Rico under the authority of section 301 of Title 13, United States Code (U.S.C.). Furthermore, section 303 of Title 13, U.S.C., directs the Secretary of the Treasury (Customs) to collect information in the form and manner prescribed by the regulations issued pursuant to this chapter.

The government of Puerto Rico uses the summary data from the SEDs to assess the economic health of Puerto Rico as it relates to overall production, employment, and payroll, as well as specific industries. The monthly trade data, an integral part of Puerto Rico's calculation of its Gross National Product, also serve as a proxy for other economic data available only annually or every 5 years.

Trade between the United States and Puerto Rico is significant. In 1991, two-way trade amounted to $29.5 billion. If Puerto Rico were an independent country, it would rank tenth in U.S. exports ($10.8 billion) and seventh in U.S. imports ($18.7 billion) with total trade equivalent to U.S. trade with France.

Currently, carriers transporting goods to Puerto Rico, while not subject to formal Customs clearance procedures, must be granted permission to depart by Customs in the port of departure. Such permission is contingent upon the filing of manifests and SEDs. If the exporting carrier is operating under the bonding provision of these regulations, permission to depart for Puerto Rico may be granted by the Customs Director provided that a complete manifest and all required SEDs shall be filed by the carrier not later than the seventh business day after departure.

Some exporters and carriers treat shipments to Puerto Rico as a "domestic" movement and are unfamiliar with the requirements for filing SEDs and manifests. Additionally, since Puerto Rico is inside the Customs Territory of the United States, such shipments are not subject to the same scrutiny by the Customs Service as a shipment to a foreign country. Therefore, compliance with SED and manifest requirements is not consistent with obtaining quality statistics. Over the past 5 years increased scrutiny of SED

and manifest requirements for shipments from Puerto Rico to the United States, by both the Census Bureau and the Customs Service, resulted in a marked improvement in the accuracy and completeness of the northbound data. Based on this experience, the Census Bureau and the Customs Service are proposing to amend their respective regulations to require that, effective January 1, 1993, carriers submit their SEDs and outward cargo manifests for southbound shipments to the District Director of Customs in Puerto Rico rather than at the U.S. port of departure. Also, aircraft carrying merchandise on direct flights between the United States and Puerto Rico will be required to file complete manifests as opposed to manifesting only cargo for which SEDs are either not required or not available.

To further support the effort to obtain complete and accurate statistics on U.S. trade with Puerto Rico, the Census Bureau is establishing a processing office in Puerto Rico so as to better monitor the trade, provide assistance, and to produce data responsive to the needs of both the Government and the trade. Additionally, the Customs Service is increasing their staff in Puerto Rico to ensure compliance and to further assist the trade as well as the Census Bureau in these efforts.

Under this proposal, carriers will be granted permission to depart for Puerto Rico by the Customs Director at the port of departure without requiring the filing of outward cargo manifests or SEDs. These documents will instead be filed with the Customs Director at the port of entry in Puerto Rico within one business day after arrival. The bonding provisions of these regulations are being amended to allow such carriers to file their complete manifest and all required SEDs not later than the seventh business day *after* arrival in Puerto Rico. If adopted, several sections in Subpart B-General Requirements—Exporting Carriers of the FTSR (15 CFR part 30) and in parts 4 and 122 of the Customs Regulations (19 CFR parts 4 and 122) will be amended as set forth below.

This proposed rule does *not* change any requirements for individual exporters of merchandise being shipped from the United States to Puerto Rico. U.S. exporters, or their agents, will continue to prepare the SEDs and submit them to the exporting carrier in the United States prior to exportation.

These proposed amendments do not meet the criteria of a major rule as set forth in section 1(b) of Executive Order 12291; therefore, no Regulatory Impact Analysis is required. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. Pursuant to the Provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), the General Counsel of the Department of Commerce and the Commissioner of Customs certify to the Small Business Administration that the proposed regulations, if promulgated, will not have a significant economic effect on a substantial number of small entities because they only change the place of filing shipping documents by exporting carriers. The information collection requirements in this rule are cleared under OMB Control Nos. 0607-0001, 0018, and 0152 pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects

15 CFR Part 30

Economic statistics, Foreign trade, Reporting and recordkeeping requirements.

19 CFR Part 4

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Customs duties and inspection, Freight, Penalties, Reporting and recordkeeping requirements.

To effect these changes, it is proposed to amend the Foreign Trade Statistics Regulations (15 CFR part 30) and the Customs Regulations (19 CFR parts 4 and 122) as set forth below:

Title 15—Commerce and Foreign Trade

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR part 30 is revised to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301-307; Reorganization Plan No. 5 of 1950 (3 CFR 1949-1953 Comp., p. 1004), Department of Commerce Organization Order No. 35-2A, August 4, 1975, 40 FR 42765.

2. Section 30.20 is amended by revising the first sentence of paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively, and adding new paragraph (b) to read as follows:

§ 30.20 General statement of requirement for the filing of manifests and Shipper's Export Declarations by carriers.

(a) Carriers transporting merchandise from the United States, Puerto Rico, or U.S. Possessions to foreign countries; from the United States or Puerto Rico to the Virgin Islands of the United States; or from Puerto Rico to the United States; shall not be granted clearance, where clearance is required, and shall not depart, where clearance is not required, until manifests (for vessels, aircraft, and rail carriers) and Shipper's Export Declarations have been filed with the Customs Director as specified in paragraphs (b) through (d) of this section, except as provided in § 30.24.* * *

(b) For carriers transporting merchandise from the United States to Puerto Rico, the complete manifest, as required, and all required Shipper's Export Declarations shall be filed within one business day after arrival, as defined in 19 CFR 4.2(b), with the Customs Director in Puerto Rico, except as provided in § 30.24.

* * * * *

3. Section 30.21 is amended by revising paragraphs (a) and (b) to read as follows:

§ 30.21 Requirements for the filing of manifests.

(a) *Vessels.* Vessels transporting merchandise as specified in § 30.20 (except vessels exempted by paragraph (d) of this section) shall file a complete Cargo Declaration, Customs Form 1302, or a Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, either form with copies of bills of lading or equivalent commercial forms relating to all cargo encompassed by the manifest attached thereto. The manifest shall be filed with the Customs Director at the respective ports where the merchandise is laden (for shipments from the United States to Puerto Rico, the manifest shall be filed with the Customs Director in the port where the merchandise is unladen in Puerto Rico), and shall show the destination of the vessel and list all the cargo so laden. For each item of cargo, the manifest shall show a description of the articles, contents, quantities, and values; however, a notation on the Cargo Declaration that values are as stated on the Shipper's Export Declarations, copies of which are attached to such manifest, will be accepted. There shall also be shown for each item of cargo the bill of lading number on the Shipper's Export Declaration covering the item, except that bill of lading numbers are not required on manifests covering cargo destined for Canada or a nonforeign area. If an item on a Cargo Declaration is one for which a Shipper's Export Declaration is not required, a notation shall be inserted on the Cargo Declaration as to the basis for the

exemption with a reference to the number of the section in the regulations where the particular exemption is provided. The bills of lading, cargo lists, or other commercial forms must be securely attached to the Cargo Declaration in such manner as to constitute one document; that they are incorporated by suitable reference on the face of the form such as "Cargo as per bills of lading attached," or "Cargo as per commercial forms attached," and that there is shown on the face of each bill the information required by the Cargo Declaration for the cargo covered by that document. The manifest of vessels (including vessels taking bunker fuel to be laden aboard vessels on the high seas) clearing for foreign countries shall also show the quantities and values of bunker fuel taken aboard at that port for fueling use of the vessel, apart from such quantities as may have been laden on vessels as cargo. The quantity of coal shall be reported in metric tons (2,240 pounds), and the quantity of fuel oil shall be reported in barrels of 158.98 liters (42 gallons). Fuel oil shall be described in such manner as to identify diesel oil as distinguished from other types of fuel oil.

(b) *Aircraft.* Aircraft transporting merchandise as specified in § 30.20 shall file a complete manifest on Customs Form 7509. Such manifest shall be filed with the Customs Director at the respective ports where the merchandise is laden (for shipments from the United States to Puerto Rico, the manifests shall be filed with the Customs Director in the port where the merchandise is unladen in Puerto Rico) aboard the aircraft which is to carry the merchandise to the foreign country or to its ultimate destination in a nonforeign area, and shall list all the cargo so laden and show, for each item, the air waybill number or marks and numbers on packages, the number of packages, and the nature of the goods, except as otherwise provided in this paragraph (b). In addition, for any item for which a Shipper's Export Declaration is not required under the regulations in this part, a notation as to the basis for the exemption with a reference to the number of the section in this part where the particular exemption is provided, shall be inserted on the manifest, or on the waybill filed in lieu of listing on the manifest. In the case of shipments on an air waybill, a copy of each document may be attached to the cargo manifest, the numbers of such air waybills listed in the body of the manifest, and the statement "Cargo as per Air Waybills Attached" noted on the manifest. On direct departures only, for shipments requiring a Shipper's Export Declaration a copy of each declaration may be attached to the cargo manifest. In such case the air waybill numbers of such declarations shall be listed on the cargo manifest in the column for air waybill numbers, and the statement "Cargo as per SEDs Attached" noted on the manifest. Under this alternative procedure, any shipments not requiring a Shipper's Export Declaration shall be listed on the manifest, and a notation as to the basis for the exemption with a reference to the number of the section in this part where the particular exemption is provided, shall be shown.

* * * * *

4. Section 30.22 is amended by revising paragraph (a) to read as follows:

§ 30.22 Requirements for the filing of Shipper's Export Declarations by departing carriers.

(a) To meet the requirements of § 30.20 for the filing of SEDs, every departing carrier transporting merchandise as specified in § 30.20 including vessels, aircraft, rail carriers, trucks and other vehicles, ferries, and every other carrier shall deliver to the Customs Director at the port of exportation (for shipments from the United States to Puerto Rico, at the port of arrival in Puerto Rico), with the manifest of the carrier, if a manifest is required by the regulations in this part, Shipper's Export Declarations prepared and signed by the exporters, or their agents, covering all the cargo for which such SEDs are required by the regulations in this part.

* * * * *

5. Section 30.24 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 30.24 Clearance or departure of carriers under bond on incomplete manifest or Shipper's Export Declarations.

(a) For purposes of the regulations in this part, except when carriers are transporting merchandise from the United States to Puerto Rico, clearance (where clearance is required), permission to depart (where clearance is not required) may be granted to any carrier by the Customs Director prior to the filing of a complete manifest as required under the regulations in this part, or prior to the filing by the carrier of all required Shipper's Export Declarations, provided that a bond as specified in paragraph (b) of this section is filed with the Customs Director. The condition of the bond shall be that a complete manifest, where a manifest is required by the regulations in this part and all required Shipper's Export Declarations, shall be filed by the carrier not later than the fourth business day after clearance (where clearance is required or departure (where clearance is not required) of the carrier except as otherwise specifically provided in paragraphs (a) (1) and (2) of this section. For carriers transporting merchandise from the United States to Puerto Rico, if the complete manifest, as required, and all required Shipper's Export Declarations are not available for filing with the Customs Director in Puerto Rico within one business day after arrival, a bond, as specified in paragraph (b) of this section shall be filed.

(1) For shipments aboard a U.S. flag carrier between the United States and Puerto Rico, or from the United States or Puerto Rico to the Virgin Islands of the United States, the condition of the bond shall be that a complete manifest (where a manifest is required) and all required Shipper's Export Declarations shall be filed by the carrier not later than the seventh business day after departure or in the case of shipments from the United States to Puerto Rico, the seventh business day after arrival.

* * * * *

Title 19—Customs Duties

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

6. The general authority citation for 19 CFR part 4 and the specific authority for Section 4.84 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 2103 and 46 U.S.C. App. 3;

* * * * *

Section 4.84 also issued under 13 U.S.C. 303; 19 U.S.C. 1433, 1435, 1437; 46 U.S.C. App. 91, 313, 314, 883–1;

* * * * *

7. Section 4.84 is amended by revising paragraph (c) to read as follows:

§ 4.84 Trade with noncontiguous territory.

* * * * *

(c)(1) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to any noncontiguous territory of the United States (excluding Puerto Rico), or from Puerto Rico to any State or the District of Columbia, or any other noncontiguous territory, shall not be permitted to depart without filing a complete manifest, when required by regulations of the Bureau of the Census (15 CFR part 30), and all required Shipper's Export Declarations, unless before the vessel departs an approved bond is filed for the timely production of the required

documents, as specified in 15 CFR 30.24. Requests for permission to depart may be written or oral and permission to depart shall be granted orally by the appropriate Customs officer. However, if the request is to depart prior to the filing of the required manifest and export declarations, permission shall not be granted unless the appropriate bond is on file. In the latter case, the Customs officer shall keep a simplified record of the necessary information in order to assure that the manifest and export declarations are filed within the required time period. The Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(a)), required at the time of clearance is not required to be taken to obtain permission to depart.

(2) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to Puerto Rico shall file a complete manifest, when required by the regulations of the Bureau of the Census (15 CFR part 30), and all required Shipper's Export Declarations within one business day after arrival, as defined in section 4.2(b) of this part, with the appropriate Customs officer in Puerto Rico. If the complete manifest and all required Shipper's Export Declarations are not filed with the appropriate Customs officer within that time frame, an appropriate bond shall be filed with the Customs officer for the timely production of the required documents as specified in 15 CFR 30.24. In these instances when a bond is filed, the Customs officer shall keep a simplified record of the necessary information in order to ensure that the manifest and export declarations are filed not later than the seventh business day after arrival in Puerto Rico.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

8. The authority for 19 CFR part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 303; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

9. Section 122.62 is amended by revising paragraph (a) to read as follows:

§ 122.62 Aircraft not otherwise required to clear.

(a) *Bureau of the Census.* Under Bureau of the Census Regulations (15 CFR part 30), aircraft not required to clear by § 122.61 shall obtain permission to depart if carrying merchandise from the U.S. to Puerto Rico or from Puerto Rico to the U.S.

* * * * *

10. Section 122.74 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 122.74 Incomplete (pro-forma) manifest.

(a) *Application*—(1) *Shipments to foreign countries.* Except for aircraft bound for foreign locations referred to in paragraph (b) of this section, clearance, or permission to depart may be given to an aircraft bound for a foreign location by the district director in the port of departure before a complete manifest or all required Shipper's Export Declarations have been filed, if a proper bond is filed on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter.

(2) *Shipments to Puerto Rico.* As provided in § 122.79(b), any required air cargo manifest or Shipper's Export Declarations for direct flights between the U.S. and Puerto Rico shall be filed with the appropriate Customs officer upon arrival in Puerto Rico. If any required manifest or Shipper's Export Declarations are not filed with the appropriate Customs officer within one business day after arrival in Puerto Rico, a proper bond shall be filed at that time on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter.

* * * * *

(c) * * *

(2) *Shipments to and from Puerto Rico.* For shipments from the U.S. and Puerto Rico, the complete manifest (when required) and all required Shipper's Export Declarations shall be filed not later than the seventh business day after arrival into Puerto Rico. For shipments from Puerto Rico to the U.S., the complete manifest (when required) and all required Shipper's Export Declarations shall be filed not later than the seventh business day after departure from Puerto Rico.

* * * * *

11. Section 122.76 is revised to read as follows:

§ 122.76 Shipper's Export Declarations and inspection certificates.

(a) *Shipper's Export Declarations* (1) *Other than shipments to Puerto Rico.* For shipments other than to Puerto Rico, at the time of clearance, the aircraft commander or agent shall file with the district director at the departure airport any Shipper's Export Declarations required by the Bureau of Census (see 15 CFR part 30).

(2) *Shipments to Puerto Rico.* For flights carrying shipments to Puerto Rico from the U.S., the aircraft commander or agent shall file any Shipper's Export Declarations required by the Bureau of Census (see 15 CFR part 30) upon arrival in Puerto Rico with the district director there.

(b) *Inspection certificates.* The aircraft commander or authorized agent shall deliver a proper export inspection certificate issued by the Veterinary Service, Animal and Plant Inspection Service, Department of Agriculture (9 CFR part 91), to the Customs officer in charge at the time of departure of any aircraft carrying horses, mules, asses, cattle, sheep, swine, or goats.

12. It is proposed to amend § 122.79 by revising paragraph (b) to read as follows:

§ 122.79 Shipments to U.S. possessions.

* * * * *

(b) *Puerto Rico.* When an aircraft carries merchandise on a direct flight from the U.S. to Puerto Rico, any required air cargo manifest or Shipper's Export Declarations shall be filed with the district director at Puerto Rico.

Barbara Everitt Bryant,

Director, Bureau of the Census.

Carol B. Hallett,

Commissioner, Customs Service.

Approved and concurred: September 21, 1992.

Peter K. Nunez,

Assistant Secretary for Enforcement, Department of the Treasury

[FR Doc. 92-28945 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-76-90]

RIN 1545-AP19

Regulations Under Section 108 of the Internal Revenue Code; Discharge of Indebtedness

AGENCY: Internal Revenue Service, Treasury.

ACTION: Rescheduling of the time of public hearing on proposed regulations; change of date to submit requests to speak and outlines of oral comments.

SUMMARY: This document reschedules the time of the public hearing and changes the date to submit requests to speak and outlines of oral comments on a notice of proposed rulemaking that adds proposed regulations § 1.108-1

under sections 108(e)(8) (A) and (B) of the Internal Revenue Code of 1986.

DATES: The public hearing will be held on Tuesday, January 12, 1993, beginning at 1 p.m. Requests to speak and outlines of oral comments must be received by Monday, December 21, 1992.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [CO–76–90], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the **Federal Register** on Wednesday, November 4, 1992, announced among other things, that a public hearing relating to proposed regulations under section 108(e)(8) of the Internal Revenue Code of 1986 would be held on Tuesday, January 12, 1993, beginning at 10:00 a.m. in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC, and that requests to speak and outlines of oral comments should be received by Tuesday, December 22, 1992. The proposed regulations were published in the **Federal Register** for Wednesday, November 4, 1992 (57 FR 52601).

There has been a change in the time of the public hearing, and a change of date to submit requests to speak and outlines of oral comments. The hearing will be held on Tuesday, January 12, 1993, beginning at 1:00 p.m. The requests to speak and outlines of oral comments must be received by Monday, December 21, 1992.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 12:30 p.m.

In all other respects the details regarding the hearing will remain the same.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–28858 Filed 11–27–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1, 20, 25, and 602

[PS–100–88]

RIN 1545–AM81

Valuation Tables; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of public hearing on proposed regulations.

SUMMARY: This document provides corrections to the notice of public hearing on proposed regulations (PS–100–88), which was published in the **Federal Register** on Monday, November 2, 1992, (57 FR 49581). The proposed regulations regarding this notice relate to the valuation of certain partial interests in property under section 7520 of the Internal Revenue Code of 1986, as added by section 5031 of the Technical and Miscellaneous Revenue Act of 1988.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the notice of public hearing is proposed regulations proposing amendments to the regulations under section 7520 of the Internal Revenue Code relating to the valuation of any annuity, any interest for life or a term of years, or any remainder or reversionary interest.

Need for Correction

As published, the notice of public hearing contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of public hearing [PS–100–88], which was the subject of FR Doc. 92–26051, is corrected to read as follows:

Paragraph 1. On page 49581, column two, under the caption "**DATES:**", last line, the language "received by Friday, November 30, 1992" is corrected to read "received by Monday, November 30, 1992".

Par. 2. On page 49581, column three, under the caption "**SUPPLEMENTARY INFORMATION:**", second paragraph, lines ten and eleven, the language "should submit not later than Friday, November 20, 1992, an outline of the oral" is corrected to read "should submit not later than Monday, November 30, 1992, an outline of the oral".

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–28852 Filed 11–27–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 301

[PS–103–90]

RIN 1545–AP23

Election Out of Subchapter K for Producers of Natural Gas; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (PS–103–90), which was published on Wednesday, September 16, 1992 (57 FR 42712). The proposed regulations contain requirements that must be met by producers of natural gas subject to a gas balancing agreement in order to elect under section 761(a) to be excluded from the application of subchapter K of chapter 1 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Grace Kim, 202–622–3060 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction contains proposed regulations under section 761 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (PS–103–90), which was the subject of FR Doc. 92–22000, is corrected as follows:

Paragraph 1. On page 42715, column one, in the preamble under the caption "D. Description of the Cumulative Gas Balancing Method", the first full paragraph, line six, the language "to the same gas balancing agreement as" is corrected to read "to the same GBA as".

Par. 2. On page 42718, column three, in § 1.761–2(d)(5)(iii)(C), in the paragraph heading, the language "(C) *Acceleration*

of section 481" is corrected to read "(C) *Acceleration of section 481(a)*".

Par. 3. On page 42719, column three, in § 1.761–2(d)(6) paragraph (v) of *Example 2*, fourth line from the top of the column, the language "production for those years, that is 160 for" is corrected to read "production for those years, that is 160 mmcf for".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate)

[FR Doc. 92–28853 Filed 11–27–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 26

[AG Order No. 1634–92]

Implementation of Death Sentences in Federal Cases

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes procedures for government attorneys, the United States Marshals Service, and the Federal Bureau of Prisons to follow in obtaining and executing death orders for violations of the Federal criminal law. The rule is necessary to ensure orderly implementation of death sentences.

DATES: Written comments must be submitted on or before December 30, 1992.

ADDRESSES: Please submit written comments to the Assistant Director, Information Policy and Public Affairs, Federal Bureau of Prisons, 320 First Street NW., room 641, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Thomas R. Kane, Assistant Director, Information Policy and Public Affairs, Federal Bureau of Prisons, 320 First Street NW., room 641, Washington, DC 20534.

SUPPLEMENTARY INFORMATION: The United States Code currently provides the death penalty for a number of civilian offenses. See, for example, 18 U.S.C. 1111 and 21 U.S.C. 848. In 1984 Congress repealed 18 U.S.C. 3566, which since 1937 had provided that executions in Federal cases were to be conducted in the manner prescribed in the state in which the sentence was imposed. Congress's repeal of section 3566, and Federal prosecutors' negligible experience with capital cases in recent years, has left a need for procedures for obtaining and executing death orders. This need has become imperative with the growing number of cases under 21 U.S.C. 848, providing the death penalty for certain drug-related offenses, and with recent Supreme Court decisions indicating the vitality of the capital sentencing procedures under 18 U.S.C. 1111.

Section by Section Analysis

Section 1

This section provides guidance once a death sentence has been recommended in Federal civilian cases. The U.S. Attorneys' Manual governs the conduct of such cases in earlier stages. This rule is not meant to govern cases under military law.

Section 2

The prosecutor should file the proposed Judgment and Order promptly upon recommendation of the death sentence, since Federal judges themselves have little recent experience with capital cases and may expect the government's guidance.

The proposed Judgment and Order prescribed in this section sets forth the procedures for execution that are established in later sections of this rule. In cases where the court adopts in full the proposed Judgment and Order, the execution will be carried out according to the procedures dictated by both judicial and executive mandates, operating in tandem. The rule contemplates, however, that establishment by the Executive Branch of procedures for execution is entirely adequate for execution of a duly-ordered sentence of death.

The "Return," which is a common feature of death orders dating back to at least last century, notifies the sentencing court of the execution.

Section 3

This section establishes procedures for execution in Federal criminal cases except to the extent a court orders otherwise. Lethal injection will be the method of execution. This method increasingly is the method of execution in the states. The execution is to be conducted in a Federal Bureau of Prisons facility selected by the Director of the Bureau of Prisons. It is to be conducted by a United States Marshal selected by the Director of the U.S. Marshals Service, who will be assisted by a team selected by the Marshal and Warden of the facility.

The date, time, and place of execution are to be determined by the Director of the Federal Bureau of Prisons, the institution normally charged with determining the place and manner of custody of prisoners. See 18 U.S.C. 3621. Resting determination of the execution date with the Director will obviate the practice, which is a pointless source of delay in state cases, of seeking a new execution date from the sentencing court each time a higher court lifts a stay of execution that caused an earlier execution date to pass. This procedure will not, of course, limit any right of the prisoner under sentence of death to seek collateral relief from his sentence.

Section 4

This section establishes rules for access to the prisoner under sentence of death at the time of the execution and in the days immediately preceding. These rules are meant to enable the prisoner and his immediate family to prepare themselves for the execution, while ensuring that the prison facility and the execution itself are not disrupted. These rules also accommodate the media's and public's interest in reports of the execution. They are similar to rules in place in many states and to rules previously followed by the Marshals Service in implementing the Federal death penalty. The rules are not meant to curtail necessary contacts initiated by Justice Department personnel, including the U.S. Marshals Service.

Section 5

This section gives all Justice Department personnel the right to decline to participate in executions for religious or moral reasons. This right is granted Bureau of Prisons personnel by 21 U.S.C. 848(r).

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with Section 6 of E.O. 12612.

List of Subjects in 28 CFR part 26

Law enforcement officers, prisoners.

For the reasons set out in the preamble, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by adding a new part 26 to read as follows:

PART 26—IMPLEMENTATION OF DEATH SENTENCES IN FEDERAL CASES

Sec.

26.1 Applicability.
26.2 Proposed Judgment and Order.
26.3 Time, place, and method of execution.
26.4 Other execution procedures.

Sec.
26.5 Attendance at or participation in executions by Department of Justice personnel.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; 28 U.S.C. 509, 510.

§ 26.1 Applicability.

The regulations of this part apply whenever a sentencing hearing conducted in a United States District Court has resulted in a recommendation or determination that a criminal defendant be sentenced to death for commission of an offense described in any Federal statute.

§ 26.2 Proposed judgment and order.

(a) Whenever this part becomes applicable, the attorney for the government shall promptly file with the sentencing court a proposed Judgment and Order. The proposed Judgment and Order shall state, in addition to any other matters required by law or otherwise appropriate, that:

(1) The sentence of death shall be executed by a United States Marshal designated by the Director of the United States Marshals Service;

(2) The sentence shall be executed by intravenous injection of a lethal substance or substances in a quantity sufficient to cause death;

(3) The sentence shall be executed on a date and at a place designated by the Director of the Federal Bureau of Prisons; and

(4) The prisoner under sentence of death shall be committed to the custody of the Attorney General or his authorized representative for appropriate detention pending execution of the sentence.

(b) The attorney for the government shall append to the proposed Judgment and Order a Return by which the designated United States Marshall may inform the court that the sentence of death has been executed.

§ 26.3 Time, place, and method of execution.

(a) Except to the extent a court orders otherwise, a sentence of death shall be executed:

(1) On a date and at a time designated by the Director of the Federal Bureau of Prisons, which date shall be no sooner than 60 days from the entry of the judgment of death. If the date designated for execution passes by reason of a stay of execution, then a new date shall be designated promptly by the Director of the Federal Bureau of Prisons when the stay is lifted;

(2) At a Federal penal or correctional institution designated by the Director of the Federal Bureau of Prisons;

(3) By a United States Marshal designated by the Director of the United States Marshals Service, assisted by additional personnel selected by the Marshal and the Warden of the designated institution and acting at the direction of the Marshal; and

(4) By intravenous injection of a lethal substance or substances in a quantity sufficient to cause death, such substance or substances to be determined by the Director of the Federal Bureau of Prisons and to be administered by qualified personnel selected by the Warden and acting at the direction of the Marshal.

(b) Unless the President interposes, the United States Marshal shall not stay execution of the sentence on the basis that the prisoner has filed a petition for executive clemency.

§ 26.4 Other execution procedures.

Except to the extent a court orders otherwise:

(a) The Warden of the designated institution shall notify the prisoner under sentence of death of the date designated for execution at least 20 days in advance, except when the date follows a postponement of fewer than 20 days of a previously scheduled and noticed date of execution, in which case the Warden shall notify the prisoner as soon as possible.

(b) Beginning seven days before the designated date of execution, the prisoner shall have access only to his spiritual advisers (not to exceed two), his defense attorneys, members of his family, and the officers and employees of the institution. Upon approval of the Director of the Federal Bureau of Prisons, the Warden may grant access to such other proper persons as the prisoner may request.

(c) In addition to the Marshal and Warden, the following persons shall be present at the execution:

(1) Necessary personnel selected by the Marshal and Warden, including at least one physician selected by the Warden;

(2) Those attorneys of the Department of Justice whom the Deputy Attorney General determines are necessary;

(3) Not more than the following numbers of persons selected by the prisoner:

(i) One spiritual adviser;

(ii) Two defense attorneys; and

(iii) Three adult friends or relatives; and

(4) Not more than the following numbers of persons selected by the Warden:

(i) Eight citizens; and

(ii) Ten representatives of the press.

(d) No other person shall be present at the execution, unless leave for such person's presence is granted by the Director of the Federal Bureau of Prisons. No person younger than 18 years of age shall witness the execution.

(e) The Warden should notify those individuals described in paragraph (c) of this section as soon as practicable before the designated time of execution

(f) No photographic or other visual or audio recording of the execution shall be permitted.

(g) After the execution has been carried out, the physician or other qualified personnel selected by the Warden shall conduct an examination of the body of the prisoner to determine that death has occurred and shall inform the Marshal and Warden of his determination. Upon notification of prisoner's death, the Marshal shall complete and sign the Return described in § 26.2(b) or any similar document and shall file such document with the sentencing court.

(h) The remains of the prisoner shall be disposed of in a manner determined by the Warden.

§ 26.5 Attendance at or participation in executions by Department of Justice personnel.

No officer or employee of the Department of Justice shall be required to be in attendance at or to participate in any execution if such attendance or participation is contrary to the moral or religious convictions of the officer or employee. For purposes of this section, the term "participation" includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

Dated: November 19, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92-28869 Filed 11-27-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 10

[Docket No. 921061-2261]

RIN 0651-AA50

Electronic Filing of Patent and Trademark Applications

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking is to inform the public that the Patent and Trademark Office (PTO) is considering amending its rules of practice: (1) To allow for electronic filing of patent applications and trademark applications; and (2) to require applications filed in paper form to follow a prescribed order and format.

The PTO anticipates that permitting electronic filing of applications will improve the accuracy of the information relied upon in the examination of patent and trademark applications, eliminate delays caused by mailing and data entry, and, as a first step toward a fully-automated processing system, ultimately provide considerable cost savings. The cost savings realized could be used to help reduce the need for future fee adjustments and/or fund improvements in the delivery of services. Requiring applications filed on paper to follow a prescribed order and format will enable the PTO to convert these applications to electronic format.

The purposes of this notice are to: (1) Invite interested parties to participate in pilot programs involving electronic filing of patent and trademark applications; and (2) encourage comments on this topic, in the form of responses to the questions posed in this notice, from industry, the patent and trademark bars, and members of the public.

DATES: Comments should be received on or before March 1, 1993.

ADDRESSES: Written comments should be addressed, if sent by mail, to the attention of Edward R. Kazenske, Executive Assistant to the Commissioner and Director of Interdisciplinary Programs, c/o Commissioner of Patents and Trademarks, Washington, DC 20231. If delivered by hand, comments should be brought to the Office of the Executive Assistant to the Commissioner and Director of Interdisciplinary Programs, room 906, Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Edward R. Kazenske, Executive Assistant to the Commissioner and Director of Interdisciplinary Programs, (703) 305–8600.

SUPPLEMENTARY INFORMATION:

1. Pilot Programs

Currently, the PTO accepts patent and trademark applications delivered by mail or in person. These applications are in paper form or, in the case of patent applications for nucleotide sequences, a combination of computer-readable (see 37 CFR 1.821–1.825) and paper form.

The PTO is initiating a pilot program that would permit electronic filing of patent and trademark applications, using software now under consideration by the PTO. Initially, it is anticipated that participants in the pilot program would be required to use the PTO software to create a diskette, which would then be mailed to the PTO along with the paper application generated by the diskette. The diskette would serve the limited function of eliminating the initial data entry of applications into the PTO databases.

As part of a second pilot program, a separate group of participants is being solicited to file paper applications following a prescribed order and format. The paper applications would then be scanned and converted to electronic format.

Data collected from the pilot programs will be evaluated to determined whether requiring submission of a paper application in a certain order and format facilitates data entry; whether any modifications to the electronic filing software are required; and more fundamentally, whether electronic filing is a feasible, cost-effective alternative to filing in paper form.

2. Paper Applications

The PTO contemplates that paper applications will be required to follow the order and format of the data elements (e.g., inventor, foreign priority information, in the case of a patent application; applicant, mark, in the case of a trademark application) entered in the electronic filing system. This would enable the PTO to scan and convert paper applications to electronic applications upon receipt at the PTO. Once the paper application is converted into electronic form, processing of the application will be done in a purely electronic format. The electronic form of the application would become the official file.

3. Electronic Filing

The PTO contemplates that applicants filing by electronic means would be required to use an "Authoring Program" developed by the PTO, which will be available to facilitate the preparation of an electronic submission and record the submission on electronic media. This "Authoring Program" will include a validation feature so that applicants, themselves, can test whether an electronic submission complies with all requirements.

The "Authoring Program" software under consideration by the PTO will be designed to be compatible with computers capable of creating files of standard ASCII (American Standard Code for Information Interchange) text within one or more of the major operating systems environments (e.g., DOS, Windows ®, Unix ®, and Apple MacIntosh ®).

The format for text in patent applications will specify a set of mandatory data elements, similar to those required under the Patent Cooperation Treaty. The format for text in trademark applications will specify a set of mandatory data elements, similar to those required of a "written application" under 15 U.S.C. 1051. In both the patent and trademark software, specific formats will be required for non-textual elements, such as drawings, formulas, tables and specimens. These non-textual elements would be submitted in separate computer files called "Presentations," similar to the presentation of nucleotide sequence information in accordance with 37 CFR 1.821–1.825.

The PTO also contemplates that certain individuals be designated by the agency as qualified "electronic application transmitters." Upon application to the PTO, unlimited parties meeting specified requirements may be issued Personal Identification Numbers to enable them to transmit applications in electronic form on behalf of themselves or other individuals.

In an effort to facilitate public comment to the questions set forth below, the following background information is provided:

4. Background Specific to Electronic Patent Applications

Signature

Under 35 U.S.C. 111, a patent application must include an oath by the applicant. 35 U.S.C. 25 permits a declaration in lieu of oath. The applicant's signed oath or declaration is not required for receipt of a filing date, but may be submitted, upon payment of a surcharge, within a prescribed period.

Certified Copy of Foreign Patent Application

Under 35 U.S.C. 119, a U.S. patent application may be based on a foreign patent application, thus, potentially, conferring the benefit of the earlier foreign patent application's filing date. A certified copy of the foreign patent application is required to be filed in the PTO before the patent is granted.

5. Background Specific to Electronic Trademark Applications

Signature

Under 15 U.S.C. 1051, a trademark application must be verified by the applicant. Prior to implementation of the Trademark Law Revision Act of 1988

(TLRA) on November 16, 1989, the PTO permitted verification of the application to be provided at any time during the examination process. With implementation of the TLRA, the PTO amended its regulations with respect to the verification of an application. 37 CFR 2.21, which sets forth the minimum requirements for an application to receive a filing date, was amended to require that the application be signed by the applicant at the time of filing.

Specimen

Under 15 U.S.C. 1051, a trademark application based on "use in commerce" must include specimens or facsimiles of the mark as used. 37 CFR 2.21(a)(5) requires at least one specimen or facsimile to be included with the "use" application in order to receive a filing date. Applications filed based upon a "bona fide" intention to use the mark in commerce, under 15 U.S.C. 1051(b), must be supplemented with specimens or facsimiles before the registration issues. In order to meet the minimum requirements for filing an amendment to allege use or statement of use, one specimen or facsimile must be submitted. 37 CFR 2.76(e)(2) and 2.88(e)(2).

Certification or Certified Copy of Foreign Registration

Under 15 U.S.C. 1126(e), "an application [based on a foreign registration] shall be accompanied by a certification or a certified copy of the registration of the country of origin of the applicant." 37 CFR 2.21(a)(5) requires the certification or certified copy to be included with the application in order to receive a filing date.

6. Comments on the Following Questions and Any Other Related Matters Are Solicited

Questions Common to Patent and Trademark Applications

a. What benefits do you foresee for the applicant if electronic filing is adopted? What disadvantages do you foresee?

b. Should the PTO require paper applications to be filed in a specific order and format to facilitate conversion to electronic format? What advantages and disadvantages do you foresee?

c. Should the electronic file become the official agency file?

d. Should electronic filing be expanded to encompass amendments and other submissions to the PTO?

e. Should paper or electronic application filing receive a filing date only if they meet order and format requirements, or should compliance be subject to a surcharge?

f. Should the PTO accept electronic filing by diskette, on-line, or both?

g. Should applications filed in paper form be converted to electronic form by the PTO? Should the PTO charge a fee for this service?

h. If paper applications are converted to electronic form by the PTO, should the PTO destroy or retain the paper applications?

i. Should fees be processed electronically?

j. Should the PTO create a registry of "electronic application transmitters" capable of transmitting patent and trademark applications for others? If so, what, if any, criteria should be established before one could be "registered" as an "electronic application transmitter?"

Questions Related Solely to Patent Issues

k. Should the PTO require the oath or declaration to an electronically filed patent application be filed on paper to authenticate that applicants believe themselves to be the original and first inventors of the subject matter of the electronically filed application?

If not, how should the filing of the oath or declaration be accomplished?

l. How should the filing of certified copies of foreign patent applications be accomplished for an electronically filed patent application?

Questions Related Solely to Trademark Issues

m. Should the PTO require electronically filed applications to include a scanned, signed declaration in order to receive a filing date? Should the PTO accept declarations in electronic form with some type of electronic signature?

If not, should 37 CFR 2.21 be amended to permit unverified applications to be accorded a filing date? If so, within what time period must an unverified application be ratified by the submission of a signed declaration?

How long should the PTO retain the signed declaration after it has been scanned and merged into the electronic file?

n. Should "use" applications submitted without a specimen be given a filing date?

If so, within what time period after filing must the specimens be submitted?

Should the number of required specimens be reduced?

How long should the PTO keep the specimens after they are scanned and merged into the electronic file?

o. Should section 44(e) of the Trademark Act (15 U.S.C. 1126(e)) be amended to permit applicants to submit a facsimile of the certification or certified copy of the foreign registration?

Alternatively, should the statute be amended to permit section 44(e) applicants to obtain a filing date absent a certification or certified copy of the foreign registration? If so, within what time period must a section 44(e) application be supplemented with a certification or certified copy of the foreign registration?

How long should the PTO retain the certification or certified copy after it has been scanned and merged into the electronic application?

7. Candidates for the Pilot Programs

Any person interested in participating in one of the pilot programs identified above is requested to contact Edward R. Kazenske, Executive Assistant to the Commissioner and Director of Interdisciplinary Programs, c/o Commissioner of Patents and Trademarks, Washington, DC. 20231. If delivered by hand, written statements of interest should be brought to Suite 906, Crystal Park 2, 2121 Crystal Drive, Arlington, VA 22202. Telephone: (703) 305–8600. Please indicate which pilot program you wish to participate in and please be certain to include a telephone number where you may be reached.

Dated: November 23, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92–28963 Filed 11–27–92; 8:45 am]

BILLING CODE 3510–16–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 580, 581 and 583

[Docket No. 92–37]

Financial Responsibility for Non-Vessel-Operating Common Carriers

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") published a proposed rule on October 19, 1992 (57 FR 47589) to amend its regulations governing the financial responsibility requirements of Non-Vessel-Operating Common Carrier Act of 1991 ("1991 Act"). The 1991 Act amended the Non-Vessel-Operating Common Carrier Amendments of 1990 ("1990 Amendments") to permit the Commission to accept—in addition to

bonds—insurance or other surety as proof of an NVOCC's financial responsibility. The 1991 Act also deleted the $50,000 minimum amount for a bond previously prescribed by the 1990 Amendments. The proposed rule would: (1) Specify the conditions for accepting insurance and guaranties as means to evidence an NVOCC's financial responsibility; (2) provide forms and procedures for accepting insurance and guaranties as evidence of an NVOCC's financial responsibility; (3) specify guidelines for evaluating the acceptability of insurance companies and guarantors; and (4) specify the amount and method of coverage. Lloyd's, London requests a ten day extension of the comment period, citing the time need to solicit and receive reaction from the numerous underwriters that participate in Lloyd's. The request is granted.

DATES: Comments (original and 15 copies) must be received at the Commission on or before November 30, 1992. The date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5787.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–28907 Filed 11–27–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–270, RM–8110]

Radio Broadcasting Services; Liberty, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Michael S. Celenza seeking the allotment of Channel 271A to Liberty, New York, as the community's second local FM transmission service. Channel 271A can be allotted to Liberty in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4.2 miles) west to avoid short-spacings to Stations WPDH, Channel 268B, Poughkeepsie, New York, WJIV, Channel 270B, Cherry Valley, New York, and WAQY–FM, Channel 271B, Springfield, Massachusetts, at coordinates North Latitude 41–46–51 and West Longitude 74–49–19. Canadian concurrence is required since Liberty is located within 320 kilometers (200 miles) of the U.S.—Canadian border.

DATES: Comments must be filed on or before January 14, 1993, and reply comments on or before January 23, 1993.

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 K. Edmundson, Esq., Gardner, Carton & Douglas, 1301 K Street, NW., suite 900, East Tower, Washington, DC 20005 (Counsel to 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. 92–270, adopted October 22, 1992, and released November 23, 1992. 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, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

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.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–28846 Filed 11–27–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–271, RM–8102]

Radio Broadcasting Services; Mountain Pine, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mark Jones, requesting the allotment of FM Channel 270A to Mountain Pine, Arkansas, as that community's first local aural transmission service. Coordinates used for this proposal are 34–34–18 and 93–10–12.

DATES: Comments must be filed on or before January 14, 1993, and reply comments on or before January 29, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, Esq., P.O. Box 4203, Wilmington, NC 28406.

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. 92–271, adopted October 23, 1992, and released November 23, 1992. 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, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., suite 640, Washington, DC 20036.

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.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-28847 Filed 11-27-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Plants and Proposed Threatened Status for Four Plants From Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine endangered status pursuant to the Endangered Species Act of 1973, as amended, (Act) for two plants: *Astragalus brauntonii* (Braunton's milk-vetch) and *Pentachaeta lyonii* (Lyon's pentachaeta); and threatened status for four plants: *Dudleya abramsii* ssp. *parva* (Conejo dudleya), *Dudleya cymosa* ssp. *marcescens* (marcescent dudleya), *Dudleya cymosa* ssp. *ovatifolia* (Santa Monica Mountains dudleya), and *Dudleya verityi* (Verity's dudleya). These taxa occur in grassland, chaparral, or coastal sage scrub habitats in the mountains surrounding the Los Angeles basin, California. The six plants are threatened by one or more of the following: Urban development, recreational activities, alteration of fire cycles, flood control activities, and overcollection. Several of the plants are also threatened with stochastic extinction by virtue of their small numbers and population size. This proposed rule, if made final, would extend the Act's protection to these plants. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by January 29, 1993. Public hearing requests must be received by January 14, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Southern California Field Station, Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Constance Rutherford, Ventura Field Office, at the above address (telephone (805) 644-1766 or (818) 904-6040).

SUPPLEMENTARY INFORMATION:

Background

Astragalus brauntonii (Braunton's milk-vetch), *Pentachaeta lyonii* (Lyon's pentachaeta), *Dudleya cymosa* ssp. *marcescens* (marcescent dudleya), *Dudleya cymosa* ssp. *ovatifolia* (Santa Monica Mountains dudleya), *Dudleya abramsii* ssp. *parva* (conejo dudleya), and *Dudleya verityi* (Verity's dudleya) are located around the Los Angeles basin, California. The lowland plains are bounded by mountains and hills that expose Mesozoic or older basement rocks and sedimentary and igneous rocks of late Cretaceous to late Pleistocene age. The southern portion of the Transverse Ranges forms the northern and western boundary of the basin and includes the San Gabriel Mountains, the Santa Monica Mountains, and the Simi Hills. The Santa Ana Mountains at the northern end of the Peninsular Ranges border the southern region of the basin.

Strong substrate preferences are exhibited by all of the species included in this proposal. *Astragalus brauntonii* is only known to occur on small limestone outcrops. *Pentachaeta lyonii* is found on clay soils in ecotonal areas between grasslands and shrublands. All of the dudleyas occur on volcanic or sandstone rock outcrops with specific microhabitat characteristics. *Dudleya verityi* and *Dudleya abramsii* ssp. *parva* occur exclusively on the outcrops and soils derived from the Miocene Conejo volcanics at the western end of the Simi Hills and the Santa Monica Mountains. *Dudleya cymosa* ssp. *marcescens* occupies the lower slopes of volcanic cliffs in canyons that have perennial moisture. *Dudleya cymosa* ssp. *ovatifolia* is found on rock outcrops with forms specific to sedimentary conglomerate or volcanic breccia.

Most of the major habitat types in which these rare plants occur are considered sensitive by the botanical community in California. Large scale loss of habitat, fragmentation, and alteration of natural ecosystem processes of plant communities have resulted from development, cattle grazing, and type conversion by agricultural practices (Schoenherr 1990). *Astragalus brauntonii* is associated with fire-dependent chaparral habitat, dominated by *Adenostoma fasciculatum*, *Yucca whipplei*, the rare *Cupressus forbesii*, and a suggested new species, *Nolina cismontana* (Dice 1988). *Dudleya abramsii* ssp. *parva* commonly occurs in cactus-dominated coastal sage scrub, which provides nesting habitat for the coastal population of the cactus wren (*Campylorhynchus brunneicapillus*), a Federal candidate species. Most of the coastal sage scrub where *Dudleya verityi* occurs is dominated by *Artesmisia californica*, *Eriogonum fasciculatum*, *Salvia leucophylla*, and occasionally *Coreopsis gigantea*. *Dudlyea verityi* is associated with *Eriogonum crocatum* and *Dudleya blochmanae* ssp. *blochmanae*, both category 2 candidates for Federal listing. A unique lichen flora of over 70 species is associated with *Dudleya verityi* and coastal sage scrub habitat on Conejo Mountain (Riefner 1992). *Niebla ceruchoides*, a small lichen cushion, apparently functions as a "nursery" for seeding establishment for *Dudleya verityi*. The population of *Niebla* on Conejo Mountain is the largest on the mainland (it is also known from the California channel islands). Occurrences of *Niebla* in coastal sage scrub habitats of coastal southern California are being reduced by habitat loss and air pollution (Riefner 1992.) The grassland habitat in which *Pentachaeta lyonii* occurs is largely dominated by introduced old world grass and herb genera such as *Avena*, *Brassica*, *Bromus*, and *Erodium*. Several native plant species such as the native bunch grass *Stipa pulchra* are present in these grasslands.

Astragalus brauntonii was first collected in 1901 by Ernest Braunton near Sherman (now called West Hollywood), Los Angeles County. Samuel B. Parish described it 2 years later as *Astragalus brauntonii* (Abrams 1944). In 1929, Per Axel Rydberg published the name *Brachyphragma brauntonii* in his revision of the genus; however, this name was not commonly recognized by other botanists. Rupert Barneby recognized the name *Astragalus brauntonii* in his Atlas of North American Astragalus (Barneby 1964).

Astragalus brauntonii is a robust, short-lived perennial in the pea family (Fabaceae). It is one of the tallest members of the genus reaching a height of 15 decimeters (dm) (60 inches (in)) and is covered with woolly tomentum

throughout. A thick taproot and woody basal stem gives rise to several to numerous stems. The 4 to 16 centimeter (cm) (1.5 to 6.5 in) long leaves are pinnately compound with 25 to 33 oblong-ovate, abruptly pointed leaflets. The light purple flowers are clustered in 35- to 60-flowered racemes 4 to 14 cm (1.5 to 5.5 in) long. The beaked, slightly curved pods are oblong-ovoid and 6.5 to 9 mm (2.5 to 3.5 in) long. *Astragalus brauntonii* is readily distinguished from the only other perennial species of *Astragalus* in the area, *A. trichopodus*, by being woolly tomentose as opposed to strigose (covered with sharp, stiff-appressed hairs) or glabrous (without hairs), and by the two-chambered, rather than one-chambered pods (CNPS 1979).

Astragalus brauntonii is apparently a limestone endemic; the only locations not found on limestone are down-wash sites (seed drift following a fire event). Limestone outcrops are extremely rare within the limits of the known distribution of *A. brauntonii*; therefore, this taxon was never common or abundant. Fire or other site perturbation is required for the survival of this species. The frequency of fire in the habitat of *A. brauntonii* is probably measured in 20 year intervals (O'Leary 1990). This species has a life span of 2 to 3 years, and, depending on fire interval, a given location is visible only once in 20 to 50 years.

Astragalus brauntonii is currently known from three general areas in Ventura, Los Angeles, and Orange Counties. Several occurrences are found in the Simi Hills of eastern Ventura and western Los Angeles Counties. Two occurrences are known from Santa Ynez Canyon in the Santa Monica Mountains, Los Angeles County. Two occurrences are known from Coal and Gypsum Canyons in the Santa Ana Mountains, Orange County. Historical collections were taken from south of Clamshell Canyon north of Monrovia, and at the type locality (Sherman) in the Santa Monica Mountains. Because reproduction of *A. brauntonii* is stimulated by fire events, the total number of individuals varies with current fire cycles. Since the largest known populations currently comprise 20 to 30 individuals, the current total number of individuals is estimated to be fewer than 300.

Most of the habitat for *Astragalus brauntonii* is on lands in private ownership with active development proposals. Two public agencies, the California Department of Parks and Recreation (DPR) and the Conejo Open Space Conservation Authority (COSCA) have small, marginally viable populations within their jurisdictions. *Astragalus brauntonii* is threatened by urban development, alteration in fire cycles, and stochastic (random) extinction due to small population sizes and/or low numbers of individuals.

The name *Pentachaeta lyonii* (Lyon's pentachaeta) was first published by Asa Gray in 1886 (Van Horn 1973) based on a plant collected by William S. Lyon "near Palos Verdes Mountain" in Los Angeles County. David D. Keck (1958) renamed the plant *Chaetopappa lyonii*, which was subsequently recognized by Munz (1959). *Pentachaeta* is recognized as the accepted genus name based on a monograph on the taxonomic status of *Pentachaeta* and *Chaetopappa*, where morphologic, anatomic, and breeding system comparisons demonstrated that the two genera are not closely related (Van Horn 1973).

Pentachaeta lyonii is a 6 to 48 cm (2.4 to 18.9 in) tall annual member of the aster family (Asteraceae) with yellow flowers, blooming in the late spring (April–June). It is distinguished from other members of the genus by its pubescent phyllaries, larger numbers of pappus bristles, and its reddish branches originating from the upper portion of the plant. The corollas of the ray flowers are typically curled, and the leaves are narrowly linear with ciliate margins.

Pentachaeta lyonii occupies pocket grassland sites that are ecotonal with shrublands, and the edges of roads and trails. Typical species associated with *Pentachaeta* include *Chorizanthe staticoides, Calochortus catalinae, Stipa pulchra*, and annual members of the Phlox family (Thomas and Danielsen 1984). Habitat of *Pentachaeta* is characterized by a low percentage of total vegetative cover, and exposed soils that exhibit a microbiotic crust (Balnap 1990), partially assisting in reducing competition with other species. Rodents (*Perognathus* spp. and *Peromyscus* spp.) and harvester ant colonies (*Pogonomyrex* spp.) also manage the vegetative density at lower competitive levels (Thomas and Wishner 1988).

There are very few collections of *P. lyonii*; the majority were made around the turn of the century and from locations where the species has been extirpated (Palos Verdes Peninsula and Santa Catalina Island). The first record from the Santa Monica Mountains was made in 1926 from an unknown location in the Malibu Hills (NDDB 1992). It was not until 1963, when Peter Raven and Henry Thompson were collecting for their *Flora of the Santa Monica Mountains* (1966), that *P. lyonii* was again documented from the Santa Monica Mountains (that population has since been extirpated by conversion to agriculture). David Verity (Herbarium, Mildred E. Mathias Botanical Garden, University of California, Los Angeles, pers. comm., 1992) discovered the eastern-most population of *P. lyonii* in the Santa Monica Mountains at Stunt Ranch in 1977.

Pentachaeta lyonii is currently known from fewer than 20 sites in the Santa Monica Mountains and the western Simi Hills, a distance of approximately 32 kilometers (20 miles). Other sites containing potential suitable habitat are limited, reducing the likelihood of finding additional populations.

Six populations occur on public lands managed by the National Park Service (NPS), DPR, Santa Monica Mountains Conservancy (SMMC), and COSCA. Three of those sites have experienced population reductions from recreational impacts and natural events, and currently the populations consist of fewer than 100 individuals each. The remaining locations are privately-owned, all with active threats from existing or proposed development.

In southern California, the dudleya or live-forever genus (*Dudleya*) comprises species of succulent, rosetta-forming perennial plants in the stonecrop family (Crassulaceae). Members of this genus frequently inhabit rocky soils or rock outcrops, both along the coast and in interior mountain ranges. The Santa Monica Mountains represent one of the most diverse concentrations of the genus. Because of the patchy and limited distribution of rocky outcrop habitat within other plant community types, many species of *Dudleya* tend to be highly localized in their distribution.

In California, 39 species and subspecies of *Dudleya* included within 3 subgenera are currently recognized (Bartel 1991a). All four *Dudleya* species being proposed for listing herein are members of the subgenus *Dudleya*. This subgenus is separated from two others on the basis of the following characteristics: Corolla tubular, rather than petals united for less than ⅓ of their length; primary stem an above-ground caudex, rather than a subterranean corm; and leaves generally evergreen, rather than vernal (withering after the growing season).

Dudleya abramsii ssp. *parva* (Conejo dudleya) was first described in 1923 as *Dudleya parva* by Joseph N. Rose and Anstruther Davidson (Moran 1948) based on a cultivated collection made a year earlier by Mrs. J. H. Bullard from the Conejo Grade in Ventura County. No further mention was made of the plant

in other regional floras for several decades, though Munz listed *Dudleya parva* as a synonym of Echeveria lanceolata in 1935 (Moran 1948). In 1960, Moran recognized *Dudleya parva* in his treatment of the genus (Moran in Jacobsen 1960), and it was subsequently also recognized by Munz in his Flora of Southern California (Munz 1974). In 1991, Jim Bartel published the combination *Dudleya abramsii* ssp. *parva*, based on similar floral features between *D. parva* and *D. abramsii* (Bartel 1991b).

Dudleya abramsii ssp. *parva* forms a rosette of oblanceolate leaves that are 1.5 to 4 cm (0.6 to 1.6 in) long, 3 to 6 mm (1.2. to 2.4 in) wide, and, unlike most species in the subsection *Dudleya*, are vernal, withering by early summer. The inflorescence is 5 to 18 cm (2.0 to 7.1 in) long, tipped with pale yellow flowers that are often flecked with red on the keel. The roots are constricted at irregular intervals (TNC 1986).

Dudleya abramsii ssp. *parva* is known only from the western terminus of the Simi Hills west along the Montclef Ridge to the Conejo Grade, a distance of approximately 16 kilometers (10 miles). It grows at the base of scattered rock outcrops of the Conejo volcanics in grassland and coastal sage scrub habitats. A portion of the plant's habitat is on lands designated as "open space" by COSCA; the remaining habitat is privately-owned. Threats to this species include recreational activity (hiking and equestrian use); urban development; fire management and suppression activities; and overcollection.

Dudleya cymosa was first described by Charles Antoine Lemaire in 1858 as *Echeveria cymosa* based on a collection sent to him by horticulturalist Louis de Smet of Ledeburg, Belgium; however, the type locality is unknown and the type specimen has been lost (Moran 1951). In 1903, Britton and Rose renamed the taxon *Dudleya cymosa* (Moran 1951). *Dudleya cymosa* includes six subspecies that range throughout the Sierra Nevada, the cost ranges, the transverse ranges, and the northern portion of the peninsular ranges; however, the two subspecies being proposed herein have very restricted distributions.

Dudleya cymosa ssp. *marcescens* (marcescent dudleya) was first observed by Charlotte M. Hoak in 1932 in Little Sycamore Canyon in the Santa Monica Mountains (Rooksby 1936). However, the plant was not described until 1951 by Reid Moran, based on a specimen that he collected in 1948 at the same location (Moran 1951, 1957).

Dudleya cymosa ssp. *marcescens* is distinguished from other subspecies of *D. cymosa* by the habit of the rosette leaves withering in the summer. A longer flowering stalk and wider leaves distinguish *D. cymosa* ssp. *marcescens* from *D. abramsii* ssp. *parva*. The rosette leaves are 1.5 to 4 cm (0.6 to 1.6 in) long, 5 to 12 mm (2.0 to 4.7 in) wide; the caudex is 2 to 7 mm (0.8 to 2.8 in) thick, floral stems are 4 to 10 cm (1.6 to 4 in) tall; corollas are bright yellow to yellow with red markings to bright red. It typically occurs on the lower reaches of sheer volcanic rock surfaces and canyon walls adjacent to perennial streams. In most locations, the topographic relief has precluded soil formation; therefore, the dudleya may be the only vascular plant occurring in a microhabitat that is otherwise dominated by mosses and lichens (CNPS 1986).

Dudleya cymosa ssp. *marcescens* is known from 6 occurrences in the Santa Monica Mountains, from Hidden Valley to Malibu Creek State Park, a distance of 24 kilometers (15 miles). Estimates of the number of individuals at each occurrence are between 50 and 200 plants; the total number of individuals is estimated to be fewer than 1000. The microhabitat requirements of the plant limit the possibility that any additional large populations will be found. Half the populations occur on lands owned and managed by DPR; one location occurs on a NPS administrative easement; the remaining populations are on lands in private ownership. On DPR lands, the plant is threatened by recreational use, particularly rock climbing and fire. At least one of the populations located on private land is threatened with development.

The distinct variation in attributes of *Dudleya cymosa* ssp. *marcescens* between sites has been commented upon (Kei Nakai, Herbarium, Mildred E. Mathais Botanical Garden, University of California, Los Angeles, pers. comm., 1992; Mark Dodero, graduate student San Diego State University, pers. comm., 1992). Nakai believes that a small population at Rattlesnake Canyon in Santa Barbara County shares characteristics with this subspecies. Bartel (1992b) has made a tentative determination of *D. cymosa* ssp. *marcescens* for a population in the Santa Ana Mountains, Orange County. Should these additional populations prove to be marcescent dudleya, this will not alter the proposed status, due to the existing threats and extremely limited population numbers.

Dudleya cymosa ssp. *ovatifolia* (Santa Monica Mountains dudleya) was first described as *Dudleya ovatifolia* by Britton in 1903 based on a collection made by H.M. Hall the previous year (Moran 1951). The type locality is listed as "Sierra Santa Monica," thought to be Topanga Canyon, Los Angeles County (Moran 1951). The species was subsequently recognized as *Cotyledon ovatifolia* and *Echeveria ovatifolia* (Fedde 1904 and Berger 1930 respectively in Moran 1951) when different generic concepts were used in the family Crassulaceae. In 1957, Moran published the new combination *Dudleya cymosa* ssp. *ovatifolia* (Moran 1957).

In 1983, Nakai considered a form found near Agoura, Los Angeles County, as a distinct race of *Dudleya cymosa* ssp. *ovatifolia* and 4 years later published the new combination *Dudleya cymosa* ssp. *agourensis* to refer to this form (Nakai 1987). Nakai distinguished the new subspecies from the other on the basis of number and shape of rosette leaves, pedicel length, and degree of spreading in petal apices. Bartel (1992a) considers that these characters exhibit a high degree of variability and are taxonomically unreliable; therefore, in his revision of the genus for the Jepson Manual he has retained the "Agoura" form within *Dudleya cymosa* ssp. *ovatifolia*. The taxon being proposed for listing herein includes *Dudleya cymosa* ssp. *agourensis* as described by Nakai.

Like most taxa in the section *Dudleya*, *D. cymosa* ssp. *ovatifolia* has rosette leaves that are evergreen rather than withering in the summer. Leaves are 2 to 5 cm (0.8 to 2.0 in) long, 1.5 to 2.5 cm (0.6 to 1.0 in) wide; floral stems are 4 to 15 cm (1.6 to 6.0 in) tall; corollas are pale yellow (Moran 1957).

Dudleya cymosa ssp. *ovatifolia* is found scattered along exposed north-facing slopes of the Santa Monica Mountains from near Westlake Village to Agoura ("Agoura" form), and in deep canyon bottoms along lower Malibu Creek and Topanga Creek. Fewer than 10 occurrences of the dudleya have been reported, each consisting of no more than several hundred individuals. While future surveys may locate additional occurrences of the "Agoura" form along the northern slopes of the Santa Monica Mountains, the limited habitat available makes it unlikely that the total number of individuals will exceed several thousand.

Material from a collection taken from Modjeska Canyon on the western flank of the Santa Ana Mountains, Orange County, in 1951 by Verity (pers. comm., 1992) was included in Uhl and Moran's cytotaxonomic treatment of *Dudleya* as *Dudleya ovatifolia* (Uhl and Moran 1953). This population consists of between several hundred and a thousand individuals and represents a range disjunction of approximately 100 kilometers (60 miles) to the southeast of the Santa Monica Mountains. Constance

Rutherford and Fred Roberts (Fish and Wildlife Service botanists) visited the site in June 1992 and were unable to locate any living material). Bartel (1992b) has made a tentative determination of the only known voucher for this population as *Dudleya cymosa* ssp. *marcescens*. Subsequent determination of this population as either *D. cymosa* ssp. *marcescens* or *D. cymosa* ssp. *ovatifolia* will not affect the threatened status of this *Dudleya* complex.

Populations of *Dudleya cymosa* ssp. *ovatifolia* in Malibu and Topanga Canyons occur largely on lands owned and managed by DPR; one of these occurrences is relatively inaccessible; however, another occurrence is directly adjacent to private property that has recently been bulldozed for development access (Suzanne Goode, Resource Ecologist, California Department of Parks and Recreation, Santa Monica Mountains, pers. comm., 1992). Two occurrences are on lands designated as open space by COSCA; the remaining occurrences are on several privately owned properties zoned for commercial and residential development.

Dudleya verityi (Verity's dudleya) occupies an extremely limited portion of the lower Conejo Grade, Ventura County. It was originally collected in 1944 by Reid Moran, who treated it as *Dudleya caespitosa*. In their 1966 *Flora of the Santa Monica Mountains*, Peter Raven and Henry Thompson treated it as *Dudleya farinosa* (Raven and Thompson 1966). In 1983, Nakai described it as *Dudleya verityi* (Nakai 1983).

Dudleya verityi is unique among those being discussed herein in that it forms multiple rosettes—as many as 100 to a colony. Rosette leaves are 2 to 5 cm (0.8 to 2.0 in) long and 5 to 8 mm (0.2 to 0.4 in) wide; floral stems are 5 to 15 cm (2.0 to 5.9 in) tall; corollas are lemon yellow with petal tips recurved to 90 degrees.

Dudleya verityi is extremely limited in distribution, occurring in a narrow band 6.4 km (4 miles) in length along the lower slopes of Conejo Mountain. Historically, the lower slopes of Conejo Mountain have been the site for quarrying of construction-grade rock. There are abandoned, active, and proposed quarry operations within the distribution of *D. verityi*. The location with the highest concentration of *D. verityi* is proposed for excavation to widen a flood control channel (Envicom 1992). The majority of the distribution of *D. verityi* is on privately-owned land in a region with rapidly increasing development. The populations that are owned by a public agency (Ventura County Flood Control District) are threatened with extirpation from flood control activities.

Previous Federal Action

Federal government actions on these six plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, and presented to Congress on January 9, 1975, recommended *Astragalus brauntonii* and *Dudleya parva* (now treated as *Dudleya abramsii* ssp. *parva*) for threatened status, and *Dudleya cymosa* ssp. *marcescens* and *Pentachaeta lyonii* for endangered status. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and of the Service's intention thereby to review the status of the plant taxa named therein. The above four taxa were included in the July 1, 1975, notice. The Service published a proposal in the June 16, 1976, **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Dudleya cymosa* ssp. *marcescens* and *Pentachaeta lyonii* were included in the June 16, 1976, **Federal Register**.

General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17909). The Endangered Species Act amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796) the Service published a notice of withdrawal of the June 6, 1976, proposal along with four other proposals that had expired.

The Service published an updated notice of review for plants in the December 15, 1980, **Federal Register** (45 FR 82480). This notice included *Astragalus brauntonii, Dudleya cymosa* ssp. *marcescens, Dudleya parva,* and *Pentachaeta lyonii* as category 1 candidate species (species for which data in the Service's possession are sufficient to support proposals for listing). On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Dudleya parva* was included in the 1983 supplement and the 1985 revision as a category 1 candidate species. *Astragalus brauntonii, Dudleya cymosa* ssp. *marcescens,* and *Pentachaeta lyonii* were included in both of these revisions as category 2 species (species for which data in the Service's possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). *Dudleya verityi* was included for the first time in the 1983 supplement, and again in the 1985 revision, as a category 2 species. On February 21, 1990 (55 FR 6184), the plant notice was again revised, and *Dudleya parva* and *Pentachaeta lyonii* were included as category 1 taxa, while *Astragalus brauntonii, Dudleya cymosa* ssp. *marcescens,* and *Dudleya verityi* were included as category 2 taxa.

Recent review of the threats facing *Astragalus brauntonii, Dudleya cymosa* ssp. *marcescens,* and *D. verityi* throughout their ranges, as well as the available status information on these three species, resulted in their elevation to category 1 candidate status and indicates that listing as endangered for *A. brauntonii,* and threatened for *D. cymosa* ssp. *marcescens* and *D. verityi* is warranted at this time. *Dudleya cymosa* ssp *ovatifolia* has no previous status as a Federal candidate. However, during the course of this review, it also came to the Service's attention, through information supplied by the California Department of Fish and Game's Natural Diversity Data Base, the California Native Plant Society, and private botanical consultants, that due to the limited range of *D. cymosa* ssp. *ovatifolia* and the similar threats that this taxon is facing, that listing as threatened is warranted at this time. As mentioned previously, *Dudleya abramsii* ssp. *parva* (as *D. parva*), and *Pentachaeta lyonii* are category 1 candidates; available information supports the listing of *D. a.* ssp. *parva* as threatened and *P. lyonii* as endangered.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Astragalus brauntonii, Dudleya parva, Dudleya cymosa* ssp. *marcescens,* and *Pentachaeta lyonii* because the 1975 Smithsonian report was accepted as a petition. In October 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991 the Service found that the petitioned listing of these taxa was warranted, but that the listing of these

species was precluded by other pending proposals of higher priority. Publication of this proposal constitutes the warranted finding for these taxa, as well as for *Dudleya verityi* and *Dudleya cymosa* ssp. *ovatifolia*.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus brauntonii* Parish (Braunton's milk-vetch), *Pentachaeta lyonii* Gray (Lyon's pentachaeta), *Dudleya cymosa* (Lem.) Britt. & Rose ssp. *marcescens* Moran (marcescent dudleya), *Dudleya cymosa* (Lem.) Britt. & Rose ssp. *ovatifolia* (Britt.) Moran (Santa Monica Mountains dudleya), *Dudleya abramsii* Rose spp. *parva* (Rose & Davids) Bartel (Conejo dudleya), and *Dudleya verityi* Nakai (Verity's dudleya) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Although steep terrain typifies *Astragalus brauntonii* habitat, several populations have been extirpated by urban development. Within the last 10 years, one site has been extirpated (Monrovia) and two others have incurred significant losses related to development (Santa Ynez Canyon and Simi Hills). Another location has recently been approved for development by the City of Anaheim (Coal Canyon). There are no known populations that are not experiencing primary or secondary threats to survival as a result of development pressure. Currently, only a small portion of the Santa Ynez Canyon population occurs on public land (DPR).

The City of Anaheim has recently approved a development project that will eliminate 50 percent of the population in the Santa Ana Mountains (Environmental Impact Report (EIR) 302 for Mountain Park Specific Plan, March 1, 1991; and EIR 298 for Cypress Canyon, February 15, 1991). The County of Ventura has recently approved a development that will eliminate a substantial portion of the *Astragalus brauntonii* habitat in the Simi Hills without adopting viable mitigation measures presented in the EIR (EIR State Clearinghouse No. 89010251, Oak Park Zone III, January 1991). A previously approved development has destroyed the majority of *A. brauntonii* habitat in Santa Ynez Canyon (Goode, pers. comm., 1992). Six of the eight extant populations are currently threatened by development.

Varied and controversial fire management policies have been implemented in southern California, generally without any clear understanding of their long-term ecological effects. Because *Astragalus brauntonii* requires periodic fire to maintain its continued existence, its persistence is compromised by the current practice of suppressing all wildland fires. Heavy equipment, such as bulldozers brought in to extinguish wildfires, are an additional threat to the species. The use of prescribed fire as a management option will be difficult because approved development is situated extremely close to "protected" populations of *Astragalus brauntonii* (D. Tony Gross, Environmental Specialist, National Park Service, pers. comm., 1992). Current fire management prescriptions include wet season burns or crush and burn techniques, which are questionable management tools for maintenance of sensitive species.

Pentachaeta lyonii continues to be affected by urban development. The Lake Sherwood Golf Course and the Ronald Reagan Presidential Library, both recently approved and developed, have eliminated substantial populations of *P. lyonii*. The Lake Eleanor Hills Project has been approved and will eliminate a population of several thousand *P. lyonii*. This plant is associated with grassland habitats and terrains that present very few engineering challenges and, as is often the case, a project proponent has invested time and money in project design prior to resource inventory. Past attempts to avoid or compensate for impacts have produced conditions that are not favorable for the long-term maintenance of the populations. Reserve sites have been designed without adequate buffer zones to maintain site integrity. Currently a 15 meter (50 ft) buffer is required by local permitting agencies. This inadequate buffer size will prevent the necessary use of prescribed fire as a management tool for population maintenance. Inadequate buffer designs have resulted in changes in surface and subsurface hydrology, competition with non-native species, loss of habitat for potential pollinators, and elimination of natural fire cycles.

Sites that have been set aside as mitigation areas, with seed and soil distributed from previously extant populations of *Pentachaeta lyonii*, have failed to successfully reestablish viable populations (Carl Wishner, Biologist, Envicom Corp., pers. comm., 1992).

Dudleya cymosa ssp. *marcescens* is threatened with residential development at one location (Mitigated Negative Declaration, Project No. 911 76, Los Angeles County).

Portions of populations of *Dudleya cymosa* ssp. *ovatifolia* and *Dudleya abramsii* ssp. *parva* have been extirpated by development in the Cities of Agoura Hills and Thousand Oaks. The majority of the distribution of these two plants is on private lands occurring in a region with increasing development pressures. Weed abatement operations have been carried out along roadsides where *Dudleya cymosa* ssp. *ovatifolia* occurs. These involved scraping with a skiploader, and destroyed several hundred individuals. *Dudleya abramsii* ssp. *parva* is also affected by trampling and off-road vehicle activities on public and private lands.

Dudleya verityi reaches its greatest density on cliff habitats at the base of Conejo Mountain where it would be extirpated by a plan to widen a flood control channel that has been approved for construction by the County of Ventura. Although the Ventura County Flood Control District has obtained a Mitigated Negative Declaration based on a salvage and reintroduction experiment, the potential success of the mitigation is questionable. Experiments conducted to evaluate reintroduction techniques have a reported failure of approximately 50 percent within the first year of monitoring (Lockard 1991).

B. Overutilization for commercial, recreational, scientific, or educational purposes. Some taxa have become vulnerable to collecting by curiosity seekers as a result of increased publicity following publication of a listing proposal. Overutilization is probably not applicable to *Astragalus brauntonii* or *Pentachaeta lyonii*. However, because of the milk-vetch's large stature and striking appearance, it may be vulnerable to casual collection, particularly along firebreaks adjacent to areas used for recreational activities. Virtually all members of the genus *Dudleya* have been subject to collection, owing to their unique appearance and their ability to be transplanted. The four *Dudleya* taxa that are subjects of this rule have all been collected by professional horticulturists and most likely by amateur collectors and gardeners as well.

C. Disease or predation. Neither disease nor predation are known to be a factor for any of the taxa except *Pentachaeta lyonii*. As part of a program to mitigate the loss of a substantial

population of *Pentachaeta lyonii*, plants grown from seed at Rancho Santa Ana Botanic Gardens were severely damaged by a white fly infestation (Orlando Mistretta, endangered plant specialist, Rancho Santa Ana Botanic Garden, pers. comm., 1992). During a field survey, Rutherford observed substantial dieback of caudex bases of *Dudleya verityi* on the west slope of Conejo Mounain from unknown causes.

D. The inadequacy of existing regulatory mechanisms. The California Fish and Game Commission has listed *Dudleya cymosa* ssp. *marcescens* as rare and *Pentachaeta lyonii* as endangered under the Native Plant Protection Act (NPPA) (Div. 2, chapter 10 sec. 1900 et seq. of the California Fish and Game Code) and the California Endangered Species Act (CESA) (Div. 3, chapter 1.5 sec. 2050 et seq.). *Astragalus brauntonii, Dudleya abramsii* ssp. *parva, Dudleya cymosa* ssp. *ovatifolia*, and *Dudleya verityi* are included on List 1B of the California Native Plant Society's *Inventory* (Smith and Berg 1988), indicating that, in accordance with sec. 1901, chapter 10 of the California Department of Fish and Game Code, they are eligible for State listing. Although NPPA and CESA both prohibit the "take" of State listed plants (chapter 10 sec. 1908 and chapter 1.5 sec. 2080), these existing statutes appear inadequate to protect against the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State listed plant grows on his or her property, the Fish and Game Code requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (chapter 10 sec. 1913).

Local lead agencies empowered to uphold and enforce the regulations of the California Environmental Quality Act (CEQA) have made determinations that have or will adversely affect *Pentachaeta lyonii, Astragalus brauntonii, Dudleya abramsii* ssp. *para*, and *Dudleya verityi*. Mitigation measures used to condition project approvals are essentially experimental and fail to adequately guarantee protection of substainable populations. Relocation attempts have failed, and project designs have failed to provide an adequate buffer zone around populations to permit long-term viability at those locations.

While the public agencies that manage lands with occurrences of these and other sensitive plant species have a mandate to protect the resources, none of those agencies have specific management plans for the species in this proposal. When the Santa Monica Mountains National Recreation Area (SMMNRA) was authorized by Congress in 1978, it was given the authority to comment on projects being proposed within the "sphere of influence" of the SMMNRA planning area. However, such comments made by the SMMNRA are not binding upon the project proponent.

Public agencies reviewing requests for large development projects are required by CEQA to conduct surveys of the biological resources of a project site. Sensitive species located during surveys are to be reported to the Natural Diversity Data Base (NDDB) which is maintained by the California Department of Fish and Game's Natural Heritage Division. In actuality, however, if the project proponent considers the information proprietary, consulting biologists (hired by the project proponents to prepare public documents) may not report to the NDDB. Project proponents may also elect to ignore the results of the surveys if the occurrences of sensitive species are viewed as a constraint on project design. This further aggravates the endangerment of those species.

COSCA was jointly established by the Conejo Open Space Committee and the City of Thousand Oaks to set aside lands for parks, wildlife corridors, and recreation. Lands included in the regional parks system have been rezoned to allow for development in the past; open space designation of such lands is not binding.

E. Other natural or manmade factors affecting its continued existence. The grasslands of California have been affected by grazing for 200 years, resulting in a type-conversion from native, annual and perennial grass and herb species to aggressive, non-native annual species.

The fire management policies of the last 200 years have been based on fire exclusion, which has disrupted natural processes, causing an imbalance in ecosystem functioning in grasslands, coastal sage scrub, chaparral, and oak woodlands. The habitats of most of California are highly adapted to periodic fires. The reduction of fire frequency has resulted in an accumulation of fuels in woody vegetation where fire intensity and duration are now more severe (O'Leary 1990).

The effects of air pollution on coastal sage scrub in the Santa Monica Mountains has been documented as a threat to the viability and functioning of the habitat (O'Leary 1990).

At least two populations of *Pentachaeta lyonii* have been eliminated as a result of natural conditions, specifically gophertilling of the soil, which facilitates the growth of competitive, non-native weeds. Stable populations of *P. lyonii* occur in sites that have a crusty soil surface that results in lower spatial competition from non-native annual grasses. When the crust is broken, the aggressive non-native annual weeds have displaced *P. lyonni*.

Human-caused disturbance, such as roads, trails, and minor landform alterations, has functioned to provide a zone where the competition from aggressive, non-native annual weeds is reduced, thereby allowing *P. lyonii* to grow. This artificial habitat contains a zone of highly compacted soils devoid of vegetation graduating to a zone of high vegetative cover; in between is a narrow strip of habitat suitable for *P. lyonii*. This habitat modification cannot be expected to sustain natural, viable populations of this species. Natural openings in the chaparral are maintained in part by a mosaic of soil types and periodic fires. Land uses adjacent to populations of *P. lyonii* that are not designed to be compatible with periodic fires will place additional stress on the long-term integrity of sustainable populations of this plant.

The populations of *Pentachaeta lyonii* on parklands owned and managed by NPS have been reduced by recreational trampling. Those populations were fenced in 1988 to prevent further impacts, but have not recovered (T. Thomas, pers. obs., 1992).

Dudleya cymosa ssp. *marcescens* is adversely affected at four sites by recreational activities, primarily rock climbing. Plants are apparently destroyed through rapelling and bouldering activities. Fire has been observed to severely reduce population densities and destroy the moss substrate that *D. cymosa* ssp. *marcescens* requires (Dodero, pers. comm., 1992).

By virtue of the limited number of individuals and/or range of the existing populations, at least three (*Astragalus brauntonii, Dudleya abramsii* ssp. *parva, Dudleya verityi*) and possibly all of the taxa proposed herein are threatened with stochastic extinction. Genetic viability is reduced in small populations, making them vulnerable to extinction by a single human-caused or natural event. The potential for extinction owing to small population size is exacerbated by natural causes such as drought, fire, rock slides, an outbreak of insects, or disease. The whitefly infestation that destroyed a

living collection of *Pentachaeta lyonii* at Rancho Santa Botanic Garden is indicative of the impact that single events could have on small and/or isolated populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Astragalus brauntonii* and *Pentachaeta lyonii* as endangered, and *Dudleya cymosa* ssp. *marcescens, Dudleya cymosa* ssp. *ovatifolia, Dudleya abramsii* ssp. *parva,* and *Dudleya verityi* as threatened. The six taxa are individually threatened by one or more of the following: habitat alteration and destruction resulting from urban development; recreational activities; alteration of natural fire cycles within the coastal sage scrub, chaparral, grassland, and oak woodland communities; drought stress; and over-collection. The limited distribution of habitat for certain taxa (i.e., *Dudleya verityi*) and their small population size (i.e., *Astragalus brauntonii*) makes them particularly vulnerable to extinction from stochastic events.

Astragalus brauntonii and *Pentachaeta lyonii* are in danger of extinction throughout all or a significant portion of their ranges, thus they fit the definition of endangered as defined in the Act. The Service has determined that threatened status rather than endangered status is appropriate for *Dudleya abramsii* ssp. *parva, Dudleya cymosa* ssp. *marcescens, Dudleya cymosa* ssp. *ovatifolia,* and *Dudleya verityi* because these taxa are restricted to habitats that are somewhat less vulnerable to the threat of development. Therefore, although in need of protection as threatened species, these species are not yet in danger of extinction throughout all or a significant portion of their range and hence do not now qualify as endangered species. Certain populations of *Dudleya cymosa* ssp. *marcescens* and *Dudleya cymosa* ssp. *ovatifolia* occurring on lands owned and managed by DPR are protected from destruction of habitat from development. However, habitat degradation due to recreational activities, such as rock climbing, continues. Management activities, such as the establishment of a regional parks system by COSCA have somewhat reduced the potential for habitat destruction for *Dudleya abramsii* ssp. *parva.* In the case of *Dudleya verityi,* the County of Ventura is currently undertaking studies to determine the most feasible portion(s) of Conejo Mountain for acquisition as permanent open space, as a preliminary step toward entering into a Mitigation Agreement with the California Department of Fish and Game. This action has been deemed necessary in order to compensate for a proposed take of this species in connection with a flood control project on Conejo Creek. Despite these management activities, occurrences of these four taxa receive no protection where they occur on private lands, and current ongoing efforts to secure additional protection for certain sites have yet to be achieved. These four taxa appear to be likely to become in danger of extinction within the foreseeable future. Critical habitat is not being proposed for these taxa for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. As discussed under Factor B in the Summary of Factors Affecting the Species, the four *Dudleya* species are particularly threatened by taking, an activity difficult to enforce against, and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging-up, or damaging or destroying on any other lands in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps required in a proposal for critical habitat could increase the degree of threat to the four *Dudleya* from take or vandalism, and, therefore, could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All Federal and State agencies involved and local planning agencies have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and the application of the jeopardy standard through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time; such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals.The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Five of the taxa, *Astragalus brauntonii, Dudleya cymosa* ssp. *marcescens, Dudleya cymosa* ssp. *ovatifolia, Dudleya verityi,* and *Pentachaeta lyonii* occur within the current boundaries of the Santa Monica Mountains National Recreation Area. National Park Service activities that could potentially affect these taxa and their habitats are primarily recreational activities including hiking, equestrian use, and rock climbing. Urban development projects that are occurring on private lands may need permits from Federal agencies, such as section 404

permits from the U.S. Army Corps of Engineers. A proposed radio tower on Montclef Ridge would ultimately require a permit to operate from the Federal Communications Commission. Several private parcels are currently undergoing transfer of ownership at the direction of the Federal Deposit Insurance Corporation.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants, and at 50 CFR 17.71 and 17.72 for threatened plants set forth a series of general prohibitions and exceptions that apply to all threatened or endangered plants. With respect to the two plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law.

The four *Dudleya*, proposed herein to be listed as threatened, would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E); 50 CFR 17.71). Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703) 358–2093.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the Office Supervisor of the Ventura Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Authors

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) for plants by adding the following, in alphabetical order under the plant families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Asteraceae—Aster family:						
*	*	*	*	*	*	
Pentachaeta lyonii	Lyon's pentachaeta	U.S.A. (CA)	E	—	NA	NA
*	*	*	*	*	*	
Crassulaceae—Stonecrop family:						
Dudleya abramsii ssp. *parva*	Conejo dudleya	U.S.A. (CA)	T	—	NA	NA
*	*	*	*	*	*	
Dudleya cymosa ssp. *marcescens.*	Marcescent dudleya	U.S.A. (CA)	T	—	NA	NA
*	*	*	*	*	*	
Dudleya cymosa ssp. *ovatifolia.*	Santa Monica Mountains dudleya	U.S.A. (CA)	T	—	NA	NA
*	*	*	*	*	*	
Dudleya verityi	Verity's dudleya	U.S.A. (CA)	T	—	NA	NA
*	*	*	*	*	*	
Fabaceae—Pea family:						
*	*	*	*	*	*	
Astragalus brauntonii	Braunton's milk-vetch	U.S.A. (CA)	E	—	NA	NA

Dated: November 6, 1992.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–28947 Filed 11–27–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Grassland Plants From the Central Valley of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list two plants, *Pseudobahia bahiifolia* (Hartweg's golden sunburst) and *Pseudobahia peirsonii* (San Joaquin adobe sunburst) as endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). The two plants occur primarily in nonnative grasslands in the eastern and southeastern portions of the San Joaquin Valley, but at a few sites they occur at the ecotone between the nonnative grassland and blue oak woodland communities. Both plants have been variously affected and are threatened by one or more of the following: conversion of native habitat for agriculture (ag-land development), urbanization, overgrazing, competition from alien plants, transmission line maintenance, recreational activities, water projects, mining, highway projects, and other anthropogenic actions. Potential threats include herbicide application to control herbaceous and weedy taxa. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act for both plants. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 29, 1993. Public hearing requests must be received by January 14, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Sacramento Field Office, Field Supervisor, Wayne S. White, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jan Knight (See **ADDRESSES**) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

Pseudobahia bahiifolia (Hartweg's golden sunburst) and *Pseudobahia peirsonii* (San Joaquin adobe sunburst) are endemic to nonnative grassland and grassland-blue oak woodland community ecotone of the southern Sacramento Valley and San Joaquin Valley of California. These two valleys together comprise the Central Valley. The prehistoric composition of the native grasslands and adjoining plant communities likely will remain a mystery (Brown 1982), although numerous authors have speculated as to the composition of the "pristine" flora of the Central Valley (Clements 1934, Munz and Keck 1950, Biswell 1956, Twisselmann 1956, White 1967, McNaughton 1968, Bakker 1971, Ornduff 1974, Heady 1977, Bartolome and Gremmill 1981, Wester 1981). Alien annual grasses and forbs invaded the low elevation plant communities of California during the days of the Franciscan missionaries in the 1700's. These alien grasses now account for up to 80 percent or more of the floral composition of the grasslands of California (Heady 1956). The alien grasses have outcompeted the native flora throughout much of California because these exotics germinate in late fall prior to the germination of the native forbs, including the two sunflower species discussed herein, *P. bahiifolia* and *P. peirsonii*. Each species, however, occurs in a distinctive microhabitat within the larger matrix of alien annual grassland. *P. bahiifolia* prefers the top of "Mima" mound topography where the grass cover is minimal (Stebbins 1991). Vernal pools, an increasingly rare California landform, are often interspersed with the Mima mounds (Stebbins 1991). *P. peirsonii* prefers heavy adobe clay soils where the water retention properties are high.

Karl Hartweg, a German botanist, first collected *Pseudobahia bahiifolia* on Cordua's farm near the junction of the Yuba and Feather Rivers in Yuba County, California, in April of 1847. George Bentham described the species as *Monolopia bahiaefolia* in 1849. Edward L. Greene placed the species in the genus *Eriophyllum* in 1897. In 1915, Per Rydberg split out the genus *Pseudobahia* on the basis of leaf and floral morphology and formed the new combination *Pseudobahia bahiaefolia*. Dale Johnson (1978) recognized an orthographic error in the specific epithet *bahiaefolia* and used *P. bahiifolia* in his doctoral dissertation. For further clarification on this orthographic issue, see Article 73.8 of The International Code of Botanical Nomenclature.

Pseudobahia bahiifolia, a member of the sunflower or aster family (Asteraceae), is one of three species of *Pseudobahia* in the subtribe Eriophyllinae of the tribe Helenieae (Johnson 1978). The species is a few-branched annual about 6–15 centimeters (cm) (2–6 inches) tall covered throughout with white, wooly hairs. Its leaves are narrow, alternate, three-lobed or entire with three blunt teeth at apex, and about 1–2 cm (0.4–0.8 inches) long. The bright yellow flower heads, produced in March or April, are solitary at the ends of the branches. The ray flowers are equal in number to the sub-floral bracts (phyllaries), and there is no pappus. *P. bahiifolia* is distinguished from other members of the genus by having the largest leaves entire or three-lobed versus once- or twice-pinnatifid as in *P. heermanii* and *P. peirsonii*. The range of *P. bahiifolia* is strongly correlated with the distribution of the Amador and Rocklin soil series (Stebbins 1991). Both series generally consist of shallow, well-drained, medium-textured soils that exhibit strong Mima mound microrelief (Stebbins 1991). Such topography is characterized by a series of mounds that may range from 30 cm to 2 meters (1.0–6.6 feet) in height and 3–30 meters (10–98 feet) in basal diameter interspersed with shallow basins that may pond water during the rainy season (Bates and Jackson 1987). *P. bahiifolia* nearly always occurs on the north- or northeast-facing slopes of the mounds, with the highest plant densities on upper slopes with minimal grass cover (Stebbins 1991). A variant of one of the two series is concentrated near Friant in Madera County and contains large quantities of pumice, which is mined for use as an industrial binder and in making concrete blocks (Chesterman and Schmidt 1956). According to a status survey by John Stebbins (1991), *P. bahiifolia* may have existed throughout the Central Valley of California from Yuba County in the north to Fresno County in the south, a range of approximately 322 kilometers (km) (200 miles). The plant presently occurs only in the eastern San Joaquin Valley in Stanislaus, Madera, and Fresno Counties, a range of approximately 153 km (95 miles). Although population numbers of annual species are highly variable from year to year, 11 of 16 extant populations are very small, and numbered fewer than 200 plants during the 1990 field season (Stebbins 1991). Conversion of native habitat for agriculture (ag-land development), competition from alien plants, overgrazing, mining, urbanization, and other anthropogenic actions threaten the existence of *P. bahiifolia*.

In March 1925, Philip Munz first collected specimens of *Pseudobahia peirsonii* in a grassy flat near Ducor in Tulare County, California. Until Munz described *P. peirsonii* as a species in 1949, specimens had been referred to *Monopolia, heermani, Eriophyllum heermani*, or *Pseudobahia heermani*, depending on the prevailing generic treatment of the time (Stebbins 1991). Sherwin Carlquist (1956) and Johnson (1978) supported Munz's taxonomic position with additional morphological and cytological evidence.

Pseudobahia peirsonii, like its congener, is a member of the Asteraceae and is an erect annual herb about 1–6 decimeters (dm) (4–18 inches) tall loosely covered with white, wooly hairs. Its alternate leaves are twice divided into smaller divisions (bipinnatifid), triangular in outline, and 2–6 cm (1–3 inches) in length. Flower heads, which appear in March or April, are solitary at the ends of the branches. The ray flowers are bright yellow and equal in number to the sub-floral bracts (phyllaries) and about 3 mm (0.1 inches) long; the disk flowers are numerous; and there is no pappus. The dry fruits, called achenes, are black. *P. peirsonii* is distinguished from *P. heermani* by its phyllaries, which are united only at the base versus united to half their length in the latter species. *P. peirsonii* occurs only on heavy adobe clay soils over a range of approximately 193 km (120 miles) through Madera, Fresno, and Kern Counties. Stebbins (1991) speculates that the edaphic restriction is associated with the ability of these clay soils to retain moisture longer into the summer dry season, as average annual precipitation in that region of the San Joaquin Valley is less than 25 cm (10 inches). These soils are mainly distributed in the valleys and flats near the foothills of the southeastern San Joaquin Valley (Stebbins 1991). *Avena fatua, Brassica kaber, Bromus mollis, Bromus rubens*, and *Erodium cicutarium*

are some of the common nonnative associates of *P. peirsonii* (Stebbins 1991). The intrusive and aggressive characteristics of herbaceous weedy taxa appear to be detrimental to habitat quality of this rare plant. Six of 17 known occurrences are small and number fewer than 250 plants (Stebbina 1991). Highway projects, urbanization, recreational activities, ag-land development, overgrazing, water projects, competition from allen plants, transmission line maintenance, and other anthropogenic actions threaten *P. peirsonii*.

Federal government actions on these two plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. The report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In the report, *Pseudobahia bahiifolia* was included as a threatened species and *Pseudobahia peirsonii* as an endangered species.

On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3) of the Act), and its intention thereby to review the status of the plant taxa named therein. *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* were included in that notice. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *P. bahiifolia* and the *P. peirsonii* were included in the June 16, 1976 **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four proposals that had expired due to a procedural requirement of the 1978 Amendments.

On December 15, 1980, the Service published a revised notice of review of native plants in the **Federal Register** (45 FR 82480). *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* were included as category 1 candidate species, meaning that the Service had in its possession substantial information on biological vulnerability and threats to support preparation of a listing proposal. On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to the 1980 notice of review. This supplement treated *P. bahiifolia* and *P. peirsonii* as category 2 species, meaning that the data in the Service's possession indicate listing may be appropriate, but that substantial data on biological vulnerability and threats are not currently known or on file to support preparation of a proposed rule. The plant notice was again revised on September 27, 1985 (50 FR 39526). Both species remained in category 2. In the February 21, 1990, revision of the plant notice (55 FR 6184), *P. bahiifolia* remained as a category 2 candidate species and *P. peirsonii* returned to category 1 status. *P. bahiifolia* is being included in this proposal after a review of existing information indicated that the species should be elevated to category 1 status and that listing is warranted.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *P. bahiifolia* and *P. peirsonii* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(c)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pseudobahia bahiifolia* (Bentham) Rydberg (Hartweg's golden sunburst) and *Pseudobahia peirsonii* Munz (San Joaquin adobe sunburst) are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

Pseudobahia bahiifolia and *Pseudobahia peirsonii* are restricted to specific habitats in nonnative valley grassland and occasionally the grassland-woodland ecotone of the San Joaquian Valley and neighboring foothills. The primary threat facing the two plants is the ongoing and threatened destruction, and the adverse modification of their habitat. The habitat of the two plants is being threatened or eliminated by one or more of the following: Ag-land development, urbanization, overgrazing, competition from alien plants, water projects, mining, highway projects, recreational activities, transmission line maintenance, and other anthropogenic actions.

Pseudobahia bahiifolia is known from 16 sites in Fresno, Madera, and Stanislaus Counties, according to a status survey by Stebbins (1991). Habitat alteration from one or more of these activities threatens the species in the three countries: Ag-land development, urbanization, water projects, and mining. *P. bahiifolia* is known from two localized areas in the eastern portion of the San Joaquin Valley: Friant region in Fresno and Madera Countries, and La Grange region in Stanislaus County. One population in Fresno County grows on three parcels, one of which is jointly managed by the U.S. Bureau of Reclamation and The Nature Conservancy whereas the remaining two parcels are in private ownership. The other Fresno County population occurs entirely on private lands. Both privately-held Fresno County occurrences are threatened by urbanization associated with a potential "Millertown New Town" development, the Friant Redevelopment Plan, overgrazing, and water tank access and maintenance (Stebbins 1991). Two historical occurrences have been eliminated or seriously degraded in Madera County by ag-land development, mining, unauthorized dumping, and overgrazing. The only two remaining occurrences are threatened

by urbanization, road widening, pumicite mining, and off-highway vehicle use (Stebbins 1991). The largest population, containing approximately 20,000 plants, is located near a quarry owned by the California Industrial Minerals Company. Quarry expansion and off-road vehicle use associated with quarry operations may eliminate or damage this population, which likely represents a fragment of an even larger population that once occurred west of Cottonwood Creek and east of State Route 145, north of the San Joaquin River at Friant Bridge (Stebbins 1991). In Stanislaus County, three of the remaining 12 occurrences are variously threatened by off-highway vehicle use, overgrazing, potential quarry expansion, urbanization, potential road-widening, potential development of the site for a new University of California (UC) campus, and ag-land development (Stebbins 1991). Urbanization and ag-land development eliminated the type locality in Yuba County, the only documented occurance of this plant in the Sacramento Valley. The species likely was extirpated in the area between Stanislaus and Yuba Counties before other collections were documented, as valley soils in this area were rapidly cultivated in the late 1800's (Stebbins 1991).

Pseudobahia peirsonii is known from 17 sites in Fresno, Tulare, and Kern Counties according to Stebbins (1991). Habitat alteration from one or more of the following factors threatens *P. peirsonii:* Urbanization, transmission line maintenance, ag-land development, and water projects. These activities have reduced the species to a small number of isolated colonies that occur in three areas in three counties in the southeastern portion of the San Joaquin Valley: Round Mountain-Wahtoke region in Fresno County, Porterville-Visalia region in Tulare County, and Pine Mountain-Woody region in Kern County. Ag-land development, urbanization, overgrazing, flooding and shore erosion by Lake Success, recreational activities, and water projects have extirpated 13 historical occurrences, 11 of which were in Tulare County and 2 of which were in Kern County. The two largest extant population sites are found in Fresno County. The largest, containing approximately 5,000 plants spread over 1.2 hectares (3 acres), is threatened by a large, residential project (Quail Lakes) and an adjacent, recreational water park (Clovis Lakes). The project plans consist of a golf course, lakes, and about 400 housing units spread over 121 hectares (300 acres) (Stebbins 1991). The second largest population site, containing nearly 4,500 plants spread over 17 hectares (42 acres), is located in the Fancher Creek Reservoir Project Area in Fresno County. The Fancher Creek Reservoir Project, managed by the Fresno Metropolitan Flood Control District, would impact approximately 40 percent of the population by temporarily inundating it during flood periods (Jones and Stokes 1990). Two other sites are variously threatened by the potential development of a site for a new UC campus and the residential expansion of the Fresno-Clovis and Porterville-Visalia areas, Fancher Creek flood control, ag-land development, overgrazing, highway widening, competition from alien plants, and livestock trampling (Stebbins 1991). The maintenance and repair of the Southern California Edison transmission lines could threaten two Tulare County populations located under the transmission line right-of-way. At Lake Success in Tulare County, one population site is endangered by inundation from increased water storage in the lake. In Kern County, five sites are variously threatened by highway projects, overgrazing, soil erosion, and livestock trampling (Stebbins 1991).

Numerous other anthropogenic actions threaten both plants. In Fresno County, the widening of State Route 180 threatens a *Pseudobahia peirsonii* population growing on both sides of the highway on the soft shoulder (Stebbins 1991). Four populations in Kern County, one in Tulare County, and one in Fresno County are threatened by the road stabilization work (Stebbins 1991). Off-highway vehicle use and hiking threaten one population of approximately 200 plants spread over 1.2 hectares (3 acres) in Tulare County. A potential recreational water park (Clovis Lakes) threatens another population of approximately 5,000 plants in Fresno County (Stebbins 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There are no known significant existing or potential threats to *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as a result of these activities. However, the increased publicity associated with proposing these species may make them attractive to researchers and collectors of rare plants.

C. Disease or Predation

Pseudobahia bahiifolia and *Pseudobahia peirsonii* have been subjected to various degrees of livestock grazing. Stebbins (1991) speculated that moderate levels of grazing may help control the aggressive alien forbs and grasses in their respective habitat areas but that both species may benefit from reduction of the grazing levels during flowering and fruiting in March and April. In addition, heavy trampling may be detrimental to both plants because of direct and indirect effects of soil compaction on soil-water relations and erosion. One historical occurrence in Kern County and another historical occurrence in Tulare County of *P. peirsonii* are thought to have been extirpated by overgrazing (Stebbins 1991). Three populations in Stanislaus County are threatened by overgrazing, while an additional nine sites in the county could be threatened if existing grazing practices are changed (Stebbins 1991). An additional four occurrences of *P. peirsonii* in Tulare County, two sites in Fresno County, and four sites in Kern County are currently threatened by overgrazing. One site in Tulare County and one in Kern County would be threatened by a change in grazing practices toward more intense or prolonged grazing (Stebbins 1991).

D. The Inadequacy of Existing Regulatory Mechanisms

Nearly all populations of both plants occur entirely on private land. State and Federal laws are limited in their ability to regulate potentially detrimental human activities on private property (Clausen 1989). For example, local zoning ordinances typically do not regulate the conversion of open rangeland to ag-land. Under the Native Plant Protection Act of 1977 (Chapter 10 section 1900 *et seq.* of the California Fish and Game Code) and California Endangered Species Act of 1984 (Chapter 1.5 section 2050 *et seq.*), the California Fish and Game Commission has listed both *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as endangered (14 California Code of Regulations § 670.2). Though both statutes prohibit the "take" of State-listed plants (Chapter 10 section 1908 and Chapter 1.5 section 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (Chapter 10 section 1913).

The California Environmental Quality Act (CEQA) requires a full public disclosure of the potential environmental impacts of proposed

projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is therefore at the discretion of the lead agency involved.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The typical variation in rainfall characteristic of the regional climate very likely will subject populations of both species to periodic drought, which may threaten the remaining small, marginal populations of both species. Marginal habitat conditions and past disturbances contribute to the critically low population sizes and stored seed banks for both species. Typically, annuals and other monocarpic plants (individuals that die after flowering and fruiting), like both plants proposed herein, are vulnerable to random fluctuations or variation (stochasticity) in annual weather patterns and other environmental factors (Huenneka *et al.* 1986). Moreover, the alien species germinate in late fall and likely outcompete *Pseudobahia bahiifolia* and *P. peirsonii* for sunflight, nutrients, and water. Competition from alien plants threatens the *P. bahiifolia* population at the botanical preserve in Fresno County (Rosalie Faubion, U.S. Bureau of Reclamation, pers. comm., 1992). Competition from alien plants also threatens three occurrences of *P. peirsonii* in Tulare County (Stebbins 1991). The invasion of the alien plants has likely been a significant factor in the degradation of the habitat of both plants throughout their respective ranges.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by both species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as endangered. Both species occupy specific habitat within a restricted geographic area. This habitat is highly fragmented and many remaining populations are quite small. A significant portion of the remaining range of both species is under pressure from urbanization, ag-land development, mining, water projects, overgrazing, and other anthropogenic actions. In addition, anthropogenic actions have degraded the habitat of some existing populations and reduced them to the point that may be vulnerable to stochastic extirpation. As a result, because *P. bahiifolia* and *P. peirsonii* are in danger of extinction throughout all or a significant portion of their ranges, both plants fit the definition of endangered in the Act.

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that the determination of critical habitat is not prudent for either species at this time. Because the two species face numerous anthropogenic threats (see Factor A, Factor C, and Factor E in the "Summary of Factors Affecting the Species") and occur predominantly on private land, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make both plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of the two plants. The listing of both species as endangered also publicizes the rarity of the plants and, thus, can make them attractive to researchers or collectors of rare plants. The proper agencies will be notified of the location and importance of protecting the habitat of both species. Protection of both species' habitat will be addressed through the recovery process and the application of the jeopardy standard through the section 7 consultation process. The Service believes that Federal involvement in the areas where the plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that the designation of critical habitat for both plants is not prudent at this time, because such a designation likely would increase the degree of the threat from vandalism, collection, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The U.S. Bureau of Reclamation operates the Friant-Kern canal system (i.e., Central Valley Project) located within a 0.4 km (0.25 mile) of six *P. bahiifolia* colonies. In addition, the U.S. Army Corps of Engineers operates the facilities at Lake Success located within 0.8 km (0.50 miles) of three *P. peirsonii* colonies and sponsors the Redbank and Fancher Creek Flood Control Project, which will impact another *P. peirsonii* colony near Round Mountain. Any future construction or maintenance activities on these government projects that may affect the plant populations would require section 7 consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species

set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* all prohibitions of sections 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession these species from areas under Federal jurisdiction. Other prohibitions of section 9(a)(2) of the Act make it illegal to maliciously damage or destroy an endangered plant on areas under Federal jurisdiction; or to remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. The Service anticipates few trade permits would ever be sought or issued for the two species because the plants are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, VA 22203–3507 [703/358–2093].

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Pseudobahia bahiifolia* and *Pseudobahia peirsonii;*

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *Pseudobahia bahiifolia* and *Pseudobahia peirsonii*; and

(4) Current or planned activities in the subject area and their possible impacts on *Pseudobahia bahiifolia* and *Pseudobahia peirsonii.*

Any final decision on this proposal to list *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Derek G. Williams, U.S. Fish and Wildlife Service, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17 subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical

order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 **Endangered and threatened plants.**

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * * * * * *						
Asteraceae—Aster family:						
* * * * * * *						
Pseudobahia bahiifolia	Hartweg's golden sunburst	U.S.A. (CA)	E		NA	NA
Pseudobahia peirsonii	San Joaquin adobe sunburst	U.S.A. (CA)	E		NA	NA
* * * * * * *						

Dated: October 26, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-28946 Filed 11-27-92; 8:45 am]

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Notices

Federal Register
Vol. 57, No. 230
Monday, November 30, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Butch Creek Timber Sale

Idaho Panhandle National Forests, Pend Oreille County, Washington; Intent to Prepare an Environmental Impact Statement

AGENCY: Forest Service USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: This notice is hereby given that the USDA Forest Service is gathering information in order to prepare an environmental impact statement for a proposal to harvest timber and construct roads in drainages tributary to the Lower West Branch of Priest River. The Forest Service will analyze and disclose the environmental impacts of a proposal to harvest timber and reforest approximately 440 acres of National Forest lands, construct approximately 1.5 miles of new road, and reconstruct approximately 9.5 miles of existing road in the Hickman, Butch, Blickensderfer and Lower West Branch of Priest River drainages. The analysis area is located approximately 15 air miles northwest of Priest River, Idaho, and approximately 10 air miles northwest of Newport, Washington.

DATES: Written comments concerning the scope of the analysis must be received on or before January 14, 1993. Two public meetings have been held for this project, no additional meetings are anticipated. The Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency in January, 1993. The Final Environmental Impact Statement and Record of Decision are expected to be completed in April, 1993.

ADDRESSES: Send written comments to Charles E. Harris, Acting District Ranger, Priest Lake Ranger District, HCR 5 Box 207, Priest River, ID 83856.

FOR FURTHER INFORMATION CONTACT: Specific questions about the proposed action, analysis, and EIS should be directed to David F. Cobb, timber sale planner; or Charles E. Harris, Acting District Ranger, Priest Lake Ranger District, at the above address or telephone (208) 443–2512.

SUPPLEMENTARY INFORMATION: These management activities will be administered by the Priest Lake Ranger District of the Idaho Panhandle National Forests in Pend Oreille County, Washington. This EIS will tier to the Idaho Panhandle National Forests Plan (September 1987), which provides the overall guidance (goals, objectives, standards and guidelines, and Management Area direction) in achieving the desired future condition for this area.

The primary purpose for the proposed action is to contribute to the Forest Plan goal of producing a sustained yield of commercially valuable wood products. To achieve this goal, the proposed action was designed to improve the net growth and yield of the timber resource, to protect against forest insect and disease damage and to reach the desired size and species composition of the timber resource. The proposed action concentrates harvesting in areas where trees are growing slowly and are being impacted by disease and insect agents. Harvest treatments are proposed which would create conditions conducive to the rapid establishment and growth of tree regeneration and which would minimize subsequent damage from insect and diseases.

In addition to the goal of producing a sustained yield of forest products, the proposal is designed to sustain healthy and diverse ecosystems by the protection of threatened, endangered and sensitive species, by the retention of large contiguous old growth areas and by utilizing prescribed fire in many areas to re-introduce this natural disturbance agent back into the ecosystem as well as reduce future fire hazards.

The analysis area is approximately 7,270 acres in size and comprised of 6,800 acres of public land administered by the Priest Lake Ranger District of the Idaho Panhandle National Forests. The boundary between the Idaho Panhandle National Forests and the Colville National Forest, known as the Pend Oreille Divide, is the western boundary. The watershed divide between the Lower West Branch and Upper West Branch of Priest River is the northern boundary. The ridge between the Lower West Branch of Priest River and a unnamed tributary of Flat Creek is the eastern boundary. The ridge between Hickman Creek and Bear Paw Creek forms the southern boundary of the analysis area. All or portions of Sections 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 22 and 23, T33N, R45E, Williamette Meridian; and Sections 26, 27, 28, 29, 32, 33, 34, and 35, T34N, R45E, Williamette Merdian are included.

Because of the potential for significant impacts resulting from the proposed action (as defined by 40 CFR 1508.27), an Environmental Impact Statement will be prepared.

The proposed actions are consistent with the Forest Plan (September 1987). Two Forest Plan Management Areas are designated within the analysis area. The purpose and need for the proposed action are specifically defined by these management areas.

MA–1: (94% of analysis area) Consists of lands designated for timber production. They are to be managed for long-term growth and production of commercially valuable wood products, and to provide cost-effective timber production as well as provide for soil protection, wildlife habitat, dispersed recreation opportunities and visual quality objectives.

MA–16: (6% of analysis area) Consists of lands designated to be managed to feature riparian-dependent resources including fisheries, water quality, natural channels, and plant and wildlife communities while producing other resource outputs at levels compatible with the objectives for riparian-dependent resources.

The Priest Lake Ranger District proposes to harvest timber and reforest approximately 440 acres of timber land, construct approximately 1.5 miles of new road and reconstruct approximately 9.5 miles of existing roads. Specifically, the proposal includes 67 acres of clearcut harvest, 177 acres of seedtree harvest, 99 acres of shelterwood harvest, 88 acres of overstory removal and 9 acres of commercial thinning. After timber sale activities have been completed, the majority of the roads which would be constructed or reconstructed under this proposal would be closed to protect wildlife and

watershed resources. Because this road system is needed for the long-term management of the area, the roads would not be obliterated. The majority of the area to be harvested would require use of cable yarding systems. The proposed harvest would generate approximately seven million board feet of wood products.

Internal and public scoping have identified the following main issues:

1. The effect of harvest types and locations on the visual quality, especially the results of clearcutting.
2. The effect that forest insect and disease agents have on short and long-term timber production.
3. The effect that the proposal may have on water quality, specifically fishery resources and domestic water quality.
4. The effect that roads can have no other resources such as water quality, wildlife, and recreation resources.
5. The cumulative effects that past harvesting has had on the watershed and fishery resources.
6. Potential effects to the old-growth resource.
7. Possible increases or decreases in fuel levels in the area and the effect on the fire hazard and ecology.
8. The effect on wildlife species in the area, especially threatened, endangered or sensitive species.
9. The possibility of a below-cost timber sale.
10. Possible effects on recreation.

The Priest Lake Ranger District has distributed scoping notices to interested individuals, agencies and organizations, and held two public meetings. Public participation will continue to be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision; however, two periods of time are specifically identified for the receipt of comments on the analysis. These public comment periods are during the scoping process and in the review of the draft environmental impact statement (expected to be January/February 1993).

The existing information, as well as any additional information gathered as a result of this notice, will be used to prepare a Draft Environmental Impact Statement. This process will include:

1. Determination of significant issues.
2. Determination of potential cooperating agencies.
3. Identification of and elimination from detailed study any non-significant issues, or issues that have been covered by previous environmental review.
4. Development of a range of reasonable alternative to the proposed action.
5. Identification of potential environmental effects of the alternatives.

The analysis will consider a range of alternatives developed from the key issues including the "No Action" alternative, in which all management activities are deferred. Other alternatives will consider various levels and location of harvest and regeneration activities in response to issues and other resource objectives. From scoping efforts thus far, it is anticipated at least three additional action alternatives will be developed. These include:

(1) An alternative designed to limit impacts to the fishery and watershed resources by minimizing road construction or reconstruction.

(2) An alternative designed to have the least impact on the old-growth resource by not harvesting timber from old-growth stands.

(3) An alternative designed to emphasize biodiversity by having features such as "light" harvesting, utilizing prescribed burning to re-introduce fire into the area, minimizing forest fragmentation, retaining unique components of the timber stands and providing a higher level of protection for the wildlife resources.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankees Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553* (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Final EIS is expected to be released April 15, 1993. The District Ranger for the Priest Lake Ranger District, who is the responsible official for the EIS, will make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws regulations and policies. The reasons for the decision will be documented in a Record of Decision.

Dated: November 20, 1992.

Charles E. Harris,

Acting District Ranger, Priest Lake Ranger District, Idaho Panhandle National Forests.

[FR Doc. 92-28889 Filed 11-27-92; 8:45 am]

BILLING CODE 3410-11-M

Grand Targhee Resort Master Development Plan, Targhee National Forest, Teton County, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the comment period on the Draft EIS for the Grand Targhee Master Development Plan for a period of 30 days. The comment period will end December 20, 1992. The extension is granted based upon a request, from the Teton County, Wyoming, Board of County Commissioners, for additional time to thoroughly assess all the information contained in the document. The Board of County Commissioners is currently involved with drafting a new Comprehensive Plan for Teton County, Wyoming and election year activities,

thus requiring additional time to address this DEIS.

FOR FURTHER INFORMATION CONTACT: Lynn Ballard, Interdisciplinary Team Leader (208) 624–3151, Targhee National Forest, P.O. Box 208, St. Anthony, ID 83445.

Dated: October 15, 1992.

James L. Caswell,

Forest Supervisor.

[FR Doc. 92–28890 Filed 11–27–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1992 Panel Wave 5.

Form Number(s): SIPP–12500, SIPP–12503, SIPP–12504, SIPP–12505(L).

Agency Approval Number: 0607–0723.

Type of Request: Revision of a currently approved collection.

Burden: 63,000 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1992 Panel Wave 5 collectively are called the "Annual Round–up". The individual components are (1) Annual Income and Retirement Accounts, (2) Taxes, and (3) School Enrollment and Financing. We will conduct Wave 5 interviews from June through September 1993.

Affected Public: Individuals or households.

Frequency: Twice during the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 23, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–28910 Filed 11–27–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1993 Panel Wave 2.

Form Number(s): SIPP–13200, SIPP–13205(L).

Agency Approval Number: 0607–0759.

Type of Request: Revision of a currently approved collection.

Burden: 42,000 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1993 Panel Wave 2 are the following: (1) Work Disability History, (2) Education and Training History, (3) Marital History, (4) Migration History, (5) Fertility History, and (6) Household Relationships. We will conduct Wave 2 interviews from June through September 1993.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 23, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–28911 Filed 11–27–92; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

Sanctions for Violation of Administrative Protective Order

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of status of investigation into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

SUMMARY: This is a notice of the status of investigations into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

EFFECTIVE DATE: November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230: telephone (202) 482–8916.

SUPPLEMENTARY INFORMATION: The International Trade Administration, U.S. Department of Commerce (ITA), wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to administrative protective order (APO) during the course of those proceedings. In order that the gravity with which ITA views violations of its APO's might be better appreciated, ITA is publishing the following report on recent allegations that the provisions of an ITA APO have been violated.

An individual employed by a firm left a copy of proprietary information submitted to the ITA by another party to

the proceeding in a taxi cab. Individuals who had been granted an APO for the proceeding were held responsible for this failure to safeguard proprietary information. During the conduct of the investigation into the loss of the proprietary information, a second violation of the APO was discovered. The investigation revealed that the same signatories to the APO had failed to require non-lawyer employees to sign their names when they first obtained access to information under the APO. Thus, the same signatories to the APO were responsible for the failure to ensure internal compliance with the administration of the APO.

In this case, the individuals involved were (1) required to send a letter of apology to counsel for the company whose information was lost; (2) required to submit to the ITA a written copy of the firm's APO handling procedures, together with an outline for an in-house training course for employees of the firm on APO handling procedures; (3) required to attend a training session on procedures for protecting proprietary data conducted by the ITA; and (4) required to conduct an in-house training course on the handling of business proprietary information for employees of the firm.

We consider these sanctions to be appropriate for the following reasons: First, the violation appears to have been inadvertent and the loss of the proprietary information was voluntarily reported to the ITA. Second, there appears to be no harm to the submitter of the information despite the non-recovery of the proprietary information. Third, the individuals cooperated fully with the ITA investigation.

Serious harm can result from unauthorized use of proprietary information obtained under APO. ITA will continue vigorously to investigate allegations that the provisions of APOs have not been faithfully observed, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, and disbarment from practice before the ITA.

This notice is published pursuant to 19 CFR 354.15(e) of the Department's regulations.

Dated: November 20, 1992.

William Piez,

Deputy Assistant Secretary for Planning.

[FR Doc. 92-28981 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 910772-2214]

RIN 0693-AA88

Approval of Federal Information Processing Standards Publication 177, Initial Graphics Exchange Specification (IGES)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 177, Initial Graphics Exchange Specification (IGES).

SUMMARY: On October 3, 1991, notice was published in the **Federal Register** (56 FR 50096) that a Federal Information Processing Standard for Initial Graphics Exchange Specification (IGES) was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standards Publication, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective April 30, 1993.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Benigni (301) 975-3266, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: November 23, 1992.

Samuel Kramer,

Acting Director.

Federal Information Processing Standards Publication 177,

(Date)

Announcing the Standard

Initial Graphics Exchange Specification (IGES)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* Initial Graphics Exchange Specification (IGES) (FIPS PUB 177).

2. *Category of Standard.* Software Standard; Graphics and Information Interchange.

3. *Explanation.* This publication announces the adoption of American National Standard Digital Representation for Communication of Product Definition Data, ASME/ANSI Y14.26M-1989, as a Federal Information Processing Standard (FIPS). ASME/ANSI Y14.26M-1989, more commonly known as the Initial Graphics Exchange Specification (IGES), specifies file structure and syntactical definition, and defines the representation of geometric, topological, and nongeometric product definition data. ASME/ANSI Y14.26M-1989 establishes information structures for the digital representation and communication of product definition data. Use of this standard permits the compatible exchange of product definition data used by various computer-aided design and computer-aided manufacturing (CAD/CAM) systems.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology (Computer Systems Laboratory).

6. *Cross Index.*

a. American National Standard Digital Representation for Communication of Product Definition Data, ASME/ANSI Y14.26-1989.

7. *Related Documents.*

a. NBSIR 88–3813, Initial Graphics Exchange Specification (IGES) Version 4.0.

b. NISTIR 4412, Initial Graphics Exchange Specification (IGES) Version 5.0.

c. NISTIR 4600, IGES 5.0 Recommended Practices Guide.

d. Federal Information Processing Standards Publication 29–2, Interpretation Procedures for Federal Information Processing Standards for Software.

e. Federal Information Resources Management Regulations (FIRMR) subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

8. *Objectives.* Federal standards for electronic interchange permit Federal departments and agencies to exercise more effective control over the production, management, and use of the government's information resources. The primary objectives specific to IGES are to:

—Allow digital exchange of product definition data independent of any particular CAD/CAM system.
—Enable users of CAD/CAM equipment to effectively exchange product definition data throughout the life cycle of a given product.
—Exchange digital representations of product definition data in various forms: illustrations, 2-dimensional drawings, 3-dimensional edge-vertex models, surface models, solids models, and complete product models.
—Aid CAD/CAM equipment manufacturers as a guideline for identifying useful combinations of product definition data capabilities in any CAD/CAM system.
—Reduce the cost of design by achieving increased designer productivity and design accuracy through the use of a standard for product definition data.
—Reduce the overall life-cycle cost for digital systems by establishing a common exchange format for the transfer of product definition data digitally across organizational boundaries.

9. Applicability.

a. This graphics information interchange or software standard is intended for the exchange of CAD/CAM product definition data among applications and programs that are either developed or acquired for government use. FIPS for IGES provides a mechanism for the digital exchange of database information among computer-aided systems. It is designed to support applications which enhance 2-dimensional or 3-dimensional geometry representations with rich attribute information. It provides a data format for describing product design and manufacturing information that has been created and stored in a computer-readable form. IGES information is intended for machine interpretation at the receiving site, but sometimes requires human intervention.

b. The use of FIPS for IGES is strongly recommended for exchange between product definition applications when one or more of the following situations exist:

—The product definition application or program is under constant review, and changes may result frequently.
—It is anticipated that the life of the data files will be longer than the life of the presently utilized CAD/CAM equipment.
—The application is being designed centrally for a decentralized system that may employ computers of different makes and models and different CAD/CAM devices.
—The product definition application may run on equipment other than that on which it was developed.
—The product definition data is to be used and maintained by other than the original designer.
—The product definition data is or is likely to be used by organizations outside the Federal Government.
—It is desired to have the design understood by multiple people, groups, or organizations.

c. Functionality not specifically cited in IGES should be used only when such functionality cannot be implemented with standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard features may make the interchange of IGES files, future conversion to a revised standard or replacement CAD/CAM systems more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of a CAD/CAM system employing a different data transfer mechanism other than that provided by FIPS for IGES. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

10. *Specifications.* The ASME/ANSI Y14.26M–1989 standard for IGES, describes the form of the physical file but not how IGES preprocessor or postprocessor software should behave. There is a lack of fundamental rules to describe minimum levels of processor functionality. The requirements specified herein will be part of this standard and apply to Federal Government implementations and procurements of this standard:

Conformance Requirements. The conformance rules given here are based on three principles. First, conformance is defined in terms of a conforming data file. Second, conformance is defined for a single processor in isolation (i.e., not in terms of interoperability). Third, conformance is defined separately for preprocessor and postprocessor.

These requirements detail minimum conformance criteria for processors. All processors claiming conformance to this version of the standard must adhere to the general rules below. In addition, conforming processors must adhere to all the rules appropriate to specific features such as entities defined within ASME/ANSI Y14.26M–1989.

Conformance Rules for Data Files. A conforming data file shall be syntactically, semantically and structurally correct as defined by this standard. This applies to all sections of the data file.

Conformance Rules for Preprocessors. A preprocessor which claims conformance to this standard must satisfy the following rule:

—A conforming preprocessor shall create only conforming data files which correctly represent the native database which was input to the preprocessor.

Conformance Rules for Postprocessors. A postprocessor, which claims conformance to this standard, must satisfy the following rule:

—A conforming postprocessor shall be capable of reading and correctly processing any conforming data file without halting or aborting, such that it produces the correct results.

Additional conformance rules may be specified for particular applications or by specific purchasers of IGES processors. As long as these rules do not contradict the conformance rules defined within FIPS IGES, such processors would still conform.

Processor Reporting. It is desirable and recommended that processors report on the following. (This is not a conformance requirement at this time.) Preprocessors should report on any CAD/CAM system feature or entity which has not been written to the IGES file. Postprocessors should (1) report on any IGES entities or features which have been discarded, and (2) handle any errors encountered within the IGES file in a preferred manner. The following techniques are suggested.

Selected Methodology. The functions of an IGES postprocessor are similar to those of a compiler. The postprocessor

shall recognize errors encountered when an IGES file is processed, shall provide the user with an indication of the error, and shall continue processing the file if possible.

The key elements of a diagnostic capability are:

—Determine Seriousness of Error. The postprocessor determines the impact the error will have on the processing of the file and categorizes the error. Possible categories include FATAL ERROR, ERROR, WARNING.

—Continue Processing when Possible. After an error is identified, the post-processor attempts to continue processing the file. Many errors will not prevent processing, and multiple errors that may exist will need to be identified. Options can be included to stop processing if a fatal error occurs, or a specific number of errors occur, to avoid wasting computer processing time when a file is not processable.

—Provide Meaningful Error Messages. The postprocessor provides complete error messages that include a description of the error and the location of the error in the file. For display on a terminal, the postprocessor should also provide a summary description of the error and the actions taken.

Common Errors. The following table lists some common errors. This list is not complete but contains a variety of errors. After each error message, the list contains a suggested action. The processor may need to take some corrective action before continuing after non-fatal errors. The processor should always output some type of message to the user.

Possible error	Suggested action
Global delimiters in error	Terminate.
Tape format—not ASCII	Terminate.
Binary section missing—binary format.	Terminate.
Entity not supported	Bypass & continue.
Global version not supported	Bypass & continue.
No end of record delimiter	Bypass & continue.
Terminate section missing	Continue.
DE section missing	Terminate.
Sequence field:	
Out of order	Continue.
Missing	Continue.
Wrong format	Continue.
Parameters:	
Wrong type	Use default & continue.
Invalid value 106—(IP parameter not equal to 1, 2, 3).	Adjust & continue.
Endpoints not on circle/conic	Adjust & continue.
Pointers not in DE range	Continue.
Out of range	Continue.

[1] Common processing errors.

11. *Implementation.* The implementation of this standard involves three areas of consideration: acquisition of IGES implementations, interpretation of FIPS for IGES, and validation of IGES implementations.

11.1 Acquisition of IGES Implementations. This publication is effective April 30, 1993. Product definition systems acquired for Federal use after this date shall support IGES preprocessors and postprocessors. Conformance to this standard should be considered whether the CAD/CAM systems are developed internally, acquired as part of a system procurement, acquired by separate procurement, used under a leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce product definition systems conforming to this standard. The transition period begins on the effective date and continues for one (1) year thereafter. The provisions of this publication apply to orders placed after the effective date; however, an IGES implementation conforming to FIPS for IGES, if available, may be acquired for use prior to the effective date.

ASME/ANSI Y14.26M–1989 does not specify conformance requirements; in lieu of this, the conformance requirements enumerated herein, section 10., apply.

11.2 Interpretation of this FIPS. NIST provides for the resolution of questions regarding FIPS for IGES and its requirements.

All questions concerning the interpretation of FIPS for IGES should be addressed to: Director, Computer Systems Laboratory, ATTN: FIPS IGES Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

11.3 Validation of IGES Implementations. Validation of IGES implementations is not mandatory at this time. Future versions of this FIPS may mandate the validation of IGES implementations for government use. Testing of an implementation's conformance to this FIPS IGES will be optional by the agency. Until a formal conformance testing service is available, government agencies acquiring implementations in accordance with this standard may wish to require testing for conformance, interoperability, and performance. The tests to be administered and the testing organization are at the discretion of the agency Acquisition Authority.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agencies may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affair of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this FIPS IGES are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specification document is by arrangement with the American Society of Mechanial Engineers and the American National Standards Institute.) When ordering, refer to Federal

Information Processing Standards Publication 177 (FIPSPUB177) and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 92-28833 Filed 11-27-92; 8:45 am]
BILLING CODE 3510-CN-M

[Docket No. 921194-2294(b)]

National Fire Codes: Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standard as the basis for developing Federal regulations concerning fire safety. Often, the Office of Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition by the NFPA Committee as the Technical Committee Report. Each person who has submitted a written proposal will receive a copy of the report.

Dated: November 23, 1992.

Samuel Kramer,

Acting Director.

NFPA No.	Title	Proposal closing date
NFPA 10-1990	Portable Fire Extinguishers	1/15/93
NFPA 10L-1990	Sale or Leasing and Servicing of Portable Fire Extinguishers	1/15/93
NFPA 13E-1989	Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems	7/16/93
NFPA 17-1990	Dry Chemical Extinguishing Systems	1/15/93
NFPA 17A-1990	Wet Chemical Extinguishing Systems	1/15/93
NFPA 30B-1990	Aerosol Products	1/15/93
NFPA 32-1990	Drycleaning Plants	7/16/93
NFPA 33-1989	Spray Application Using Flammable and Combustible Materials	1/15/93
NFPA 34-1989	Dipping and Coating Processes Using Flammable or Combustible Liquids	1/15/93
NFPA 35-1987	Manufacture of Organic Coatings	7/15/93
NFPA 49-1991	Hazardous Chemicals Data	1/15/93
NFPA 57 [1]	LNG Vehicle Fuel	1/15/93
NFPA 70B-1990	Electrical Equipment Maintenance	1/15/93
NFPA 70E-1988	Electrical Safety Requirements for Employee Workplaces	1/15/93
NFPA 79-1991	Electrical Standard for Industrial Machinery	1/15/93
NFPA 85C-1991	Furnace Explosions/Implosions in Multiple Burner Boiler Furnaces	1/15/93
NFPA 86-1990	Ovens and Furnaces	1/15/93
NFPA 91-1992	Exhaust Systems for Air Conveying of Materials	5/31/93
NFPA 101M-1992	Alternative Approaches to Life Safety	1/15/93
NFPA 102-1992	Assembly Seating, Tens and Air-Supported Structures	4/9/93
NFPA 122-1990	Flammable and Combustible Liquids within Underground Metal and Nonmetal Mines (Other than Coal)	7/16/93
NFPA 123-1990	Underground Bituminous Coal Mines	7/16/93
NFPA 124-1988	Diesel Fuel and Diesel Equipment in Underground Mines	7/16/93
NFPA 150-1991	Firesafety in Racetrack Stables	7/16/93
NFPA 221 [1]	Fire Walls	1/15/93
NFPA 231-1990	General Storage	1/15/93
NFPA 231D-1989	Storage of Rubber Tires	1/15/93
NFPA 251-1990	Fire Tests of Building Construction and Materials	7/16/93
NFPA 252-1990	Fire Tests of Door Assemblies	7/16/93
NFPA 255-1990	Surface Burning Characteristics of Building Materials	7/16/93
NFPA 262-1990	Fire and Smoke Characteristics of Electrical Wires and Cables	1/15/93
NFPA 264A-1990	Heat Release Rates of Upholstered Furniture	1/15/93
NFPA 268 [1]	Ignitibility of Exterior Wall Assemblies Using A Radiant Heat Energy Source	1/15/93
NFPA 298-1989	Foam Chemicals and Wildland Fire Control	1/15/93
NFPA 302-1989	Pleasure and Commercial Motor Craft	1/15/93
NFPA 321-1991	Classification of Flammable and Combustible Liquids	1/15/93
NFPA 325M-1991	Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids	1/15/93
NFPA 385-1990	Tank Vehicles for Flammable and Combustible Liquids	1/15/93
NFPA 386-1990	Portable Shipping Tanks for Flammable and Combustible Liquids	1/15/93
NFPA 410-1989	Aircraft Maintenance	1/15/93

NFPA No.	Title	Proposal closing date
NFPA 418–1990	Roof Top Heliport Construction and Protection	1/15/93
NFPA 423–1989	Aircraft Engine Test Facilities	1/15/93
NFPA 497M–1991	Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified) Locations	1/15/93
NFPA 701–1989	Fire Tests for Flame-Resistant Textiles and Films	1/15/93
NFPA 801–1991	Facilities Handling Radioactive Materials	7/16/93
NFPA 820–1992	Wastewater Treatment Plants and Collection Facilities	7/16/93
NFPA 907M–1988	Electrical Fire Causes	1/15/93
NFPA 921–1992	Fire and Explosion Investigations	7/16/93
NFPA 1000 [1]	Certification and Accreditation of Fire Service Professional Qualifications Programs	1/15/93
NFPA 1201–1989	Developing Fire Protection Services for the Public	1/15/93
NFPA 1221–1991	Public Fire Service Communication Systems	1/15/93
NFPA 1404–1989	Fire Department Self-Contained Breathing Apparatus Program	7/16/93
NFPA 1906 [1]	Wildland Fire Apparatus	3/1/93
NFPA 1914–1991	Testing Fire Department Aerial Devices	1/15/93
NFPA 1931–1989	Design, and Design Verification Tests for Fire Department Ground Ladders	1/15/93
NFPA 1932–1989	Fire Department Ground Ladders	1/15/93
NFPA 2002 [1]	Selection of Fire Protection Systems	7/16/93

[1] Proposed.

[FR Doc. 92–28832 Filed 11–27–92; 8:45 am]
BILLING CODE 3510–13–M

[Docket Number 921194–2294(a)]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1993 Fall Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Thirty-eight reports are published in the 1993 Fall Meeting Technical Committee Reports and will be available on January 29, 1993. Comments received on or before April 9, 1993 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 1993 Fall Technical Committee Reports are available from NFPA, Publications Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9109. Commenters may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before April 9, 1993, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by September 24, 1993, prior to the Fall Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commenter. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Fall Meeting, November 15–18, 1993 in Phoenix, Arizona by NFPA members.

Dated: November 23, 1992.

Samuel Kramer,

Acting Director.

1993 Fall Meeting—Technical Committee Reports

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

Doc. No.	Title	Action
NFPA 11	Low Expansion Foam and Combined Agent Systems	C
NFPA 11A	Medium-and High-Expansion Foam Systems	P
NFPA 13	Installation of Sprinkler Systems	C
NFPA 13A	Inspection, Testing and Maintenance of Sprinkler Systems	W

1993 FALL MEETING—TECHNICAL COMMITTEE REPORTS—Continued

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

Doc. No.	Title	Action
NFPA 13D	Installation of Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes	P
NFPA 13R	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height	P
NFPA 14A	Testing, Inspection and Maintenance of Standpipe and Hose Systems	W
NFPA 16A	Installation of Closed-Head Foam-Water Sprinkler Systems	C
NFPA 37	Stationary Combustion Engines and Gas Turbines	P
NFPA 50A	Gaseous Hydrogen Systems at Consumer Sites	P
NFPA 50B	Liquefied Hydrogen Systems at Consumer Sites	P
NFPA 51B	Cutting and Welding Processes	P
NFPA 53	Fire Harzards in Oxygen-Enriched Atmospheres (Formerly NFPA 53M)	P
NFPA 59A	Liquefied Natural Gas (LNG)	P
NFPA 68	Venting and Deflagrations	P
NFPA 73	Residential Electrical Maintenance	N
NFPA 82	Incinerators, Waste, and Linen Handling Systems and Equipment	P
NFPA 96	Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment	P
NFPA 101	Safety to Life from Fire in Buildings and Structures	P
NFPA 120	Coal Preparation Plants	C
NFPA 170	Firesafety Symbols	C
NFPA 253	Critical Radiant Flux of Floor Covering Systems Using Radiant Heat Energy Source	P
NFPA 258	Determining Smoke Generation of Solid Materials	P
NFPA 260	Cigarette Ignition Resistance of Components of Upholstered Furniture	C
NFPA 261	Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes	P
NFPA 263	Heat and Visible Smoke Release Rates for Materials and Products	R
NFPA 265	Evaluation Room Fire Growth Potential of Textile Wall Coverings	N
NFPA 266	Upholstered Furniture, Subjected to Open Flame Ignition Using a Large-Scale Oxygen Consumption Calorimeter	N
NFPA 267	Mattresses, Subjected to Open Flame Ignition, Using a Large-Scale Oxygen Consumption Calorimeter	N
NFPA 512	Truck Fire Protection	P
NFPA 513	Motor Freight Terminals	P
NFPA 654	Chemical, Dye, Pharmaceutical, and Plastics Industries	P
NFPA 781	Lightning Protection Systems Using Early Streamer Emission Air Terminals	N
NFPA 1122	Code for Unmanned Rockets	R
NFPA 1410	Initial Fire Attack	C
NFPA 1470	Search and Rescue for Structural Collapse Incidents	N
NFPA 1922	Self-Contained Pumping Units	N
NFPA 2001	Clean Agent Fire Extinguishing Systems	N

[FR Doc. 92-28831 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's (NPFMC) Pacific Northwest Crab Industry Advisory Committee (Committee) will meet on December 2, 1992, at the National Marine Fisheries Service (NMFS) Alaska Fisheries Science Center, Building 4, room 2039, 7600 Sand Point Way, NE., Seattle, WA. The Committee will begin its meeting at 8:30 a.m.

The Committee will discuss the Alaska Board of Fisheries proposals for the February 2, 1993, shellfish meeting. These are Bering Sea crab pot limits, super-exclusive registration areas, season opening dates for kind and tanner crab, crab observer program, and gear changes. The Committee also will discuss NPFMC Bering Sea/Aleutian Islands Crab Fishery Management Plan (FMP) issues, i.e. comprehensive rationalization (limited entry) alternatives and review of the Crab FMP NMFS oversight review process.

For more information contact Brent Paine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: November 23, 1992.

David S. Crestin,

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

[FR Doc. 92-28987 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Import Permit (P519).

On October 6, 1992, Notice was published in the **Federal Register** (57 FR 46017) that an application had been filed by Bruce L. Homer, Ph.D., College of Veterinary Medicine, University of Florida, Box 100145, Gainesville, FL 32610-0145, for a Permit to import from and export to Chile, tissue samples of Juan Fernandez fur seals (*Arctocephalus philippii*) taken from stranded dead animals.

Notice is hereby given that on November 19, 1992, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141).

Dated: November 19, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-28866 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

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

ACTION: Notice of receipt of application for a scientific research permit to take marine mammals (P771#64).

Notice is hereby given that the Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Bldg. 4, Seattle, WA 98115, has applied in due form for a Permit to take marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222).

The applicant seeks authorization to conduct several studies on Steller sea lions (*Eumetopias jubatus*) over a five-year period. This research would entail harassment of unspecified numbers of Steller sea lions while carrying out aerial and ground surveys, the capture, hot branding, flipper tagging, weighing and measuring of up to 1600 pups over five years, and the capture, weighing, measuring, blood sampling and flipper tagging of up to 240 pups/juveniles and 20 adult females per year. Some of these animals may be recaptured, blood sampled, lavaged or given enemas, instrumented with radio tags, tissue sampled for genetic analysis and fur-clipped. Up to 30 adult females per year would be dye-marked, and up to 2000 animals per year may be harassed incidental to the capture and sampling activities.

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 Hwy., room 7324, Silver Spring, MD 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 interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700–Building 1, Seattle, WA 98115–0070, (206/526–6150); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd. Suite 6, Juneau, AK 99802 (907/586–7221).

Dated: November 20, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Services.

[FR Doc. 92–28908 Filed 11–27–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

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

ACTION: Receipt of application to modify permit No. 789 (P135C).

Notice is hereby given that James H.W. Hain, Ph.D., Associated Scientists at Woods Hole, Inc., Woods Hole, MA 02543, has requested a modification of Permit No. 789 issued on August 24, 1992 (57 FR 39672), under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife (50 CFR parts 217–222).

Permit No. 789 authorizes the inadvertent harassment of, among other species, 25 right whales (*Eubaleana glacialis*) annually during aerial observations from a fixed-wing aircraft at altitudes no lower than 750 ft., surface vessel approach closer than 100 ft. in the northeast regional area and 100 yds. in the southeast regional area, underwater acoustic surveys, and observations from an airship (blimp) at altitudes no lower than 500 ft. The Permittee requests a modification to the Permit to descend on right whales to altitudes of 200–400 ft. and slant-range distances of 350–600 ft. for observational purposes.

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 Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice.

Documents submitted in connection with the above modification request are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713–2289); Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200); and Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: November 20, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–28909 Filed 11–27–92; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Government-Owned Inventions; Notice of Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service (NTIS), Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151 or by telephoning (703) 487–4732. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

Department of Health and Human Services

7-037,203—(U.S. 5,052,997) Diathermy Coil.
7-069,867—(U.S. 4,958,009) Anti-Human Ovarian Cancer Immunotoxins and Methods of Use Thereof.
7-117,937—(U.S. 5,135,864) Human Immunodeficiency Virus (HIV) Associated with Acquired Immunual Deficiency Syndrome (AIDS), a Diagnostic Method for Aids and pre-AIDS, and a Kit Therefor.
7-182,222—(U.S. 5,096,707) Flavone-8-Acetic Acid and Interleukin-2 in a Method of Treating Certain Cancers.
7-279,186—(U.S. 5,030,642) Acylaminoalkylpyridineamides as Inhibitors of Metastasis
7-398,213—(+)—Isomers of Endoetheno/Endoethano-Epoxymorphinan Derivatives as Antitussive Agents.
7-448,090—(U.S. 5,119,469) Dynamically Stable Associative Learning Neural Network System.
7-498,319—(U.S. 5,124,471) A BiFunctional DTPA-Type Ligand.
7-503,832—Chemically Modified CD4 Peptide Fragments Having Anti-Retroviral Properties.
7-513,269—(U.S. 5,052,934) Phantom for Evaluation of Prosthetic Valves and Cardiac Ultrasound Procedures.
7-518,887—Antigen Specific Plasmacytomas and Antibodies Derived Therefrom.
7-524,319—Dynamically Stable Associative Learning Neural System.
7-535,407—Method for Detecting Immune Dysfunction in Asymptomatic Aids Patients and for Predicting Organ Transplant Rejection.
7-545,077—Diagnosis and Treatment of Autoimmune Diseases.
7-547,892—A Polypeptide and DNA Sequence Corresponding to the Human Receptor with High Affinity for lgE.
7-612,672—Parvovirus Capsids.
7-639,453—Mammalian Bilirubin UDP-Glucuronosyltransferase Clones and Methods of Use Thereof.
7-655,502—A Non-Mitogenic Competitive HGF Antagonist.
7-662,368—Solomon Islands Variants of Human T-Lymphotropic Virus.
7-662,508—Synthetic HIV Protease Gene and Method for Its Expression.
7-664,731—Antigenic Proteins of Borrelia Burgdorferi.
7-668,865—A Simple Method for Detecting Inhibitors of Retrotransposition.
7-695,024—Recombinant Virus Expressing Human Carcinoembryonic Antigen and Methods of Use Thereof.
7-696,556—Compositions for the Treatment of Chronic Fatigue Syndrome.
7-699,374—Method of Inhibiting Viral Replication.
7-715,650—Amino Acid Derivative and Bromoacetyl Modified Peptides for the Preparation of Synthetic Peptide Polymers, Conjugated Peptides, and Cyclic Peptides.
7-722,823—Method and Apparatus for Imaging a Physical Parameter in Turbid Media Using Diffuse Waves.
7-725,066—Muscarinic Antagonists.
7-738,032—Improved Expression of Influenza a M2 Protein in Baculovirus and Uses of M2 Protein.
7-747,371—Adenovirus Mediated Transfer of Genes to the Gastrointestinal Tract.
7-750,044—Antibodies to P40.
7-751,830—Defective, Interfering HIV Particies.
7-751,892—A Method for Discriminating and Identifying Alleles in Complex Loci.
7-756,621—A Method for the Treatment of Hemophilia A and B.
7-758,824—Apparatus for and Method of Making Ultra Thin Walled Wire Reinforced Endotracheal Tubing and Product Thereof.

Department of Interior

7-723,570—(U.S. 5,078,533) Driveline Yoke with Improved Seal Retainer.
7-730,014—(U.S. 5,098,573) Binary Concentration and Recovery Process.

[FR Doc. 92-28881 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-04-M

Government-Owned Inventions; Notice of Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151 or by telephoning (703) 487-4732. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

Department of Human and Health Services

7-814,885—Glutathione Aerosol.
7-815,749—Cytoplasmic Tail of CD3 &.
7-821,415—Inhibition of Cell Proliferation Using Antisense Oligonucleotides.
7-822,043—Autotaxin: Motility Stimulating Protein Useful in Cancer Diagnosis and Therapy.
7-822,539—Methods and Compositions for Diagnosing Cat Scratch Disease and Bacillary Angiomatosis.
7-827,043—AAMP-1.
7-828,447—Aerosolization of Protein Therapeutic Agent.
7-831,603—High Resolution Digital Thermometer.
7-832,236—Method of Inhibiting HIV Protease.
7-836,590—Species Specific Identification of Borrelia Burgodorferi with 16S rRNA Directed Oligonucleotides.
7-837,392—Methods for Purifying and Detecting IgM Antibodies.
7-840,625—An Immortalized Human Bronchial Epithelial Cell Line.
7-841,310—Attenuated Influenza a Virus.
7-842,957—Splash Containment Testing Device for Emergency Wash Units.
7-843,067—Parvovirus Capsids.
7-844,304—Mu-crystallins.
7-845,042—Epibatidine and Derivatives Compositions and Methods of Treating Pain.
7-846,388—Cloning and Characterization of a Vasopression V2 Receptor.
7-847,298—Vectors for Ligation-Independent Cloning and Methods for Using Same.
7-847,311—Potent Peptide for Stimulation of Cytotoxic T Lymphocytes Specific for the HIV-1 Envelope.
7-849,294—Exchangeable Template Reaction.
7-861,249—Calanolide Antiviral Compounds, Compositions and Uses Thereof.

[FR Doc. 92-28882 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-04-M

Government-Owned Inventions; Notice of Availability for Licensing

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Please cite the number and title of inventions of interest.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

Department of Health and Human Services

7–285,025—(U.S. 5,099,069) Backbone Polysubstituted Chelates for Forming a Metal Chelate-Protein Conjugate.
7–570,442—Method of Making Live Autogenous Skeletal Replacement Parts.
7–737,854—RfaD Gene and Product.
7–754,987—Method of Detecting Infectious Virus Strains.
7–760,143—Glucuronoxylomannan-Protein Conjugates of Cryptococcus Neoformans.
7–760,530—Method to Induce Cytotoxic T Lymphocytes Specific for a Broad Array of HIV–1 Isolates Using Hybrid Synthetic Peptides.
7–764,695—Oncoimmunins.
7–764,906—Therapeutic Inhibition of Platelet Aggregation by Nucleophile-Nitric Oxide Complexes and Derivatives Thereof.
7–764,908—Oxygen Substituted Derivatives of Nucleophile-Nitric Oxide Adducts as Agents for the Treatment of Cardiovascular Disorders.
7–765,746—Substituted Phenserines as Specific Inhibitors of Acetylcholinesterase.
7–767,331—Recombinant Immunotoxins.
7–768,053—A Method of Identifying Ligands and Antagontists of Ligands.
7–770,026—Blockage of Cell Adhesion Molecules.
7–771,557—A Peptide Analog.

Department of Health and Human Services—(Continued)

7–775,081—A Method of Diagnosing Cancer Susceptibility or Metastatic Potential.
7–779,195—Selective Cytotoxic Reagents.
7–781,808—Carboline Derivatives Useful in Treating L-Tryptophan Eosinophilia Myalgia Syndrome.
7–783,046—A Method for Detecting a Differentiation Marker in Normal and Malignant Carcinoma Cells and in Biological Samples and Body Fluids.
7–783,602—A Fat Cell Specific B-Adrenergic Receptor.
7–785,993—A Method of Introducing Hydroxyl Groups into Artemisinin and its Derivatives.
7–786,001—Bistriazenes as Chemotherapeutic Agents.
7–788,262—Production of Complementary DNA Representing Hepatitis a Viral Sequences by Recombinant DNA Methods and Uses Therefor.
7–789,517—Multidimensional Imaging Using A Single Point Detector for a Phase Encoded Modulated Optical Carrier.
7–789,835—Purification of Human Chorionic Gonadotropin B-Coore Molecule and Preparation of Antibodies with Specificity for Same.
7–798,918—Nucleotide and Amino Acid Sequence of Pemphiqus Vulgaris Antigen and Methods of Use.
7–801,167—Myocardial cGMP-Inhibited cAMP Phosphodiesterase.
7–801,812—Heparin- and Sulfatide-Binding Peptides from the Type I Repeats of Human Thrombospondin.
7–804,663—Method of Preparation of Template for DNA Sequencing.

[FR Doc. 92–28884 Filed 11–27–92; 8:45 am]
BILLING CODE 3510–04–M

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Please cite the number and title of inventions of interest.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

Department of Health and Human Services

7–282,562—(U.S. No. 5,141,852) Chromatographic Assay of Protein Kinases with Peptide Substrates.
7–355,744—(U.S. No. 5,132,315) Therapeutic Application of an Anti-invasion Compound.
7–376,687—(U.S. No. 5,135,855) Rapid, Versatile and Simple System for Expressing Genes In Eukaryotic Cells.
7–437,819—(U.S. No. 5,132,212) The SCL Gene, and a Hematopoietic Growth and Differentiation Factors Encoded Thereby.
7–536,101—(U.S. No. 5,141,849) A Marker for Early Detection of Human Hydatidiform Moles and Choriocarcinomas.
7–575,808—(U.S. No. 5,137,712) Use of S-Adenosyl-L-Methionine (same) to Reverse and/or Prevent Supersensitivity, Tolerance, and Extrapyramidal Side Effects Induced by Neuroleptic Treatment.
7–594,923—(U.S. No. 5,134,969) Cage Configuration for Arboreal Reptiles.
7–757,366—(U.S. No. 5,148,679) Portable Device for Producing Solid Carbon Dioxide.

Department of Interior

7–602,491—(U.S. No. 5,129,945) Scrap Treatment Method.
7–704,832—(U.S. No. 5,131,992) Microwave Induced Plasma Process for Producing Tungsten Carbide.

Department of Agriculture

7–373,977—(U.S. No. 5,132,220) More Virulent Biotype Isolated from Wild-Type Virus.
7–536,860—(U.S. No. 5,130,232) Monoclonal Antibody Immunoassay Kit for Avian Reticuloendotheliosis Virus.
7–586,116—(U.S. No. 5,145,786) Preenriched Broth Medium for the

Simultaneous Sampling of Foods for Salmonella and Listeria.

7-610,903—(U.S. No. 5,149,525) Organophosphorus Insecticides as Synergizicides for Carpophilus spp. Pheromones.

7-610,904—(U.S. No. 5,149,526) The Use of Cholesteryl Esters as Mounting Sex Pheromones in Combination with 2,6-Dichlorophenol and Pesticides to Control Populations of Hard Ticks.

7-634,853—(U.S. No. 5,139,562) Inhibition of Potato Sprouting Using Volatile Monoterpenes.

7-645,439—(U.S. No. 5,139,530) Treatment of Cellulosic Materials for Enhanced Dyeability.

7-801,157—(U.S. No. 5,146,731) Bagger Receiver Rox.

[FR Doc. 92-28883 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-04-M

Notice of Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Applications SN 7-688,087 and SN 7-871,973, filed April 22, 1991 entitled "Activity Dependent Neurotropic Factor" to Synergen, Inc., 1885 33rd Street, Boulder, Colorado 80301. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license to the company would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention relates to a purified non-neuronal activity-dependent neurotropic factor (ADNF) protein that increases the survival of spinal cord neuron cells and hippocampal neuron cells. The protein of the invention can be used in treatment of neurological deficiencies.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 56, No. 220 (November 14, 1991). A copy of the U.S. Patent Application may be purchased from NTIS Sales Desk by telephoning 1-800-553-NTIS, or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22151.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151 (Telephone: 703/487-4732). Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NTIS within sixty (60) days of this notice will be considered.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing, National Technical Service, U.S. Department of Commerce.

[FR Doc. 92-28885 Filed 11-27-92; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List cocoa beverage powder to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 30, 1992.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 8, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (57 FR 19888) of the proposed addition of this powder to the Procurement List. Comments were received during the development phase of the proposal to add this commodity to the Procurement List and later from the current contractor for the item, both directly and through a Member of Congress. The comments claimed that addition of the item to the Procurement List would have a very negative impact on the company in terms of lost sales and investment in equipment to produce the cocoa powder to the Government. The Committee was also contacted by another Member of Congress who urged the Committee to add the item to the Procurement List to benefit people with severe disabilities in his district.

The contractor also submitted its total sales figures for 1989 through 1991 and projected sales for 1992, which the Committee compared with sales of the cocoa beverage powder to the Government to determine the size of the impact of losing these sales in the future. Increased sales due to Operation Desert Shield/Storm in 1990 and 1991 were taken into account in assessing impact, as was the fact that projected Government requirements for the future, which is what the company would lose the opportunity to supply once the item is added to the Procurement List, are substantially lower than the requirements for 1990 and 1991. After reviewing this data, the Committee concluded that the impact on the company is not extensive enough to constitute severe adverse impact. The company has not provided any information that indicates that the equipment it has purchased could not be used to produce other dry food items or cocoa powder for commercial use.

The contractor did tell the Committee that most of its cocoa powder sales are not sales of this specific item to the Government. Consequently, the Committee has discounted the loss of use of this equipment in reaching its conclusion that addition of the cocoa powder to the Procurement List would not have a severe adverse impact on the contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for additional to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Cocoa Beverage Powder, 8960–01–276–4207

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–28974 Filed 11–27–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 30, 1992.

ADDRESS: Committee for Purchase From People Who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–84c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Drill, Twist
- 5133–00–988–5684
- 5133–00–988–5673
- 5133–00–988–5655
- 5133–00–065–0980
- 5133–00–065–0981
- 5133–00–051–5749

Nonprofit Agency: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.

Stencil Set, Marking
- 7520–00–205–1760
- 7520–00–298–7043
- 7520–00–272–9680
- 7520–00–298–7044
- 7520–00–272–9683
- 7520–00–269–9012
- 7520–00–272–9684

Nonprofit Agency: Orange Rehabilitation Center, Occupations, Inc., Middletown, New York.

Tray, Pre-Packing, Plastic
- 8135–00–181–8240
- 8135–00–181–8241
- 8135–00–181–8242
- 8135–00–181–8243
- 8135–00–181–8244
- 8135–00–181–8249
- 8135–00–181–8250
- 8135–00–181–8251
- 8135–00–181–8252

Nonprofit Agency: Royal Maid Association for the Blind, Inc., Hazlehurst, Mississippi.

Services

Janitorial/Custodial, Federal Center, 74 North Washington Avenue, Battle Creek, Michigan

Nonprofit Agency: Calhoun County Community Mental Health Services, Battle Creek, Michigan.

Janitorial/Grounds Maintenance, U.S. Army Reserve Center, 4722 McArdle Road, Corpus Christi, Texas

Nonprofit Agency: Nueces County Mental Health/Mental Retardation Community Center, Corpus Christi, Texas.

Publications Distribution, GPO Complex, Laurel, Maryland

Nonprofit Agency: Virginia Industries for the Blind, Richmond, Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–28975 Filed 11–27–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 30, 1992.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities

proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities to the Procurement List:

Binder, Looseleaf, Ring
7510-01-203-4708
7510-01-203-8814

Nonprofit Agency: South Texas Lighthouse for the Blind, Corpus Christi, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-28976 Filed 11-27-92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 15-16 December 1992, at The ANSER Corporation, Crystal Gateway 3, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to address existing theater air defense capabilities, and establish a study approach to identify options for meeting theater air defense requirements through the year 2020.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-28979 Filed 11-27-92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Draft Environmental Impact Statement on a Proposal to Purchase Lands at Abiquiu Reservoir, New Mexico for the Purpose of Recreational Access and Development

AGENCY: U.S. Army Corps of Engineers, Albuquerque District, DoD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

1. Planned Action: The planned actions are to purchase approximately 6,185 acres of land within Abiquiu Reservoir and to construct recreational facilities to develop the recreational potential of the lake. The U.S. Government currently holds flowage easements on 6,110 acres of these lands. These actions are authorized by Public Laws 88-29, 89-72, and 100-522. Construction of new facilities will be contingent upon a cost sharing agreement with a non-federal sponsor.

2. Alternatives Considered: Alternatives considered include the proposed acquisition of lands and recreational development, limited recreational development, and the no action alternative.

3. Public Involvement Process: Public and private concerns having jurisdiction or an interest in land and resources in the vicinity of Abiquiu Dam and Reservoir will be invited to attend public scoping meetings and follow-on public hearings. Public scoping meetings will be held to identify public interest and issues of public and private concern regarding the planned action. All interested parties will be invited to attend the public hearings and to submit comments on the DEIS when it is circulated for review.

The planning effort will be coordinated with the U.S. Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act of 1972 (72 Stat. 563) (Pub. L. 85-624) and the Endangered Species Act of 1973, as amended (87 Stat. 563) (Pub. L. 93-205). Consultation with the Advisory Council on Historic Preservation and the New Mexico State Historic Preservation Office will be initiated pursuant to the National Historic Preservation Act of 1966 (80 Stat. 915) (Pub. L. 89-655), and the Preservation of Historic and Archeological Data (88 Stat. 174) (Pub. L. 93-291).

4. Significant Issues to be Analyzed: Significant issues to be analyzed in the development of the DEIS include the socioeconomic effect of the proposed land acquisition on the surrounding area, the effect of increased recreational activity on the Rio Chama Wild and Scenic River and the Chama River Canyon Wilderness Area, and the effect of the proposed action on wildlife habitat, endangered species, aesthetic qualities, and cultural resources.

5. Public Review: The estimated date that the DEIS will be circulated for public review is May 1993.

FOR FURTHER INFORMATION CONTACT: Questions regarding the study may be directed to: Sandra L. Rayl, USAED, Albuquerque, P.O. Box 1580, Albuquerque, NM 87103, telephone (505) 768-2187.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-29014 Filed 11-27-92; 8:45 am]

BILLING CODE 3710-08-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0037]

Clearance Request for Presolicitation Notice and Response

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0037).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Presolicitation Notice and Response.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time, and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice response is used to determine the number of solicitation documents needed and to assure that interested offerors receive the solicitation documents. The responses are placed in the contract file and referred to when solicitation documents are ready for mailing. After mailing, the responses remain in the contract file and become a matter of record.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 5,900; responses per respondent, 8; total

annual responses, 47,200; preparation hours per response, .167; and total response burden hours, 7,882.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0037, Presolicitation Notice and Response, in all correspondence.

Dated: November 18, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–28861 Filed 11–27–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0047]

Clearance Request for Place of Performance

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0047).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Place of Performance.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (a) determine bidder responsibility; (b) determine price reasonableness; (c) conduct plant or source inspections; and (d) determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 79,397; responses per respondent, 14; total annual responses, 1,111,558; preparation hours per response, .07; and total response burden hours 77,810.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0047, Place of Performance, in all correspondence.

Dated: November 18, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–28893 Filed 11–27–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0043]

Clearance Request for Delivery Schedules

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0043).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Delivery Schedules.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 3,440; responses per respondent, 5; total annual responses, 17,200; preparation hours per response, .167; and total response burden hours, 2,872.

OBTAINING COPIES OF PROPOSALS; Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: November 18, 1992.

Beverly Fayson;

FAR Secretariat.

[FR Doc. 92–28862 Filed 11–27–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0046]

Clearance Request for Type of Business

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0046).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Type of Business.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4655.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms proposing to provide supplies or services to the Government must indicate their type of business to ensure that any subsequent contracts contain the proper provisions and clauses. This information is used by the Government in preparation of the contract and is then placed in the contract file and becomes a matter of record.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 79,397; responses per respondent, 14; total annual responses, 1,111,558; preparation hours per response, .07; and total response burden hours, 77,810.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0046, Type of Business, in all correspondence.

Dated: November 18, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–28863 Filed 11–27–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0048]

Clearance Request for Authorized Negotiators

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an exciting OMB clearance (9000–0048).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Authorized Negotiators.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *61,875*; responses per respondent, *8*; total annual responses, *495,000*; preparation hours per response, *.017*; and total response burden hours, *8,415*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0048, Authorized Negotiators, in all correspondence.

Dated: November 18, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–28864 Filed 11–27–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB control No. 9000–0041]

Clearance Request for Technical Proposal—Two-Step Sealed Bidding

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0041).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Technical Proposal—Two-Step Sealed Bidding.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755

SUPPLEMENTARY INFORMATION:

A. Purpose

Two-step sealed bidding is a method of contracting designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements.

(b) Step two involves the submission of sealed price bids by those who submitted acceptable technical proposals in step one. The requested information is needed, in the absence of adequate specifications, to develop a sufficiently descriptive and not unduly restrictive statement of the Government's requirements and to determine the acceptability of proposals received. The contracting officer evaluates the acceptability of the information received, based on the criteria in the request for proposals.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *3,225;* responses per respondent, *1;* total annual responses, *3,225;* preparation hours per response, *8;* and total response burden hours, *25,800.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0041, Technical Proposal—Two-Step Sealed Bidding, in all correspondence.

Dated: November 17, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-28865 Filed 11-27-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 30, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests pror to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: November 23, 1992.

Cary Green,

Director, Information Resources, Management Service.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Drug-Free Schools and Communities—Emergency Grants.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 200.
Burden Hours: 5600.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.
Abstract: The Drug-Free Schools and Communities Program regulations require that local education agencies submit a grant application in order to be considered for funding under the Emergency Grants Program.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: State Plan under Part B of the Individuals with Disabilities Education Act.
Frequency: Triennial.
Affected Public: State or local governments.
Reporting Burden:
Responses: 19.
Burden Hours: 551.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: States are required to submit an approved State plan to the U.S. Department of Education in order to receive funds under Part B of the Individuals with Disabilities Education Act.

Office of Special Education and Rehabilitative Services

Type of Review: New Collection.
Title: Examination of Interpreter Referral and Service Provisions for State and Local residents who are Deaf or Hard of Hearing.
Frequency: One time Only.
Affected Public: Individuals or households, State or local governments.
Reporting Burden:
Responses: 200.
Burden Hours: 50.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The purpose is to determine the availability and quality of sign language and oral interpreter referral services, and the adequacy of interpreter service delivery for persons who are deaf or hard of hearing at State and local levels. The results will assist Rehabilitation Services Administration in determining the need to implement section 315 of Public Law 93-112, as amended.

[FR Doc. 92-28887 Filed 11-27-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-2900.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following notice of meetings is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Thursday, December 3, 1992, at the Offices of the Organization for Economic Cooperation and Development (OECD), Annex, 94, rue Chardon Lagache, Paris, France, beginning at 9:15 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ). The agenda for the meeting is under the control of the SEQ. It is expected that the following draft Agenda will be followed:

1. Adoption of the Agenda.
2. Summary Record of the 76th Meeting.
3. Initial Review of Results of the Seventh Allocation Systems Test (AST-7).
4. Emergency Reserve and Net Import Situation for IEA Countries on 1st July 1992.
5. Emergency Data System and Related Questions:

—Monthly Oil Statistics (MOS) to July 1992
—MOS to August 1992
—Base Period Final Consumption (BPFC) Q391-Q292.

6. Any other business.

In addition to the foregoing, there will be a brief informal meeting of the IAB on the same date and at the same location, commencing at 8:30 a.m., to discuss the agenda items described above in preparation for the meeting of the SEQ at 9:15 a.m.

As permitted by 10 CFR 209.32, the usual 7-day period for publication of the notice of these meetings in the Federal Register has been shortened because unanticipated circumstances pertaining to the IEA's scheduling of these meetings delayed the issuance of this notice.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings are open only to representatives of members of the IAB and their counsel, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IAB, or the IEA.

Issued in Washington, DC, November 9, 1992.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 92-28838 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

Floodplain Involvement Notification for Proposed Waste Management Action at the Oak Ridge Reservation, Oak Ridge, TN

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of floodplain involvement and opportunity to comment.

SUMMARY: DOE proposes to install a sanitary sewer monitoring station and a new sanitary sewer line on the east end of the Y-12 Plant on the Oak Ridge Reservation in Oak Ridge, Tennessee. The proposed action would be located within the 100-year floodplain of East Fork Poplar Creek. All activities related to the proposed action would occur within a fenced area of less than one (1) acre on federally owned property.

The proposed action, if implemented, would be performed in such a manner as to avoid or minimize potential impacts on the floodplain.

In accordance with the DOE regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR part 1022), DOE will conduct a floodplain assessment before conducting construction activities.

DATES: Comments are due no later than December 15, 1992.

ADDRESSES: Send comments to Larry L. Radcliffe, Director, Waste Management Division (EW-92), U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831, or fax comments to 615-576-5333.

FOR MAPS AND FURTHER INFORMATION REGARDING THE PROPOSED ACTION CONTACT: DOE at the Information Resource Center, 105 Broadway Avenue, Oak Ridge, Tennessee 37830. Phone: 615-481-0695.

For further information on the DOE floodplain/wetlands review requirements, write or call Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Phone: 202-586-4600 or 800-472-2756.

SUPPLEMENTARY INFORMATION: Sanitary wastewater exits the Y-12 Plant from two pipes, the East Pipe and the West Pipe. The flow through these two pipes is currently combined with the city of Oak Ridge sanitary sewer at a point downstream of the Y-12 Plant. The combined flow is then monitored at an existing monitoring station owned by the city. As such, personnel from the city of Oak Ridge do not have a clear understanding of the volume of sanitary waste discharged by the Y-12 Plant. This project would establish a monitoring station which would monitor only the flow of the sanitary sewer discharged by the Y-12 Plant. To ensure that all sanitary sewer discharge is monitored through the new station, a new sewer line would be installed to combine the discharge of the two existing East and West Pipes. Approximately 830 feet of new 15-inch line would be installed to redirect the flow of the West Pipe to the East Pipe. The new monitoring station would then operate downstream of the combined Y-12 Plant flows and monitor all sanitary sewer discharge before confluence with the city of Oak Ridge system.

Following the issuance of the floodplain assessment, a floodplain statement of findings will be published in the **Federal Register**.

Issued at Washington, DC, this twenty-fourth day of November 1992.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92-28969 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Space Nuclear Systems.

Date and Time: Monday, December 14, 1992, 8 a.m.-4:30 p.m.

Place: U.S. Department of Energy, 1000 Independence Ave, SW., room 6E-069, Washington, DC 20585.

Contact: Dr. Jake W. Stewart, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7092.

Purpose: The Secretary of Energy Advisory Board Task Force on Space Nuclear Systems was established in August, 1992 to: (1) Review current DOE space nuclear policy in light of national space policy; (2) review current DOE space nuclear-related activities with respect to their support of present civilian and national security space requirements; (3) evaluate the role and practices of the DOE in supporting nuclear space systems required for present and future missions of NASA and the DOD; (4) review environmental safety and health issues associated with space nuclear systems, and determine whether ample consideration is afforded possible alternative systems; (5) assess opportunities for international cooperation and collaboration in space nuclear systems; (6) examine aspects of space nuclear systems in the context of nuclear non-proliferation and other national security issues; (7) provide to the Secretary of Energy recommendations and guidance for most effectively utilizing DOE and other agency resources to serve national goals in the area of space nuclear systems.

Tentative Agenda

Monday, December 14, 1992, 8:30 a.m.-5 p.m.

8:30 a.m. Call to Order/Discussion of final findings and recommendations.
10:15 a.m. Break.
10:30 a.m. Continue discussion of findings and recommendations.
12 p.m. Lunch.
1 p.m. Continue discussion of findings and recommendations.
3:15 p.m. Break.
3:30 p.m. Public Comment.
4:30 p.m. Conclude task force discussion on findings and recommendations for the final report.
5 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (E.D.T.) Tuesday, December 8, 1992, and reasonable provision will be made

to include the presentation during the public comment period. It is requested that oral presenters provide 20 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (E.D.T.) Tuesday, December 8, 1992, to assure that it is considered by Board members during the meeting.

Minutes: A transcript and minutes of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 am and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: November 24, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-28967 Filed 11-27-92; 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.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 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 (a DOE component which term includes the 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 of 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 on or before December 30, 1992. 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.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-516
3. 1902-0096
4. Electric Rate Schedule Filings, RM92-12
5. Revision of a currently approved collection
6. On occasion
7. Mandatory
8. State of local governments; Businesses or other for-profit
9. 234 respondents
10. 2.7 responses per respondent
11. 976 hours per response
12. 614,775 hours
13. The Federal Power Act requires each public utility, certain hydroelectric project licensees and qualifying small power producers to file for approval rate schedules, together with related contracts and service conditions. Supporting data required to determine the reasonableness of the rates.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-556
3. 1902-0075
4. Cogeneration and Small Power Production—RM92-12, Streamlining of Regulations, Parts II and III, Federal Power Act
5. Revision of a currently approved collection
6. On occasion
7. Required to obtain or retain a benefit
8. State or local governments; Businesses or other for-profit; Small businesses or organizations
9. 333 respondents
10. 1 response per respondent
11. 6 hours per response
12. 1,947 hours
13. The proposed rule revises and clarifies Commission policies regarding procedural and technical rules by which cogeneration and small power production facilities can obtain qualifying status. By proposing these changes, the Commission is continuing to encourage cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and efficient rates for consumers.

The third energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-508
3. 1902-0138
4. Reporting of Electric Energy Shortages and Contingency Plans under PURPA 206—RM92-12
5. Revision of a currently approved collection
6. On occasion (When shortage is anticipated)
7. Mandatory
8. Businesses or other for-profit
9. 55 respondents
10. 1 response per respondent
11. 67 hours per response
12. 3,685 hours
13. The information reported will be used to formulate options and recommendations for Commission consideration and action should shortages affecting reporting public utilities occur and to determine if statute provisions (FPA-202(g)) for equitable customer treatment are satisfied.

STATUTORY AUTHORITY: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, November 19, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92-28835 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

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 Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/NO(SW)-20, for the transfer of 10 kilograms of uranium, enriched to approximately 5 percent in the isotope uranium-235 from Sweden to the Institutt for Energiteknikk, Kjeller, Norway, for use as samples for safeguards and control analysis. After use these samples will be disposed of as waste.

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 24, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 92-28965 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE Metal Casting Industrial Advisory Board Meeting.

Date and Time: Monday, December 14, 1992 8:00 a.m.-7:00 p.m., Tuesday, December 15, 1992 9:00 a.m.-12:00 p.m.

Location: University of Northern Iowa, Metal Casting Center, Cedar Falls, Iowa 50614-0178, (319) 273-6894.

Contact: David M. Pellish, Executive Secretary, DOE Metal Casting Industrial Advisory Board, U.S. Department of Energy, CE-231, Forrestal, 1000 Independence Avenue, SW., Washington, DC 20585.

Purpose of Board: To provide guidance and oversight of research programs at the National Metal Casting Research Institutes and the operation of the Metal Casting Competitiveness Research Program and to recommend to the Secretary of Energy new or revised Metal Casting Research Priorities.

Agenda For the Annual Meeting of the Metal Casting Industrial Advisory Board:

I. Discussion of the latest developments of the Metal Casting Competitiveness Research Program
II. Tour of UNI Metal Casting Center and demonstration of Sand Reclamation Prototype
III. Review of UNI Metal Casting Research
IV. Discussion of proposed Industry Cooperative Technology Utilization Program
V. Research project reviews
VI. Open forum discussions

Public Participation: The meeting is open to the public. The Chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 24, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-28966 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC).

Date and Time: Thursday, December 17, 1992 at 9 a.m.

Place: Four Seasons Hotel, Corcoran Ballroom, 2800 Pennsylvania Avenue, NW., Washington, DC 20585.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-5), Washington, DC 20585, Telephone: 202/586-3867.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

—Call to order by Ray L. Hunt, Chairman of the NPC.
—Remarks by the Honorable James D. Watkins, Secretary of Energy.
—Consider and approve the proposed final report of the NPC Committee on Natural Gas, Frank H. Richardson, Chairman.
—Progress report of the NPC Committee on Refining.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, room IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 23, 1992.

Marcia Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 92-28968 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-134-NG]

ANR Pipeline Co.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ANR Pipeline Company authorization to import up to 350 Bcf of Canadian natural gas over a two-year term beginning on

the date of first delivery after January 31, 1993, the date in which ANR's current authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 20, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-28840 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-125-NG]

Chevron Natural Gas Services, Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Chevron Natural Gas Services, Inc. (CNGS), authorization to import up to 7[9] Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery after December 16, 1992, the date CNGS's current authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 20, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-28839 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

[Fe Docket No. 92-70-NG]

Saranac Power Partners, L. P.; Order Granting Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Saranac Power Partners, L. P., long-term authorization to import up to 54,000 Mcf per day of Canadian natural gas for a period of sixteen years beginning on the date of first import.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 20, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy.

[FR Doc. 92-28836 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-98-NG]

Saranac Power Partners, L.P.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOS.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Saranac Power Partners, L. P., blanket authorization to import up to 40,000,000 MMBtu of Canadian natural gas over a two-year period beginning on the date of first import.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 20, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-28837 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of October 19 Through October 23, 1992

Office of Hearings and Appeals

During the week of October 19 through October 23, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for 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.

Appeal

Greenpeace, 10/19/92, LFA-0240

Greenpeace filed an Appeal from a denial by the Director of the Office of Processing and Reactor Facilities, Office of Security Affairs, of a request for information that it filed under the Freedom of Information Act (FOIA). In its Appeal, Greenpeace challenged the Director's non-disclosure of certain portions of one of two responsive documents on the grounds that no justification was given for the non-disclosure. The DOE determined that no justification for non-disclosure was in fact set forth in the initial determination and remanded the matter for a new determination with respect to that document. Accordingly, the Appeal was granted in part and denied in part.

Refund Applications

Apex Oil Co. Clark Oil & Refining Corp./Ashland Petroleum Corporation, 10/22/92, RF342-199

The DOE issued a Decision and Order denying an Application for Refund filed by Ashland Petroleum Company (Ashland). In its application, Ashland requested a refund based upon purchases it made from Apex. In *Apex/Clark*, the DOE determined that purchasers of Apex refined petroleum products are ineligible for refund from the Clark refined product refund pool. This portion of Ashland's claim, therefore, was denied. In addition, Ashland requested a refund based upon the 17,654,620 gallons of petroleum products which it purchased from Clark. The Schedule of Purchases included with the application revealed that the firm purchased Clark products sporadically during the refund period. Moreover, copies of the individual Authorization of Purchases submitted by the firm as documentation clearly indicate that the Clark purchases were made on the spot market. Spot purchases are generally ineligible for refund in DOE special refund proceedings. As Ashland chose not to attempt to rebut the spot purchaser presumption of non-injury, the DOE determined that the firm's Application for Refund be denied.

Apex Oil Co., Clark Oil & Refining Corp./Harry Carsey, 10/22/92, RF342-126

The DOE issued a Decision and Order denying an Application for Refund filed by Harry Carsey in the Apex/Clark special refund proceeding. In his application, Mr. Carsey requested a refund based upon 27,170 gallons of Clark gasoline that he purchased for use in his personal automobile. Mr. Carsey estimated that he used ten gallons of Clark gasoline every day during the refund period. The DOE determined that Mr. Carsey's estimate was not acceptable, as it appeared to be based upon little more than guesses and unsubstantiated assertions. As the applicant failed to establish a reasonable volume of Clark product purchased during the refund period, the Application for Refund was accordingly denied.

Apex Oil Co., Clark Oil & Refining Corp./Tom Soyk's Super 100, Inc., 10/21/92, RF342-263

The DOE issued a Decision and Order granting, in part, an Application for Refund filed by Joseph Lebeau on behalf of Tom Soyk's Super 100, Inc. (Tom Soyk's). From its incorporation until its dissolution in 1984, Mr. Lebeau was 49% stockholder of Tom Soyk's while Tom Soyk himself owned 51% of the stock. Mr. Soyk did not apply for refund on behalf of the corporation. In his application, Mr. Lebeau requested that the DOE grant him the total allocable share attributable to Tom Soyk's due to the fact that Mr. Soyk did not participate in the operations or share in the profits of the station beyond a monthly salary and commission. The DOE determined, however, that the corporation was the entity which purchased the Clark products and is, therefore, the entity which would have incurred any injury as a result of Clark's alleged overcharges. As the corporation is dissolved, the DOE determined that the shareholders of the corporation are entitled to the refund due Tom Soyk's in proportion to their respective shares of ownership. Therefore, the DOE granted Mr. Lebeau a refund equal to 49% of the corporation's allocable share, or $1,117 (comprised of $850 principal and $267 interest).

Shell Oil Company, Farmers Union Central Exchange, Inc., RF315-7845, Farmers Union Central Exchange, Inc., RF315-7846, AG-Co, Inc., et al., 10/19/92, RF315-10222 et al.

The DOE issued a Decision and Order granting, in part, an Application for Refund filed in the Shell Oil Company special refund proceeding on behalf of Farmers Union Central Exchange, Inc. (Cenex), a large agricultural cooperative, Case No. RF315-7845. Under the end-user presumption, Cenex claimed and was granted a refund totaling $43,901 ($30,016 principal and $13,885 interest) based upon purchases of Shell petroleum products which it resold to its members. Under the reseller small claims presumption, Cenex simultaneously claimed a smaller refund based upon purchases which it resold to non-members. This smaller claim was denied as it would have allowed Cenex to benefit inappropriately from a combination of two different presumptions of injury. Cenex also filed an Application for Refund on behalf of Pacific Supply (Case No. RF315-7846), a regional agricultural cooperative which sold substantially all its assets to Cenex in 1977. In a previous Decision the OHA had determined that the right to a refund was not among the assets transferred to Cenex in the sale. Accordingly, the DOE denied Cenex's claim to the refund based upon Pacific Supply purchases and directly granted the 33 eligible Pacific Supply member cooperatives refunds totaling $4,781 (comprised of $3,269 principal and $1,512 interest), Case Nos. RF315-10222 *et al.*

Texaco Inc./Diablo Texaco 10/22/92, RF321-19274

The Department of Energy (DOE) issued a Decision and Order reinstating in part a refund that had originally been granted to Diablo Texaco and its owner, Gerald Greth. The refund was rescinded in part in a Decision issued on July 15, 1992. In the Decision, the DOE found that the earlier rescission was based in part on incorrect information that was provided to the DOE by Mr. Greth concerning his dates of operation of Diablo Texaco. The DOE stated that based on new material submitted by Mr. Greth, he was entitled to an additional payment of $216.

Texaco Inc./Mike's Texaco 10/22/92, RF321-19320

The Department of Energy (DOE) issued a Decision and Order rescinding in part a refund that had been granted to Mike's Texaco and its owner, Candace Minchey in the Texaco special refund proceeding. In that Decision, the DOE stated that another application had been filed on behalf of that service station by an applicant who claimed dates of operation that overlapped with the dates claimed by Ms. Minchey. The DOE further stated that the other applicant had submitted proof of his dates of operation, and that Ms. Minchey was willing to concede that her claimed dates of operation were incorrect. The DOE concluded that Ms. Minchey received an excessive refund, and that Ms. Minchey should be required to repay that amount, plus interest, to the DOE. Ms. Minchey's total repayment obligation is $346.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full tests of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Accomack County Public Schools et al	RF272-86413	10, 22, 92
Atlantic Richfield Company/Service Oil Co	RF304-13322	10/22/92
Frank Tomascik	RF304-13323	
Frank Tomascik	RF304-13324	
Frank Tomascik	RF304-13325	
Clark Oil & Refining Corp./Farmer's Union Central Exchange, Inc. & Land O'Lakes	RF342-306	10/22/92
Gulf Oil Corp./A.L. Fuller Gulf *et al*	RF300-18200	10/19/92
Gulf Oil Corp./Anderson News Company *et al*	RF300-17507	10/21/92
Gulf Oil Corp./H.W. Lemens, Inc	RF300-16565	10/19/92
Gulf Oil Corp./Patterson's Gulf *et al*	RF300-13364	10/21/92
Gulf Oil Corp./Sure Flame Gas Company	RF300-17765	10/20/92
Gulf Oil Corp./Sure Gas, Inc. *et al*	RF300-15066	10/19/92
Keystone Central School District	RF272-100	10/22/92
Mobil Oil Corporation/Doucette Mobil	RR225-42	10/21/92
Doucette Mobil	RR225-43	
Nesco Community School District	RF272-81362	10/20/92
Publishers Clearing House	RC272-162	10/20/92
Quantum Chemical Corporation/Rice Oil Company	RF330-59	10/21/92
Shell Oil Company/Plymouth Oil, Inc. *et al*	RF315-757	10/20/92

Texaco Inc./Bates' Texaco Service Station *et al*	RF321-7096	10/20/92
Texaco Inc./Equity Co-op Association *et al*	RF321-16013	10/21/92
Texaco Inc./Modern Service *et al*	RF321-15900	10/20/92
Texaco Inc./National Heat & Power *et al*	RF321-10241	10/20/92
Town of Hudson *et al*	RF272-85016	10/19/92
Winona School District *et al*	RF272-81239	10/20/92
Woodville ISD *et al*	RF272-85602	10/22/92

Dismissals

The following submissions were dismissed:

Name	Case No.
A.C. Wallace Arco	RF304-12619
Aloha Petroleum, Ltd.	RF304-4879
Bradshaw Oil Company	RF309-662
Buentello's Texaco #1	RF321-13708
Dom's Arco	RF304-12626
Early's Mail Service	RF321-15284
Frank A. McCormick	RF304-13245
Frank's Texaco	RF321-18871
Homewood Texaco Service	RF321-11212
Jamar Oil Company	RF309-1208
Knapp Texaco	RF321-11177
Maiden, NC	RF272-85038
Military Texaco	RF321-11174
Nobles Enterprises, Inc.	RF309-659
Reclamation Air Survey	RF272-89201
Scottie's Texaco Inc.	RF321-10352
Winnsboro Road Texaco	RF321-7984

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 20, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-28841 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; During the Week of September 14 Through September 18, 1992

During the week of September 14 through September 18, 1992 the decisions and orders summarized below were issued with respect to appeals and applications for 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.

Appeal

CIC Research, Inc., 09/17/92, LFA-0234

CIC Research, Inc. (CIC) filed an Appeal from a partial denial by the Bonneville Power Administration (BPA) of a request for information submitted under the Freedom of Information Act (FOIA). CIC sought information regarding the evaluation of a contract proposal it had recently submitted to BPA, and about the winning proposal and the company that was awarded the contract by BPA. Pursuant to 5 U.S.C. 552(b)(5) (FOIA Exemption 5), BPA withheld: (1) CIC's overall technical evaluation score; (2) the weights associated with each factor of the technical evaluation; (3) the technical evaluation forms used in evaluating CIC's proposal; (4) the technical evaluation score for the winning proposal. In addition, documents indicating the percentage of the budget that would be spent by each business associated with the winning proposal were withheld pursuant to 5 U.S.C. 552(b)(4) (FOIA Exemption 4). In considering the Appeal, the DOE found that: (i) the technical evaluation scores for both CIC's proposal and the winning proposal were properly withheld under Exemption 5; (ii) the weights associated with each factor of the technical evaluation of proposals could not be withheld under Exemption 5; (iii) BPA should release redated copies of the technical evaluation forms from which the names of the evaluator, the evaluator's written comments, and the scores given to the proposal are deleted; (iv) the withholding of the budget projections in the winning proposal required a more detailed justification than was given by BPA. Accordingly, the matter was remanded to BPA for release of the material improperly withheld and for a new determination regarding the cost projections withheld. In all other respects, the appeal was denied.

Refund Applications

El Paso Sand Products, Inc., 09/18/92, RF272-25903 RD272-25903

The DOE issued a Decision and Order granting an Application for Refund filed by El Paso Sand Products, Inc., a highway construction company and producer of construction materials, in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the construction industry was 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 applicant should receive a refund. The DOE also denied the States' Motion for Discovery finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $29,150.

Texaco Inc./Home Oil Company, 09/15/92, RF-321-13292, RF321-19059, RF321-19108

The DOE issued a Supplemental Order regarding a Decision and Order issued to John C. Sternaman in the Texaco Inc. special refund proceeding. Mr. Sternaman was granted a refund of $6,100 based on the Texaco purchases he claimed to have made as the owner of Home Oil Company from March 1973 through January 1981. Subsequently, however, the DOE received information that revealed that Mr. Sternaman did not purchase the assets of Home Oil Company until July 1978. As the purchase agreement did not include potential refunds, the DOE determined that Mr. Sternaman was not entitled to a refund based on the purchases of Home Oil Company made before July 1978. Consequently, the DOE determined that Mr. Sternaman's refund should be modified and directed him to remit $5,426. The DOE found that James Freudenberg, the owner of Home Oil Company from 1971 through June 1978 was entitled to refund of $5,426. The DOE also found that Kathleen Van Gorden, the widow of J. Bruce Van Gorden, was not eligible to receive a refund in the Texaco proceeding, as Mr. Van Gorden owned the business prior to the consent order period.

Texaco Inc./Saturn Petroleum Company, 09/14/92, RF321-5606 et al.

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning six Applications for Refund

filed by Saturn Petroleum Company on behalf of retail outlets that it operated. In considering the Saturn Application, the DOE rejected the firm's gallonage estimation methodology and substituted its own estimate. Since Saturn did not have complete records, the DOE used the purchase records that were available. Based upon the available data, the DOE estimated Saturn's total Texaco purchases as 41,861,000 gallons, and the firm was granted a refund of $30,604 based upon this volume and the medium range injury presumption.

Protective Order

The following firm filed an Application for Protective Order. The application, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the application and issued the requested Protective Order as an Order of the Department of Energy:

Chevron U.S.A. Inc., 09/16/92, LRJ-0002

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Newhall Land/Farming Company *et al*	RF304-13186	09/14/92
Atlantic Richfield Company/Tomkins Oil Company	RR304-24	09/17/92
Central Community High School District No. 71	RF272-81204	09/18/92
Chesapeake County Public Schools	RF272-80816	09/15/92
Clark Oil & Refining Corp./Lam Davis Super 100 *et al*	RF342-107	09/17/92
Great Lakes Dredge & Dock Co	RF272-69694	09/18/92
Great Lakes Dredge & Dock Co	RD272-69694	
Gulf Oil Corp./L & H Service Station	RF300-17027	09/17/92
L & H Service Station	RF300-17128	
Quantum Chemical Corporation/Consumers Oil Corporation	RF330-64	09/18/92
Sergeant Bluff-Luton Community Schools	RC272-161	09/17/92
Shell Oil Company/Best Shell *et al*	RF315-148	09/15/92
Tesoro Petroleum Corporation/Osage Oil Company	RF326-103	09/17/92
Osage Oil Company	RF326-327	
Texaco Inc./Don's Texaco	RF321-19217	09/14/92
Texaco Inc./Freeway Texaco *et al*	RF321-259	09/15/92
Texaco Inc./Lois Ferguson *et al*	RF321-7127	09/14/92
Wisconsin Heights School District *et al*	RF272-81206	09/16/92

Dismissals

The following submissions were dismissed:

Name	Case No.
4th Street Texaco	RF321-2163
A.R. Lavalley, Inc	RF272-90325
Alkek Oil Corporation	RF304-3148
Alkek Oil Corporation	RF304-3151
Alkek Oil Corporation	RF304-3147
Alkek Oil Corporation	RF304-3149
Alkek Oil Corporation	RF304-3150
Alkek Oil Corporation	RF304-3146
Alkek Oil Corporation	RF304-3145
Alkek Oil Corporation	RF304-3144
Alkek Oil Corporation	RF304-3143
Boot's Texaco	RF321-868
Brasher Gulf	RF300-16339
Chippenham Hospital	RF272-86372
Chisholm School District	RF272-79437
Claussen Paving Co	RF321-14950
Courthouse Texaco	RF321-11354
Dick's Trading Post Supply	RF321-1611
Frank Moll Texaco	RF321-11286
Gas-Up	RF300-14524
Glenn's Texaco	RF321-13638
Gloucester Trucking	RF300-15442
Ikes Arco Service	RF304-3634
Jack Goodrich Distributing	RF304-13262
Kendall Company	RF272-90131
Kiel Area School District	RF272-82149
Larkspur Texaco	RF321-11355
Metz Gulf Service	RF300-16312
Monterey Texaco	RF321-1528
Peach Texaco	RF321-13635
Pit Stop Oil Inc	RF321-1677
Portales Municipal School District	RF272-82007
Queensbury Central School	RF272-93428
Reynolds Metals Company	RF272-92645
Steiner Arco	RF304-3871
Stevens County, WA	RF272-90452
Tullo Oil Company, Inc	RF304-12764
Washington Natural Gas Co	RF272-90269
Whiteley Texaco Service	RF321-18357

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 20, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-28842 Filed 11-27-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4539-5]

Announcement of the Board of Trustees for The National Environmental Education and Training Foundation, Inc.

The National Environmental Education and Training Foundation was created by Public Law #101-619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation will develop and support a grant program that promotes innovative environmental education and training programs; it will also develop partnerships with government and other organizations to administer projects that promote the development of an environmentally literate public.

The Administrator of the U.S. Environmental Protection Agency, per the terms of the Act, announces the following appointment to the National Environmental Education and Training Foundation, Inc. Board of Trustees. This appointee will join the current Board members, (see The **Federal Register**—October 21, 1991 and May 7, 1992) which include: Chairman Thomas H. Kean, President of Drew University; Vice Chairwoman Ellen Sulzberger Straus, President of Executive Service Strategies; Treasurer Francis Pandolfi,

President and CEO of Times Mirror Magazines, Inc. and Chairman of the Board of The Sporting News Publishing Company; Ms. Rebecca Rimel, Executive Director of the Pew Charitable Trusts; Dr. James Crowfoot, Professor at the School of Natural Resources, University of Michigan; Mr. Edward Bass, Chairman of Space Biosphere Ventures and Chairman and CEO of FineLine Inc. and the Bass Company; Mr. John Denver, Co-Founder and President of the Windstar Foundation; Mr. O. Mark De Michele, President and CEO of Arizona Public Service Company; Mr. Robert N. Wilson, Vice Chairman and member of the Board of Directors of Johnson & Johnson and Dr. Bonnie Guiton, now Dean of the McIntire School of Commerce at the University of Virginia. Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board yet another point of view relating to environmental education and training. Terms of office for respective Board members will be determined and announced upon completion and announcement of the full complement of 13 Board members.

Michael J. Fuchs

Mr. Michael J. Fuchs was named Chairman and Chief Executive Officer of Home Box Office (HBO) in October 1984, after being named President and CEO in March of that year and joining HBO initially in 1976 in charge of original and sports programming. He is responsible for the overall management of the nation's largest pay-TV company. Mr. Fuchs went to HBO following an 18-month association with the New York office of the William Morris Agency. Previously, he worked as a specialist in entertainment law, serving as an associate with two law firms in New York City.

Currently, Mr. Fuchs is a member of the Board of Directors of Turner Broadcasting System, Inc., the National Cable Television Association, C-Span, the Cable Satellite Public Affairs Network, and the Marvel Entertainment Group. He also serves as a member of the management committee of Comedy Central, the advertiser-supported basic cable comedy network jointly owned by HBO and MTV Networks. Mr. Fuchs is a Trustee of the American Film Institute, the Bronx Museum of the Arts, the American Museum of the Moving Image, and the Brooklyn Academy of Music. He is a member of the business committee of the Museum of Modern Art. Mr. Fuchs is also a member of the Board of Directors of the Hebrew Home for the Aged at Riverdale, the American Foundation for AIDS Research, the Creative Coalition, the Earth Communication Office, and the Alzheimer's Association, and he is Chairman of the Bryant Park Restoration Corporation.

Mr. Fuchs received a B.A. degree in political science from Union College in Schenectady, N.Y. and earned a J.D. degree from the New York University Law School. He was born March 9, 1946 in New York and currently resides in Manhattan.

FOR FURTHER INFORMATION, PLEASE CONTACT: Barbara Link, President, The National Environmental Education and Training Foundation, Inc., (202) 628-8200.

William K. Reilly,

Administrator.

[FR Doc. 92-28941 Filed 11-27-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4539-8]

Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meeting—Federal facilities environmental restoration dialogue committee.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to enhancing the Federal facilities environmental restoration process. Issues pertaining to enhanced stakeholder involvement, as well as methods for prioritizing Federal facility environmental restoration activities will be discussed. The meeting will be the fourth meeting of the Committee under the Federal Advisory Committee Act. An interim final Committee report is expected to be available shortly after the meeting.

DATES: The meeting will be held on December 15, 1992, from 9 a.m. until 5 p.m. and on December 16, 1992, from 8:30 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Sheraton City Centre, 1143 New Hampshire Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on any aspect of the Federal Facilities Environmental Restoration Dialogue Committee should contact Nicholas Morgan, Office of Federal Facilities Enforcement, U.S. EPA (OE-2261), 401 M Street, SW., 20460, (202) 260-1270.

Dated: November 19, 1992.

Nicholas Morgan,

Designated Federal Official.

[FR Doc. 92-28943 Filed 11-27-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4539-9]

Science Advisory Board; Clean Air Scientific Advisory Committee; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will conduct a planning meeting and receive updates on the status of air quality criteria and standards for Carbon Monoxide, Particulate Matter, Ozone, and Sulfur Oxides. The meeting will be held on December 16, 1992, from 9 a.m. until 5 p.m., at the Guest Quarters Suite Hotel, 2515 Meridian Parkway, Durham, North Carolina 27713. The hotel telephone number is (919) 361-4660 and the Fax number is (919) 361-2256.

The meeting is open to the public; however, seating is limited and on a first come basis. Any member of the public wishing further information concerning the meeting should contact Mr. Randall C. Bond, Designated Federal Official, Clean Air Scientific Advisory Committee at (202) 260-6552 or Fax (202) 260-7118. Those individuals requiring a copy of the agenda should contact Ms. Janice Jones at the same numbers. Members of the public wishing to provide brief oral comments at the meeting must contact Mr. Bond no later than December 1, 1992. Comments will be limited to five minutes. The Science Advisory Board expects that oral or written comment received at public meetings will not be repetitive of previously submitted materials.

Dated: November 12, 1992.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 92-28940 Filed 11-27-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4540-1]

Science Advisory Board; Environmental Economics Advisory Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that the Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board will meet on December 18, 1992 at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW., Washington, DC 20007. The hotel telephone number is (202) 338-4600.

The meeting, which is open to the public, will start at 8:30 a.m., and adjourn no later than 6 p.m. Its main purpose is to discuss and review a draft contingent valuation study *(Methods for Measuring Non-Use Values: A Contingent Valuation Study of Groundwater Cleanup)* done for EPA's Office of Policy, Planning, and Evaluation, and the Office of Solid Waste. The Committee will address, among other issues, the design, conduct, and findings of the study, as well as its applicability to EPA regulatory issues. The Committee will also discuss its draft report on the "health-health choice" concept (this theory attempts to assess the impacts of the cost of environmental/health regulations on the public's access to health care). The Committee's draft report stems from discussions at its meeting of July 14-15, 1992.

Requests for copies of the contingent valuation study, and questions concerning its content should be addressed to Mr. Gary Ballard (OS 311), Regulatory Analysis Branch, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. Mr. Ballard may be called at 202-260-2429; the study is not available from the Science Advisory Board. An agenda for the meeting is available from the Science Advisory Board (A101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 (202-260-6552). Members of the public desiring additional information about the conduct of the meeting should contact Mr. Samuel Rondberg, Designated Federal Official, Environmental Economics Advisory Committee, by telephone at the number noted above or by mail to the address noted above. Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by December 10, 1992. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: November 12, 1992.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 92-28942 Filed 11-27-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-62120; FRL-4174-5]

Accredited Training Programs Under The Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); Notice of Availability of New Edition.

SUMMARY: Effective November 30, 1992, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The November 30, 1992, directory, which supersedes the version released on August 31, 1992, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: NDAAC Clearinghouse, c/o ATLIS Federal Services, 6011 Executive Blvd., Rockville, MD 20852, Telephone: (301) 984-1929.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991 (56 FR 43064). EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

Dated: November 12, 1992.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92-28523 Filed 11-27-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632-6934.

OMB Control No.: 3060-0514.

Title. Holding Company Annual Report (Section 43.21(c)).

Expiration Date: 09/30/95

Description. Companies which directly or indirectly control common carriers having annual revenues in excess of $2,500,000 file annually with the Commission, not later than the date prescribed by the Securities and Exchange Commission for its purposes, two complete copies of any annual report Forms 10-K

OMB Control No.: 3060–0298.
Title: Tariffs (Other Than Tariff Review Plan); Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91–35: Order on Reconsideration.
Expiration Date: 01/31/94.
Description: The Commission ordered local exchange carriers to offer tariffed screening and international blocking services designed to control potentially fraudulent calls involving equal access ("10XXX") codes. The Commission required LECs to file with the Commission tariffs for the mandatory international blocking services on statutory notice. The Commission did not specify tariff filing requirements for the mandatory screening services.
OMB Control No.: 3060–0149.
Title: Application and Supplemental Information Requirements Part 63, Section 214, Sections 63.01–63.601; Telephone Company—Cable Television Cross Ownership Rules, Sections 63.54–63.58, CC Docket No. 87–266: Second Report and Order.
Expiration Date: 05/31/95.
Description: In CC Docket No. 87–266, the Commission modified 47 CFR part 63 to enable local telephone companies to participate in the video marketplace through video dialtone. In addition to the requirements of part 63, telephone companies that wish to offer video dialtone must describe how their proposed construction and operation of the basic platform will service multiple video programmers and expand as demand increase.
OMB Control No.: 3060–0391.
Title: Monitoring Program for Impact of FederalState Joint Board Decisions.
Expiration Date: 08/31/95.
Description: The Commission adopted the Federal-State Joint Board's recommendation to continue the monitoring program until 1997. Certain companies are required to submit information on network usage and growth and also information on rate cases before state commissions. The information collected is available to the general public and published in monitoring reports on an annual basis.
OMB Control No.: 3060–0511.
Title: ARMIS Access Report, FCC 43–04.
Expiration Date: 08/31/95.
Description: The Access Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is designed to obtain the detailed data that are needed to support the Commission's audit and other oversight functions concerning proposed annual tariffs, separations procedures and our access rules. Tier I telephone companies are subject to the reporting requirement.
OMB Control No.: 3060–0512.
Title: ARMIS Quarterly Report, FCC 43–01.
Expiration Date: 08/31/95.
Description: The Quarterly Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is designed to show the development of short term trends. The Quarterly Report is filed by Tier I telephone companies.
OMB Control No.: 3060–0513.
Title: ARMIS Joint Cost Report, FCC 43–03.
Expiration Date: 08/31/95.
Description: The Joint Cost Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. This report collects the allocations to regulated and nonregulated activities, at the study area level, for those accounts that are involved in the rate making process. The Joint Cost Report consists of the total amount of regulated and nonregulated operating activities as required by 47 CFR part 64. Tier I telephone companies are subject to the reporting requirement.
OMB Control Nos.: 3060–0438 and 3060–0485.
Title: Unserved Area Applications Filing Requirements and Other Cellular Requirements; Amendment of part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules.
Expiration Date: 10/31/94.
Description: In the First Report and Order and Memorandum Opinion and Order on Reconsideration issued in CC Docket No. 90–6, the Commission adopted rules for the processing, filing and selection of applications for unserved areas in the Domestic Public Cellular Radio Telecommunications Service (DPCRTS) and also amended various other rules applicable to all licensees. In the Second Report and Order issued in CC Docket No. 90–6, the Commission amended the rules governing the licensing of stations in the DPCRTS to require a new method for determining the Cellular Geographic Service Areas (CCSAs) of cellular systems. The Commission also modified the authorizations of existing cellular systems to redefine the boundaries of their CGSAs in accordance with the new method. Additionally, the Commission amended the rules to allow licensees of cellular systems to expand the CGSAs of these systems within their markets during the five year fill-in period without prior Commission authorization. Finally, the Commission clarified certain administrative details concerning application filing requirements for unserved areas.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 92–28918 Filed 11–27–92; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice; republication.

SUMMARY: This Public Notice, published on November 9, 1992 on page 53332, FR Doc. 92–27089, is being republished for the convenience of the reader. Page 2 of the Public Notice was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 632–4178.

SUPPLEMENTARY INFORMATION:

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

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, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. 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) 395–4814.

OMB Number: None.
Title: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

(Report and Order, CC Docket No. 92–90).

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 30,000 recordkeepers, 31.2 hours average burden per recordkeeper, 936,000 hours total annual burden.

Needs and Uses: The Telephone Consumer Protection Act of 1991, Public Law 102–243, December 20, 1991, adds section 227 to the Communications Act of 1934, as amended, to restrict the use of automatic telephone dialing systems ("autodialers"), artificial or prerecorded messages, facsimile machines, or other devices to send unsolicited advertisements. TCPA also requires that the Commission consider several methods to accommodate telephone subscribers who do not wish to receive unsolicited telephone advertisements. The statute mandates that the Commission prescribe regulations implementing the requirements of section 227 within nine months after the date of enactment. The rules we have adopted prohibit prerecorded message calls to residences absent an emergency or the prior express consent of the called party. Exceptions to the prohibition apply if the call: (a) Is not made for a commercial purpose; (b) does not transmit an unsolicited advertisement; (c) is made by a calling party with whom the called party has an established business relationship; or (d) is made by a tax-exempt nonprofit organization (47 CFR 64.1200(a)(2) and (c)). The rules further require that telephone solicitors maintain and use company-specific lists of residential subscribers who request not to receive further telephone calls (company-specific do-not-call lists), thereby affording consumers that choice of which solicitors if any, they will hear from by telephone. Telephone solicitors also are required to have a written policy for maintaining do-not-call lists, and are responsible for informing and training their personnel in the existence and use of such lists (47 CFR 64.1200(e) (i) and (ii)). Moreover, the rules require that those making telephone solicitations identify themselves to called parties, and that basic identifying information also be included in telephone facsimile transmissions (47 CFR 64.1200(e)(iv); 68.318(c)(3)). Pursuant to requirements of the TCPA, the rules we have adopted balance the objectives of protecting consumers from nuisance calls while permitting legitimate telemarketing practices. There is no reporting requirement, however, the R&O imposes a recordkeeping requirement on telemarketers to maintain lists of telephone subscribers who do not wish to be contacted by telephone. Without such recordkeeping, the purpose of the statute (to protect the privacy of individuals from unwanted solicitations) cannot be achieved.

Staff familiar with the requirements have made the following estimates of the annual burden for recordkeeping do-not-call requests:

Calls per day	18,000,000
Percent of calls in which do-not-call request is made.	×.05
Do-not-call requests per day	900,000
Burden hours per request	×.004 (.25 minutes)
Burden hours per day	3,600
Recordkeeping days per year.	×260
Total recordkeeping hours per year.	936,000
Recordkeepers	−30,000
Annual burden hours per recordkeeper.	31.2

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–28919 Filed 11–27–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Brazil/U.S. Atlantic Coast Agreement et al. Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010027–036

Title: Brazil/U.S. Atlantic Coast Agreement

Parties: American Transport Lines, Inc. Companhia de Navegacao Lloyd Brasileiro Companhia de Navegacao Maritima Netumar Companhia Maritima Nacional Empresa Lineas Maritimas Argentinas S.A. A. Bottacchi S.A. de Navegacion C.F.I.

Synopsis: The proposed amendment extends the special 98 percent carrying rate for all cargo through December 31, 1993. It also changes American Transport Lines, Inc.'s name to Crowley American Transport.

Agreement No.: 212–010320–027

Title: Brazil/U.S. Gulf Ports Agreement

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional, Crowley American Transport, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment extends alternate coast service provisions through December 31, 1993, clarifies application of the pool to transshipment cargo, extends the special 95 percent carrying deduction through the end of 1993, and changes American Transport Lines, Inc.'s name to Crowley American Transport, Inc.

Agreement No.: 203–011392

Title: Lauritzen/Kyokuyo Discussion Agreement

Parties: Lauritzen Reefers AS, Kyokuyo Co., Ltd.

Synopsis: The proposed Agreement authorizes the parties to discuss and agree upon rates, charges, practices and classifications, and rules in their respective service contracts and in the trade from New Zealand and South Pacific islands, including Cook Islands, Fiji, New Caledonia, Vanuatu, Samoa Islands (excluding American Samoa), Solomon Islands, Society Islands, Tonga, Kiribati, Tuvalu, and Papua, New Guinea and to ports and points in the United States, including Hawaii and Alaska and all United States Possessions and Territories. The parties may also consult and agree on sailing schedules, service frequency, ports to be served and port rotations. Adherence to any agreement reached by the parties is strictly voluntary. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: November 23, 1992.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 92–28895 Filed 11–27–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Commodore Cruise Line Limited (d/b/a Crown Cruise Line), 800 Douglas Road, suite 700; Coral Gables, FL 33134.

Vessel: Crown Jewel.

Dated: November 24,1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–28989 Filed 11–27–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Commodore Cruise Line Limited (d/b/a Crown Cruise Line) and Crown Jewel, Inc. 800 Douglas Road, Suite 700 Coral Gables, FL 33134.

Vessel: Crown Jewel.

Dated: November 24, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–28990 Filed 11–27–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app.2)).

DATES: Authority for these committees will expire on the date indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Allergenic Products	July 9, 1994
Cardiovascular and Renal Drugs.	August 27, 1994
Endocrinologic and Metabolic Drugs.	August 27, 1994
Oncologic Drugs	September 1, 1994
Anti-Infective Drugs	October 7, 1994
Dermatologic Drugs	October 7, 1994
Biological Response Modifiers.	October 28, 1994

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: November 19, 1992.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 92–28763 Filed 11–27–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92F–0396]

Novo Nordisk Bioindustrials, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Novo Nordisk Bioindustrials, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of α-acetolactate decarboxylase (ALDC) derived from *Bacillus subtilis* modified by recombinant DNA techniques to contain the gene coding for ALDC from *B. brevis* for use as a processing aid in the brewing and alcohol industries.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFF–333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

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 2A4345) has been filed by Novo Nordisk Bioindustrials, Inc. The petition proposes to amend the food additive regulations to provide for the safe use of α-acetolactate decarboxylase (ALDC) derived from *B. subtilis* modified by recombinant DNA techniques to contain the gene coding for ALDC from *B. brevis* for use as a processing aid in the brewing and alcohol industries.

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 10, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–28894 Filed 11–30–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92N–0455]

Warner Chilcott Laboratories, et al.; Withdrawal of Approval of 26 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 26 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
70-332	Methyldopa Tablets, USP, 250 milligrams (mg)	Warner Chilcott Laboratories, Division of Warner Lambert Co., 182 Tabor Rd., Morris Plains, NJ 07950.
70-333	Methyldopa Tablets, USP, 500 mg	Do.
70-340	Verapamil Hydrochloride Tablets, 80 mg	Do.
70-341	Verapamil Hydrochloride Tablets, 120 mg	Do.
80-196	Sulfisoxazole Tablets USP, 500 mg	Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
80-364	Meperidine Hydrochloride Injection USP, 50 mg/milliliter (mL) and 100 mg/mL.	Do.
80-423	Hydrocortisone Lotion USP, 0.025% and 0.5%	Do.
80-430	Hydrocortisone Lotion USP, 0.5%	Do.
80-770	Thiamine Hydrochloride Injection USP, 100 mg/mL	Do.
83-472	Propoxyphene Hydrochloride Capsules, 65 mg	Do.
83-489	Propoxyphene Hydrochloride Capsules, 32 mg	Do.
83-623	Diphenhydramine Hydrochloride Capsules USP, 25 mg	Do.
83-624	Diphenhydramine Hydrochloride Capsules USP, 50 mg	Do.
84-458	Diphenhydramine Hydrochloride Elixir USP, 12.5 mg/5 mL.	Do.
84-598	Chlordiazepoxide Hydrochloride Capsules, 10 mg	Do.
84-744	Meprobamate Tablets USP, 200 and 400 mg	Do.
84-955	Sulfisoxazole Tablets USP, 500 mg	Do.
85-109	Lidocaine Hydrochloride Injection, 1%	Do.
85-110	Lidocaine Hydrochloride Injection, 2%	Do.
85-163	Chlordiazepoxide Hydrochloride Capsules, 5 mg	Do.
85-164	Chlordiazepoxide Hydrochloride Capsules, 25 mg	Do.
85-218	Acetaminophen and Codeine Phosphate Tablets, 300 mg/30 mg.	Warner Chilcott Laboratories
85-992	Acetaminophen and Codeine Phosphate Tablets, 300 mg/15 mg.	Do.
86-047	Tolbutamide Tablets USP, 500 mg	Parke-Davis
87-131	Diphenoxylate Hydrochloride 2.5 mg and Atropine Sulfate Tablets USP, 0.025 mg.	Do.
87-306	Acetaminophen and Codeine Phosphate Tablets, 300 mg/60 mg.	Warner Chilcott Laboratories

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective December 30, 1992.

Dated: November 13, 1992.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 92-28891 Filed 11-30-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 91N-0291]

Transitional Class III Devices; Notice of Extension of Period for Review of Classification; Clarification of Scope of Transitional Provisions; Order for Transitional Class III Devices; Submission of Safety and Effectiveness Information Under Section 520(1)(5)(A) of the Federal Food, Drug, and Cosmetic Act; Reopening of the Reporting Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of period for review of classification; clarification of scope of transitional provisions; reopening of reporting period.

SUMMARY: The Food and Drug Administration (FDA) is extending the deadline, for a period not to exceed 1 year, for publication of a final regulation either reclassifying transitional class III devices, or requiring that these devices remain in class III. FDA's initial deadline to make a reclassification determination for daily wear soft or daily wear nonhydrophilic plastic contact lenses was November 29, 1992. This deadline is now extended to November 29, 1993. FDA's initial deadline to make a reclassification determination regarding all other transitional devices was November 30, 1992. This deadline is now extended to December 1, 1993. FDA is also clarifying the types of in vitro diagnostic products for use as aids in the detection and management of cancer in humans which are considered transitional class III devices and is reopening the reporting period for manufacturers of certain in vitro diagnostic products to submit a summary of and a citation to, any information known or otherwise available to the manufacturers respecting these devices, including adverse safety and effectiveness information which has not been submitted under provisions of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: FDA will make the determination regarding the reclassification of daily wear soft and daily wear nonhydrophilic plastic contact lenses by November 29, 1993. FDA will make the determination regarding the reclassification of all other transitional class III devices by December 1, 1993. Summaries and citations must be submitted by January 29, 1993.

ADDRESSES: Summaries and citations to the Document Mail Center (HFZ-401), Food and Drug Administration, Center for Devices and Radiological Health, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1186.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (HFZ-400), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1022.

SUPPLEMENTARY INFORMATION:

I. Background

The Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94-295), broadened the definition of "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. 321(h)) to include certain articles that were once regarded as drugs. To ensure that no regulatory gaps existed with respect to devices previously regarded as new drugs, Congress enacted section 520(l) of the

act (21 U.S.C. 360j(l)), which classified into class III those devices formerly regulated as new drugs or antibiotic drugs.

Sections 520(l)(2) and (l)(3) of the act provide a mechanism for manufacturers or importers of a device classified in class III under the transitional provisions to petition for reclassification of the device into class I or class II. Since the enactment of the 1976 amendments, only seven transitional devices have been reclassified from class III into class II or class I.

In 1990, Congress enacted the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101-629) which amended the act to correct problems of implementation and enforcement of the 1976 amendments. The legislative history of the SMDA reflects Congress' concern that many transitional devices were being unnecessarily retained in class III because the prescribed mechanism under the 1976 amendments for assignment of these devices to their appropriate regulatory classes was cumbersome and difficult. (H. Rept. 808, 101st Cong., 2d sess. 26-27 (1990); S. Rept. 513, 101st Cong., 2d sess. 26-27 (1990)). The retention of transitional devices in class III particularly concerned Congress because of the substantial commitment of FDA resources in processing the many premarket approval applications (PMA's) for transitional devices. In particular, Congress noted that approximately 50 percent of PMA's reviewed by FDA in a typical year relate to transitional contact lens products. (S. Rept. 513, 101st Cong., 2d sess. 27 (1990)). Congress concluded that appropriate reclassification of transitional devices would free up resources that could be devoted to products which present greater risks to the public. Accordingly, Congress enacted legislation amending section 520(l) of the act to provide a mechanism for revising or sustaining the classification of transitional devices based on the amended definitions for classes I, II, and III devices contained in section 513(a)(1) of the act (21 U.S.C. 360c(a)(1)).

In order to aid FDA in making determinations as to the appropriate classification of transitional devices, Congress enacted section 4(b) of the SMDA, which added section 520(l)(5) to the act, requiring the agency, before December 1, 1991, to issue an order requiring manufacturers of transitional class III devices to submit a summary of, and citation to, any information known or otherwise available to the manufacturers respecting the devices, including adverse safety or effectiveness information which has not been submitted under section 519 of the act (21 U.S.C. 360i).

In the **Federal Register** of November 14, 1991 (56 FR 57960), FDA published such an order pursuant to section 520(l)(5) of the act, requiring manufacturers of class III transitional devices to submit safety and effectiveness information by January 13, 1992. After publication of this order, the agency reviewed numerous inquiries indicating that firms were uncertain as to what information was required or whether the order applied to their devices. Because of these uncertainties, on January 29, 1992, FDA distributed letters to all PMA holders to clarify the applicability of the reporting requirements and to advise them that the deadline for submitting the required information had been extended to March 16, 1992. These letters also requested manufacturers to voluntarily submit their comments and justifications concerning the classification status of their devices, and requested them to voluntarily authorize FDA to reference certain safety and efficacy data to facilitate FDA's determination of the classification status of generic types of their devices. On March 10, 1992, FDA published a notice in the **Federal Register** (57 FR 8462) further extending the deadline for submitting the required information to March 31, 1992.

Section 520(l)(5) of the act, as amended by section 4(b) of the SMDA, requires that after the issuance of the order, but before December 1, 1992, FDA shall publish a regulation in the **Federal Register** for each device which is classified in class III revising the classification of the device so that the device is classified into class I or class II, unless the regulation requires the device to remain in class III. Under section 520(l)(5)(C) of the act, as added by section 4(b) of the SMDA, FDA, may by notice published in the **Federal Register**, extend the period prescribed above for a device for an additional period not to exceed 1 year. Section 520(l)(5)(B) of the act, added by section 4(b) of the SMDA, states that before the publication of a regulation requiring a device to remain in class III, the agency shall publish a proposed regulation respecting the classification of a device and provide an opportunity for the submission of comments on any such proposed regulation. No regulation requiring a device to remain in class III or revising its classification may take effect before the expiration of 90 days from the date of the publication in the **Federal Register** of the proposed regulation.

Section 4(b)(8) of the SMDA also states that, notwithstanding the provisions for reclassification of other transitional devices, FDA shall not retain daily wear soft or daily wear nonhydrophilic plastic contact lenses in class III unless the agency determines they meet the statutory criteria for remaining in class III. This finding and the grounds for such finding must be published in the **Federal Register**. The agency must make any such determination within 24 months of the date of the enactment of the SMDA. Pursuant to section 4(b)(3) of the SMDA, FDA may by notice published in the **Federal Register** extend the 2-year period prescribed by the statute to make the determination of the reclassification of daily wear soft or nonhydrophilic plastic lenses for a period not to exceed 1 year. If the agency has not reclassified the above specified contact lenses within 36 months of the date of enactment, it shall issue an order placing the lenses in class II.

II. Extension of Deadline

The agency is exercising its statutory option under section 4 of the SMDA to extend the deadline for publishing a final regulation determining the classification status of daily wear soft and daily wear nonhydrophilic plastic contact lenses until November 29, 1993, and is exercising its statutory option to extend the deadline for publishing a final regulation determining the classification of the remaining transitional class III devices until December 1, 1993. There was incomplete industry response to FDA's November 14, 1991, **Federal Register** order that required manufacturers to submit safety and effectiveness information. Additionally, FDA received limited industry response to its letter of January 29, 1992, to manufacturers requesting them to voluntarily comment and provide justification as to whether their device should be reclassified, and to voluntarily authorize FDA to reference certain safety and effectiveness information to facilitate FDA's ability to determine the appropriateness of reclassification of the generic type of their device. Because of the incomplete response to FDA's order and requests for information, and because FDA granted extensions to manufacturers to submit safety and effectiveness information, FDA is extending its deadlines to issue final regulations determining whether transitional devices should be reclassified. Until available safety and effectiveness

information is reviewed and this rulemaking process is completed, these devices will remain in class III subject to premarket approval before commercial distribution unless reclassified on the basis of a reclassification petition by a manufacturer or importer of the device under section 520(l)(2) of the act and in accordance with the procedures under 21 CFR 860.136. In the interim, FDA encourages affected PMA holders and other interested persons to continue to submit to the contact person identified in this notice the voluntary information requested in FDA's January 29, 1992, letter.

FDA recognizes that, if it does not issue a final regulation determining the classification status of soft and nonhydrophilic plastic contact lenses for daily wear by November 29, 1993, FDA must, pursuant to section 4(b) of the SMDA, issue an order placing these lenses in class II.

III. Scope of Transitional Devices

The agency is clarifying the applicability of the transitional provisions to certain types of in vitro diagnostic products for use as aids in the detection and management of cancer in humans which are considered transitional class III devices. FDA's November 14, 1991, order requiring the submission of safety and effectiveness information for transitional devices incorrectly limited the scope of this order regarding in vitro diagnostic products for use as aids in the diagnosis or management of cancer in humans to only biologically derived in vitro diagnostic substances for the identification or analysis of carcinoembryonic antigen (CEA), alpha-fetoprotein (AFP), tumor-associated antigen (TAA) and tumor-associated polypeptide antigen (TPA). On April 27, 1973, FDA published a **Federal Register** notice (38 FR 10468) announcing that all in vitro diagnostic products for use as aids in the diagnosis or management of cancer in humans and labeled as such are subject to the new drug provisions of section 505 of the act (21 U.S.C. 355). Because such products were declared to be new drugs in a **Federal Register** notice before May 28, 1976, these products are subject to the transitional provisions of the act. (See 21 U.S.C. 360j(e).) Because of the error in FDA's November 14, 1991, order in omitting this class of products, FDA is extending the deadline for submission of safety and effectiveness information required by the order to January 29, 1993, for manufacturers of in vitro diagnostic products for use as aids in the diagnosis and management of cancer that were not listed in FDA's November 14, 1991, order. All summaries and citations must be submitted to the Document Mail Center (address above). The PMA reference number, if any, and the device trade name must be clearly identified. FDA requests that persons submitting information state in the letter that the submission is in response to the November 14, 1991, **Federal Register** order, so that the submission will not be confused with other PMA submissions. One copy of each submission is sufficient.

Dated: November 24, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-29076 Filed 11-25-92; 12:36 pm]

BILLING CODE 4160-01-F

Public Health Service

Treasury, Postal Service and General Government Appropriations Act of 1992; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under section 633 of the Treasury, Postal Service and General Government Act of 1992, Public Law 102-141, as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Assistant Secretary for Health or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: November 19, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-28920 Filed 11-27-92; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-060-03-4191-03]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed Zortman Mine Expansion Project, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) for the proposed Zortman Mine Expansion Project in Phillips County, Montana and notice of scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and the Montana Environmental Policy Act, the Montana Department of State Lands (DSL) and the Bureau of Land Management (BLM), as lead agencies, will be directing the preparation of an EIS to be prepared by a third party contractor on the impacts of the Zortman Mining Inc. proposal to expand the processing of oxide and nonoxide ore reserves. The Zortman operation is located in southwestern Phillips County about 50 miles south of Malta, Montana, near the southern boundary of the Fort Belknap Indian Reservation.

DATES: Comments during the scoping process will be accepted until February 1, 1993. Public scoping meetings will be held beginning at 7 p.m. on December 15 in Dodson, December 16 in Malta, and December 17 in Hays, Montana.

ADDRESS: Comments should be sent to the Project Coordinator, Montana Department of State Lands, Capitol Station, 1625 11th Ave., Helena, MT 59620, Attn: Jo Stephen.

FOR FURTHER INFORMATION CONTACT: Jo Stephen, DSL Project Coordinator (406) 444-2074 or Scott Haight, BLM Project Coordinator (406) 538-7461.

SUPPLEMENTARY INFORMATION: Zortman Mining Inc., a wholly owned subsidiary of Pegasus Gold Corporation of Spokane, Washington, currently holds an approved Plan of Operations and an operating permit for the Zortman Mine operation. Zortman Mining Inc. proposes to expand the processing of oxide and nonoxide ore reserves.

The application for the proposed Zortman Mine Expansion Project was submitted in May 1992. The proposed mine expansion operation would consist of an open-pit gold mine utilizing heap leaching to extract gold and silver from ore. The proposed expansion would include 80 million tons of ore and 54 million tons of waste produced at the rate of 60,000-80,000 tons per day, 350 days per year, for 5 to 8 years. The operation would combine run-of-mine oxide ore and crushed unoxidized ore to ultimately produce a dore' bullion to be shipped off site for final processing. The oxide and unoxide ores would be mined at the existing operation site and transported via overland conveyor to a conventional cyanide heap leach facility. The precious metal enriched solution would be captured witnin the leach pad facility. Precious metal

cathodes and/or precipitate produced from the recovery processes will be smelted to a dore bullion product on-site. A 15,000-foot overland conveyor is proposed for ore movement to the heap. The conveyor would be approximately 36 inch wide covered belt operating at approximately 2000 tons/hour. The proposed conveyor would produce surplus energy which would be used to reduce energy consumption by the project.

Support facilities for the mining and processing operations would include existing offices, shops, warehouse, explosive storage facilities, plus sanitary waste disposal and contingency/containment facilities to service the proposed Zortman leach pad site.

Power would be delivered to the Zortman operations along existing powerline corridors owned and operated by Big Flat Electric Co-op. To utilize available power supply from the Landusky operation, a powerline extension is proposed to connect the two operations.

The current and proposed permit areas are composed of patented and unpatented mining claims, private ownership, and federal lands administered by the BLM. Major disturbances would be from construction of the leach pad, the waste rock depository, crusher, conveyor system, and process facilities. Mining activities associated with the Zortman operations would remain mostly within the current operating pit areas. The potential lime quarry, shale pit expansion, proposed overland conveyor facility disturbances would be outside the current Zortman permit boundaries. Approximately 600 more acres, both inside and outside the current permit boundaries would be disturbed.

Dated: November 18, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-28874 Filed 11-27-92; 8:45 am]

BILLING CODE 4310-DN-M

[MT-060-03-4320-01-ADVB]

Meeting of Lewistown District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of grazing advisory board meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet December 17, 1992. The agenda will be 10 a.m.—Incentive-Based Grazing Fee Concept.

LOCATION: Lewistown District Office, Airport Road, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: David L. Mari, District Manager, Bureau of Land Management, P.O. Box 1160, Lewistown, Montana 59457, Phone (406) 538-7461.

Dated: November 18, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-28875 Filed 11-27-92; 8:45 am]

BILLING CODE 4310-DN-M

[CO-920-93-4110-03; COC40528]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease COC40528, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from April 1, 1992, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective April 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239-3783.

Dated: November 19, 1992.

Joan E. Gilbert,

Acting Chief Fluid Minerals Adjudication Section.

[FR Doc. 92-28872 Filed 11-27-92; 8:45 am]

BILLING CODE 4310-JB-M

[OR-943-4210-04; GP3-046; OR-39641]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 12,783.92 acres of public lands out of Federal ownership This action will also open 14,087.40 acres of reconveyed lands to surface entry. The minerals are not in Federal ownership and will not be opened to mining and mineral leasing.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 12,783.92 acres in Deschutes, Harney, Lake, and Malheur Counties, Oregon, from Federal ownership to private ownership.

In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 16 S., R. 11 E.,
  Sec. 22, NW¼NE¼, N½NW¼, and SW¼NW¼.
T. 38 S., R. 13 E.,
  Sec. 27, SE¼,NE¼;
  Sec. 34, SW¼NW¼, N½SW¼, and W½SE¼;
  Sec. 36, NE¼ and S½.
T. 16 S., R. 14 E.,
  Sec. 32, SE¼;
  Sec. 34, N½NE¼ and SE¼NE¼;
  Sec. 35, N½;
  Sec. 36, SE¼NE¼, NE¼NW¼, and W½NW¼.
T. 39 S., R. 14 E.,
  Sec. 6, SE¼SE¼;
  Sec. 16, SE¼NE¼, N½NW¼, NE¼SW¼, and SE¼;
  Sec. 18, SE¼SW¼;
  Sec. 19, NE¼NW¼.
T. 40 S., R. 14 E.,
  Sec. 36, NW¼NE¼, S½NE¼, and SE¼
T. 41 S., R. 14½ E.,
  Sec. 16.
T. 32 S., R. 17 E.,
  Sec. 16, lots 1 to 16, inclusive.
T. 16 S., R. 18 E.,
  Sec. 8, SE¼NW¼ and NE¼SW¼
T. 19 S., R. 18 E.,
  Sec. 10, NE¼NE¼.
T. 5 S., R. 19 E.,
  Sec. 16, E½SW¼.
T. 19 S., R. 20 E.,
  Sec. 11, NE¼NE¼.
T. 21 S., R. 20 E.,
  Sec. 36, E½.
T. 34 S., R. 21 E.,
  Sec. 36, lots 1 to 6, inclusive.
T. 4 S., R. 23 E.,
  Sec. 16, SW¼NE¼, N½NW¼, SE¼NW¼, and NE¼SW¼.
T. 9 S., R. 23 E.,
  Sec. 9, N½NW¼.
T. 17 S., R. 23 E.,
  Sec. 36, SE¼SW¼ and S½SE¼.

T. 21 S., R. 23 E.,
Sec. 36.
T. 27 S., R. 24 E.,
Sec. 7, lots 2 and 3, and SE¼NW¼.
T. 25 S., R. 25 E.,
Sec. 35, SE¼SE¼.
T. 26 S., R. 25 E.,
Sec. 2, lot 2 and SE¼NW¼;
Sec. 10, SW¼NE¼, NE¼SW¼, and SW¼SW¼;
Sec. 16, N½NE¼, SW¼NE¼, NW¼, and NW¼SW¼;
Sec. 17, SE¼SE¼.
T. 14 S., R. 26 E.,
Sec. 36, NE¼NE¼.
T. 9 S., R. 27 E.,
Sec. 36, NE¼, NE¼SW¼, and E½SE¼.
T. 33 S., R. 31 E.,
Sec. 24, W½ and W½SE¼.
T. 23 S., R. 34 E.,
Sec. 16, N½NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼.
T. 26 S., R. 35 E.,
Sec. 27, SW¼ and NW¼SE¼.
T. 28 S., R. 35 E.,
Sec. 31, lot 3 and E½SW¼.
T. 29 S., R. 35 E.,
Sec. 3, SW¼SW¼;
Sec. 5, lot 4, SW¼NE¼, S½NW¼, and N½SE¼;
Sec. 6, lot 1;
Sec. 10, S½NE¼ and E½NW¼;
Sec. 11, S½NW¼, W½SE¼, and SE¼SE¼;
Sec. 12, SW¼SW¼;
Sec. 13, SW¼NE¼ and NW¼.
T. 29 S., R. 36 E.,
Sec. 4, N½SW¼;
Sec. 5, SE½NE¼ and E½SE¼;
Sec. 8, NE¼SE¼ and SW¼SE¼;
Sec. 10, NW¼NW¼, SE¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 11, S½SW¼ and SW¼SE¼.
T. 17 S., R. 37 E.,
Sec. 36, W½SW¼.
T. 18 S., R. 37 E.,
Sec. 36, NE¼NE¼.
T. 29 S., R. 37 E.,
Sec. 15, SW¼SW¼SW¼;
Sec. 22, S½NE¼NW¼;
Sec. 23, SW¼NW¼SW¼;
Sec. 25, S½SE¼NW¼ and SW¼NE¼SE¼.
T. 35 S., R. 37 E.,
Sec. 16, N½.
T. 18 S., R. 38 E.,
Sec. 16, S½NE¼ and SE¼.
T. 29 S., R. 38 E.,
Sec. 22, SE¼SW¼, NE¼SE¼, S½NW¼SE¼, and SW¼SE¼;
Sec. 30, SW¼ of lot 4;
Sec. 31, S½NE¼NW¼.
T. 18 S., R. 40 E.,
Sec. 16.
T 16 S., R. 41 E.,
Sec. 24, SE¼SE¼.
T. 39 S., R. 41 E.,
Sec. 36, NW¼.
T. 16 S., R. 42 E.,
Sec. 19, lots 3 and 4;
Sec. 36.
T. 19 S., R. 42 E.,
Sec. 16.
T. 17 S., R. 43 E.,
Sec. 36.
T. 26 S., R. 43 E.,
Sec. 16, E½SE¼NE¼ and E½E½SE¼.
T. 22 S., R. 44 E.,
Sec. 36, lots 1 to 8, inclusive, NE¼NE¼, SW¼, W½SE¼, and SE¼SE¼.
T. 23 S., R. 44 E.,
Sec. 16, lots 1 to 8, inclusive, lot 10, NE¼NE¼, S½NE¼, E½SW¼, and SE¼.
T. 26 S., R. 44 E.,
Sec. 16, lots 2, 3, and 5, SW¼NE¼, and NW¼NW¼.

The areas described aggregate approximately 14,087.40 acres in Crook, Deschutes, Gilliam, Grant, Harney, Klamath, Lake, Malheur, and Wheeler Counties.

At 8:30 a.m., on January 4, 1993, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on January 4, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: November 20, 1992.

Robert E. Mollohan,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-28876 Filed 11-27-92; 8:45 am]
BILLING CODE 4310-33-M

[NV-930-93-4210-05; N-54687]

Lease/Purchase for Recreation and Public Purposes Clark County, NV; Notice of Realty Action

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Section 10: S½NW¼NW¼NW¼.
Aggregating 5 acres (gross).

The Valley Baptist Church intends to use the land for a church site. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches for canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/the City of Las Vegas.

2. Those rights for flood control purposes which have been granted to City of Las Vegas by Permit No. N-51823 under the Act of October 21, 1976.

3. Those rights for a roadway which have been granted to the City of Las Vegas by Permit No. N-48698 under the Act of October 21, 1976.

4. Those rights for a 36 inch underground waterline which have been granted to the Las Vegas Valley Water District by Permit No. N-42515 under the Act of October 21, 1976.

The land is not required for any Federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws, and disposals of mineral materials.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: November 18, 1992.

Ben F. Collins,
District Manager, Las Vegas, NV.

[FR Doc. 92-28873 Filed 11-27-92; 8:45 am]
BILLING CODE 4310-HC-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32191]

Alabama & Florida Railway Co.—Purchase and Operation Exemption—Alabama and Florida, Inc.

Alabama & Florida Railway Co. (A&FR), a noncarrier, has filed a verified notice of exemption to acquire and operate a 76.66-mile rail line from Alabama & Florida, Inc. (A&F), extending between milepost 547.54 at Georgiana, AL, and milepost 624.20 at Geneva, AL.[1] A&FR will also acquire A&F's right to operate a 2.9-mile rail line leased from the Andalusia & Conecuh Railroad Company, Inc., extending between mileposts S428+4706 and S425+5170 in Covington County, AL.[2] The parties intended to consummate the transaction on or after November 16, 1992.

Any comments must be filed with the Commission and served on: Mary Todd Carpenter, suite 1107, 1700 K. Street, NW., Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will all automatically stay the transaction.

Decided: November 20, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-28970 Filed 11-27-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32178]

Pioneer Railcorp., Continuance in Control Exemption for Alabama & Florida Railway Co.; Exemption

Pioneer Railcorp. (Pioneer) filed a notice of exemption to continue to control Alabama & Florida Railway, Co. (A&FR), upon A&FR becoming a class III shortline rail carrier. A&FR has concurrently filed a notice of exemption to acquire and operate a total of 79.56 miles of owned and leased rail line in Alabama. Finance Docket No. 32191, *Alabama & Florida Ry., Co.—Pur. and Oper. Exempt.—Alabama and Florida, Inc.* The parties intended to consummate that transaction on or after November 16, 1992.

Pioneer also controls five nonconnecting class III rail carriers: Alabama Railroad Co. operating in Alabama; Fort Smith Railroad Co. operating in Arkansas; Natchez Trace Railroad operating in Mississippi and Tennessee; Wabash & Grand River Railway Co. operating in Missouri; and West Jersey Railroad Co. operating in New Jersey.

Pioneer states that: (1) The properties operated by these six carriers do not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the six railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Mary Todd Carpenter, suite 1107, 1700 K Street, NW., Washington, DC 20006.

Decided: November 20, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-28971 Filed 11-27-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 143X)]

Southern Pacific Transportation Company, Discontinuance of Service Exemption in Ventura County, CA; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the discontinuance of service by Southern Pacific Transportation Company over 16.593 miles of its Santa Paula Branch in Ventura County, CA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 14, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by December 10, 1992; petitions to stay must be filed by December 10, 1992; and petitions to reopen must be filed by December 28, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB-12 (Sub-No. 143X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representative:

Gary A. Laakso, Southern Pacific Transportation Co., Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

Karl Morell, Taylor, Morell & Gitomer, 919 18th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610. (TDD for hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

Decided: November 20, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillip, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-28973 Filed 11-27-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32170]

David Monte Verde, et al., Continuance in Control Exemption for Genesee & Mohawk Valley Railroad Co.; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

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[1] A&FR's parent, Pioneer Railcorp, owns five other nonconnecting shortline railroads. It concurrently filed a related notice of exemption to continue in control when A&FR becomes a carrier. *See* Finance Docket No. 23178, *Pioneer Railcorp.*—Continuance in Control Exempt.—Alabama & Florida Ry. Co.

[2] *See* Finance Docket No. 31942, A & F, Inc.—Lease and Oper. Exempt.—Andalusia & Conecuh R. Co., Inc. (not printed), served December 13, 1991.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts David Monte Verde, Michael Thomas, Charles Riedmiller, Jeffrey Baxter, and John Herbrand (Monte Verde, et al.) and Genesee Valley Transportation Company, Inc. (Genesee), from the prior approval requirements of 49 U.S.C. 11343 for their continuance in control of the Genesee & Mohawk Valley Railroad Co. (G&MV) when it becomes a class III rail carrier through the acquisition and operation of certain rail lines of Consolidated Rail Corporation. Monte Verde, et al., and G&MV's corporate parent, Genesee, currently control three other class III-rail common carriers. G&MV will connect with the Mohawk, Adirondack & Northern Railroad, Co., Inc., one of the rail carriers controlled by Monte Verde, et al. and Genesee. The exemption is subject to standard employee protective conditions, exemption is related to the notice of exemption filed concurrently in Finance Docket No. 32169.

DATES: The exemption is effective on December 30, 1992. Petitions to stay must be filed by December 10, 1992, and petitions to reopen must be filed by December 21, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32170 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representatives: Mary Todd Carpenter, Gerst, Heffner, Carpenter & Precup, suite 1107, 1700 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610. (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721).

Decided: November 17, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 92-28972 Filed 11-27-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Caribe General Electric Products, Inc.*, Civil Action No. 92-2688(JP), was lodged on November 17, 1992 with the United States District Court for the District of Puerto Rico. The proposed Consent Decree concerns Caribe General Electric Products, Inc.'s failure to comply with its National Pollutant Discharge Elimination System permit at its Vega Alta, Puerto Rico manufacturing facility in violation of the Clean Water Act.

Under the terms of the Consent Decree, Caribe General Electric Products, Inc. will pay a civil penalty of $500,000 for its past violations and is enjoined from discharging pollutants from its manufacturing facility in Vega Alta, Puerto Rico except in full compliance with its National Pollutant Discharge Elimination System permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Caribe General Electric Products, Inc.*, D.J. reference #90-5-1-1-3763.

The proposed consent decree may be examined at the office of the United States Attorney, District of Puerto Rico, Federico Degetau Federal Building, room 452, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Degree Library. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-28870 Filed 11-27-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92-89; Exemption Application No. D-8834; et al.]

Grant of Individual Exemptions; First Citizens Bank and Trust Company and Adopting Companies Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713. October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon

the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

First Citizens Bank and Trust Company and Adopting Companies Pension Plan (the Plan), Located in Raleigh, North Carolina

[Prohibited Transaction Exemption 92–89; Exemption Application No. D–8834]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the continued holding by the Plan after December 31, 1992, of shares of common stock (the Stock) of First Citizens BancShares, Inc. (BancShares), the parent corporation of the sponsor of the Plan; and (2) the Acquisition, holding, and exercise by the Plan of a put option (the Put) with respect to the Stock; provided that the following conditions are satisfied:

(A) The Plan's interests for all purposes with respect to the Stock are represented by Wachovia Bank of North Carolina, N.A. (the Fiduciary) for the duration of the Plan's holding of any of the Stock;

(B) The Fiduciary will take whatever action is necessary to protect the Plan's rights, including, but not limited to the exercise of the Put, if the Fiduciary, in its sole discretion, determines that such exercise is appropriate;

(C) The Fiduciary retains the right under the Put to require Bancshares, at any time, to purchase some or all of the Stock from the Plan for the greater of (1) the Stock's fair market value as of December 31, 1992, or (2) the fair market value of the Stock as of the date of such sales;

(D) BancShares' obligations under the Put remain secured by an escrow account containing cash or U.S. government securities worth at least 25 percent of the fair market value of the Stock as of December 31, 1992, as long as the Plan continues to hold any shares of the Stock; and

(E) Additional shares of the Stock are not voluntarily acquired on behalf of the Plan unless such acquisition satisfies the requirements of sections 406(a)(1)(E), 407(a) and 408(e) of the Act.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 28, 1992 at 57 FR 4459.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

PYCO ACE Operations Retirement Investment Plan (the Plan), Located in Baltimore, Maryland

[Prohibition Transaction Exemption 92–90; Exemption Application No. D–9039]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale), by the Plan of Group Annuity Contract No. GA–10,205 (the GAC), issued by Mutual Benefit Life Insurance Company, Newark, New Jersey, to PYCO ACE Operations, the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expenses in the transaction; (3) the Plan receives no less than the fair market value of the GAC at the time of the Sale; and (4) the trustee of the Plan has determined that the proposed sale is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 28, 1992, at 57 FR 44586.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Detroit Diesel Remanufacturing-West Inc. Tax-Favored Retirement Savings Plan (the Plan), Located in Reading, Pennsylvania

[Prohibited Transaction Exemption 92–91; Exemption Application No. D–9050]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan to Detroit Diesel Remanufacturing-West, Inc. (DDR-West), a party in interest with respect to the Plan, of an annuity contract, policy number 20274 (the Contract), issued on or about April 1, 1987, by American Protectors Insurance Company, a Utah Corporation, provided the following conditions are satisfied; (1) The Sale was a transaction for cash; (2) the Plan did not suffer any loss or incur any expenses from the Sale; (3) the Plan received no less than the fair market value of the contract at the time of the Sale; (4) the independent trustee for the Plan, Zions First National Bank of Salt Lake City, Utah, determined that the Sale was appropriate for the Plan and its participants and beneficiaries and that the consideration for the Sale was not less than the current fair market value of the Contract on the date of the Sale; and (5) should DDR-West recover more from the Contract than the amount paid, such excess shall be paid to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 5, 1992, at 57 FR 45826.

Effective Date: This exemption is effective on May 14, 1992.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Profit Sharing Plan and Trust for Employees of Radiology Consultants (the Plan), Located in Winter Haven, Florida

[Prohibited Transaction Exemption 92–92; Exemption Application No. D–9053]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)((A) through (E) of the Code, shall not apply to: (1) The proposed sale by the individual accounts in the Plan of John L. Beauchamp, Jr. (the Beauchamp Account) and Rong Dad Ho (the Ho Account) of each Account's respective 50% share of a certain 91.4% acre parcel of land and the fruit crop grown thereon (Grove Property I) to John L. Beauchamp, Jr., M.D. and Rong Dad Ho, M.D., respectively; (2) the proposed sale by the individual account in the Plan of Douglas M. Roy (the Roy Account) of a

[1] An acquisition of Stock shall not be deemed to have occurred if the Plan acquires shares of the Stock as a result of a stock dividend or stock split.

certain 39.4 acre parcel of land and the fruit crop thereon (Grove Property II) to Douglas M. Roy, M.D.; and (3) the proposed sale by the individual account in the Plan of Arnold J. Spanjers (the Spanjers Account; collectively, the Accounts) of a certain 74.3 acre parcel of land and the fruit crop thereon (Grove Property III) to Arnold J. Spanjers, M.D., provided that the following conditions are met:

(a) Each sale is a one-time transaction for cash;

(b) Each Account receives an amount which is no less than the greater of either the fair market value of the land on the Grove Property owned by such Account as appraised on January 15, 1992, or the fair market value of such land on the date of sale as established by an independent appraisal;

(c) Each Account receives the fair market value of the fruit crop on the Grove Property owned by such Account as of the date of sale, as established by an independent appraisal;

(d) With respect to the Beauchamp Account and the Ho Account, such Accounts receive an amount, as described in (b) and (c) above, which reflects each Account's 50% ownership interest in Grove Property I; and

(e) The Accounts do not pay any commissions or other expenses associated with the transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 28, 1992 at 57 FR 44589.

Written Comments: The applicant's representative (the Applicant) submitted a letter dated October 6, 1992, which commented on certain errors which were in the summary of facts and representations (the Summary) contained in the notice of proposed exemption (the Notice).

First, the Applicant states that the location of the Plan referred to in the heading of the Notice should be Winter Haven, Florida in lieu of Orlando, Florida.

Second, the Applicant notes that Item 4 of the Summary should have stated that the fair market value of the land on Grove Property I (the Land) was $914,000 in lieu of $1,050,000. The Applicant states that the second paragraph of Item 4 should delete the reference to the fair market value of the Land as $1,050,000 and should insert $914,000. Accordingly, the total fair market value of Grove Property I referred to in Item 4 should be $1,064,000 in lieu of $1,200,000.

Third, the Applicant notes that the last sentence of Item 9 of the Summary inadvertently stated that "* * * Neither the Plan nor the Accounts will not pay any commissions or other expenses for the proposed transactions (emphasis added)." The Department agrees that the word "not" should be deleted.

According, after consideration of the entire record, the Department has determined to grant the exemption.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of November 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-28982 Filed 11-27-92; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-9066, et al.]

Proposed Exemptions; Pension Plan of Government Employees Hospital Association, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall

include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

Supplementary Information: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Pension Plan of Government Employees Hospital Association, Inc. (the Plan), Located in Kansas City, Missouri [Application No. D-9066]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed guaranty by Government Employees Hospital Association, Inc. (the Employer), the sponsor of the Plan, of the maturity values of the sub-funds (the Sub-funds), plus additional interest on one of the Sub-funds (together, the Guaranteed Amount), under group annuity contract number GA-1010 (the GAC) issued to the Plan by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); (2) the proposed interest-free extensions of credit to the Plan by the Employer (the Advances) as advances on the Guaranteed Amount; and (3) the Plan's potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/or expenses are paid by the Plan;

(C) The Advances are made only in lieu of payments due from Mutual Benefit with respect to the GAC;

(D) The Repayments are made only from the amounts actually received by the Plan from Mutual Benefit, its successors or assigns, or any guaranty fund or other association (Third Party Recoveries);

(E) The Repayments do not exceed the lesser of (1) the total Advances, or (2) the Guaranteed Amount; and

(F) The Repayments are waived to the extent the Advances exceed the Third Party Recoveries.

Summary of Facts and Representations

1. The Plan is defined contribution plan with approximately 760 participants as of December 31, 1991. The Employer is a Missouri non-profit corporation engaged in the health maintenance industry, with its headquarters in Kansas City, Missouri. As of December 31, 1991, there were total assets of approximately $23,315,906 in the Plan. The trustee of the Plan is Marvin C. Baker (the Trustee, who is a director of the Employer.

2. Contributions to the Plan on behalf of Plan participants are maintained in individually-directed participant accounts (the Accounts). Prior to July 16, 1991, all Plan assets were invested in the GAC, and participants were entitled were entitled to direct the investment of their Accounts into one of two funds under the GAC: a fixed-rate fund (the Fixed Fund) and a variable-rate fund (the Variable Fund).

The terms of the Fixed Fund provide for the establishment and maintenance of a separate Sub-fund for Account deposits during each calendar year. Each Sub-fund provides its own guaranteed interest rate (the Contract Rate) and maturity date (the Maturity Date). The Sub-funds remaining in the Fixed Fund are described as follows:

Sub-fund #1, consisting of contributions deposited during 1989, providing a Contract Rate of 9.25 percent, with a Maturity Date of December 31, 1991;

Sub-fund #2, consisting of contributions deposited during 1990, providing a Contract Rate of 7.90 percent, with a Maturity Date of December 31, 1992; and

Sub-fund #3, consisting of contributions deposited during 1991, providing a Contract Rate of 8 percent, with a Maturity Date of December 31, 1993;

The Employer represents that the Sub-funds has a combined accumulated book value of $19,145,226.01 as of December 31, 1991, representing total principal deposits in the Sub-funds plus accrued interest at the Contract Rates, less previous withdrawals. The Employer represents that the Sub-funds constituted approximately 97.1 percent of the Plan's total assets invested in the GAC as of December 31, 1991, with the remaining 2.9 percent held under the Variable Account.

Each Sub-fund provides for payment upon its maturity (the Maturity Payment), and pre-maturity withdrawals are allowed to fund the payment of termination, death and disability benefits to participants whose Accounts are invested in the GAC. The Maturity Payment under each Sub-fund is due the first day following the Maturity Date in the amount (the Maturity Value) of total principal deposits thereunder plus interest accrued at the Contract Rate over the interest-accrual period specified by the terms of the Sub-fund, less previous withdrawals. In the event the Maturity Payment is not made by Mutual Benefit when due, each Sub-fund provides that post-maturity interest accrues on the Maturity Value at the prevailing market rate for group annuity contracts as determined by Mutual Benefit.

3. The Employer represents that on July 16, 1991 Mutual Benefit was placed in rehabilitation by the insurance commissioner of the State of New Jersey (the Commissioner), and the Superior Court of New Jersey imposed a moratorium on most payments with respect to Mutual Benefits group annuity contracts, including payments and withdrawals from the GAC held by the Plan.[1] The Employer represents that the Variable Fund under the GAC is unaffected by the moratorium because it constitutes a separate account which, under applicable state law, is insulated from claims against Mutual Benefit's general account and is therefore not subject to withdrawal restrictions imposed upon Mutual Benefit's general account.

The Commissioner and Mutual Benefit are proceeding with the development of a plan of rehabilitation with respect to all of Mutual Benefit's general account obligations outstanding as of the

[1] The Department notes that the decisions to acquire and hold the GAC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GAC.

commencement of the rehabilitation. However, the Maturity Payment which was due from Mutual Benefit for Sub-fund #1, after its maturity on December 31, 1992, has not been made, and the Employer represents that it appears unlikely that the other two Sub-funds will be paid in full upon their Maturity Date. Additionally, the Employer states that it is unknown whether any interest will be earned on Sub-funds which mature and remain unpaid.

4. As a result of these developments, the Employer represents that the Plan's inability to receive payments due under the Sub-funds is preventing the performance of the Plan's obligations to participants, in accordance with the terms of the Plan. To alleviate anxiety among Plan participants with respect to Plan assets invested in the GAC, the Employer has notified participants that it intends to ensure that the Plan receives all funds due from Mutual Benefit under the terms of the Sub-funds. Accordingly, the Employer proposes to guaranty that the Plan will receive the Maturity Values of the Sub-funds, plus interest on the Maturity Value of sub-fund #1 (the Guaranty), and to make the Advances necessary to accomplish this objective. The Employer is requesting an exemption for the Guaranty, the Advances, and the potential Repayments of the Advances under the terms and conditions described herein.

5. The proposed transactions are detailed in an agreement (the Agreement) between the Employer and Trustee, under which the Employer agrees to pay the Advances to the Plan as interest-free loans in the amounts, and at such times, as payments are due from, but not made by, Mutual Benefit under the terms of the GAC. The Agreement obligates the Employer to make the advances up to a total amount (the Guaranteed Amount) defined as the sum of the Maturity Values of the Sub-funds, plus interest on the Maturity Value of Sub-fund #1, commencing January 1, 1992, at the rate of 5.5 percent. The Employer represents that the proposed interest rate of 5.5 percent on the Maturity Value of Sub-fund #1 was the average rate for guaranteed investment contracts listed in the Wall Street Journal on December 30, 1991.

Under the Agreement, the Employer's obligation to pay the Guaranteed Amount to the Plan is reduced by Third Party Recoveries, defined as the total amounts actually received by the Plan from Mutual Benefit, its successors or assigns, or any guaranty fund or other association (collectively, the GAC Payors) with respect to the GAC. Within 10 business days after the Plan's administrator has notified the Employer that Mutual Benefit has failed to pay the Plan any amount due with respect to the Sub-funds, the Employer is obligated to make an Advance equal to the difference between the amount then due the Plan and the amount actually received by the Plan, if any, from or on behalf of Mutual Benefit.

The Agreement includes the Trustee's agreement to make the Repayments, which are reimbursements to the Employer for the Advances. The Repayments may be made only from Third Party Recoveries, and only after the sum of the Advances plus all Third Party Recoveries exceeds the Guaranteed Amount. The Repayments are limited to the lesser of (a) the total Advances, or (b) the amount by which the Third Party Recoveries plus all Advances exceeds the Guaranteed Amount. The Employer will not charge or receive any interest on the Advances, and no Plan assets other than Third Party Recoveries can be used to make the Repayments. The Agreement provides that in the event the total amount of Third Party Recoveries is insufficient to repay the Advances, the Employer will have no recourse against the Plan or its participants or beneficiaries for the unpaid amount of Advances.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will be relieved of any further risk and uncertainty with respect to payments due from Mutual Benefit under the GAC; (2) The proposed transaction will enable the Fixed Fund to accomplish all Withdrawal Events; (3) The Plan will receive the full Maturity Values under the GAC; and (4) The Repayments by the Plan will be made only from, and will not exceed, the amounts actually received by the Plan from Mutual Benefit and other responsible third parties with respect to the GAC.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Building Services 32B-J Health Fund (the Plan) Located in New York, New York

[Application No. D-9182]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the proposed extension of credit (the Loan) to the Plan by the Chase Manhattan Bank, N.A. (the Bank), a party in interest with respect to the Plan, under the terms described in this notice of proposed exemption, provided: (a) The terms of the Loan are not less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (b) the Bank exercised no discretion with respect to the Plan's decision to enter into the proposed transaction; and (c) the Plan's trustees, who are unrelated to the Bank, have determined that the proposed transaction is appropriate for the Plan and in the best interests of its participants and beneficiaries.

Temporary Nature of the Exemption: If the proposed exemption is granted, the exemption will extend to all advances of funds made by the Bank to the Plan through August 31, 1993.

Summary of Facts and Representations

1. The Plan is a multiemployer health and welfare benefits plan which provides benefits to members of the Local 32B-32J Service Employees International Union AFL-CIO (the Union), and their dependents, who are employed in the building services and maintenance industry throughout New York City (except in the Bronx). The Plan is jointly administered by four employer-designated trustees and four Union-designated trustees. Contributions to the Plan are established pursuant to a series of collective bargaining agreements between the Union and various employer associations (collectively, the Employers). As of January 1, 1992, the Employers are required to contribute to the Plan a fixed quarterly rate of $920.82 for each employee. As of June 30, 1991, the Plan covered approximately 60,000 employees and their dependents, amounting to total plan coverage exceeding 200,000 participants.

2. On November 30, 1990, the Plan entered into a discretionary investment management and custodial agreement (the Agreement) with the Bank. The Bank is a prominent national bank and a member of the Federal Reserve System. In addition, the Bank is subject to regulation by the Comptroller of the Currency. The Bank has discretionary control with respect to the investment of approximately one-half of the Plan's assets; another independent, unrelated bank has discretion with respect to the remaining assets of the Plan. The

Agreement provides that the Bank is an investment manager to the Plan with the authority to collect and receive moneys and other property; purchase, receive or subscribe for any securities; sell, grant options, convert, redeem or exchange securities; exercise conversion privileges and/or subscription rights; vote any securities; and register any securities in the Bank's names as trustee for the Plan. Historically, the Plan has invested a significant portion of its assets in government securities in order to ensure that the Plan has liquidity necessary to provide for benefits to its participants. Neither the Bank not any affiliate of the Bank has a relationship with or provides services to the Plan other than pursuant to the Agreement. The Bank does serve as an investment manager and custodian to a multi-employer pension plan under which members of the Union participate.

3. The Plan operates a health facility (the Health Center) located at 101 Sixth Avenue, New York, New York. The Plan currently employs approximately 700 persons at the Health Center to provide services to its members and their covered dependents. The Plan moved the Health Center to its current location on December 18, 1989 because its prior leased facilities were inadeuqate to properly conduct its operations and to service the Plan's current and future membership. The additional space at the currently leased building has enabled the Plan to initiate additional services and programs for which the prior space had been inadequate. In addition, the new building has permitted the Plan to consolidate the Health Center and its administrative facilities into a single location for ease of administration and convenience to its membership.[2]

4. The Plan is currently in the process of furnishing the office facilities and outfitting the Health Center. As anticipated, the Plan has incurred substantial start-up costs. Although some of these costs were a direct result of establishing the new facility, additional costs and expenses were incurred because of the expansion in the Health Center's programs. These short-term costs, however, in the view of the Plan's trustees and medical advisor, are outweighed by the long-term savings that the Plan will realize in establishing the Health Center and improving and expanding its programs.

5. The Plan has established a reserve fund to serve as a financial cushion against unusually adverse claims experience. The Plan has traditionally ended each fiscal year with approximately $50 million in reserves, and, based on the Plan's historical claims experience, the trustees would ordinarily anticipate that the Plan would have sufficient assets to satisfy projected expenses through the 1992–1993 fiscal year as well. However, the Plan is experiencing non-recurring start-up costs in connection with the establishment of the new administrative and health facilities at the Health Center, as described above. The Plan has financed these expenses with the assets in its reserve fund. Projections indicate that the purchase of these improvements will reduce the amount of the liquid assets in the Plan to approximately $10–12 million by the end of the current fiscal year. The Plan's fiscal year runs from July 1 through June 30.

6. It is projected that, by mid-1993, the savings realized from the Plan's new consolidated facility, together with the contributing employers' contribution increases to the Plan provided under the collective bargaining agreements, will bring the Plan's reserves back to their historical levels. However, because of this short term depletion of the Plan's revenues, the trustees have determined that it would be in the interest of the Plan and its participants to obtain short-term financing by establishing a line of credit with a financial institution to serve as protection in the event the Plan's actual claims experience for the near future exceeds its historical claims experience.

7. The Plan previously solicited proposals for a line of credit from the Bank of New York, Chemical Banking Corporation, Citibank, N.A., and Fleet Norstar Trust Division. Only two of these financial institutions provided any form of a response to the Plan's solicitation. After a careful review of each of the responses submitted by these financial institutions, the trustees determined that the terms submitted by the Bank were the least expensive and the most favorable of all the proposals. The Bank had no input into the trustees' decision to solicit requests for a line of credit, the trustees' selection of the Bank in connection therewith, or the trustees' decision to grant a security interest to the Bank.

8. The rate of interest to be charged to the Plan on monies extended under the proposed Loan is the Bank's prime commercial lending rate for the first $5 million of monies borrowed and the Bank's prime lending rate plus 1% for amounts borrowed in excess of $5 million. The maximum amount that can be advanced to the Plan is $25 million. All amounts advanced under the proposed Loan, together with outstanding interest thereon, will be repaid by the Plan to the Bank by August 31, 1993. Interest will be payable monthly on any outstanding balance. The proposed Loan will be secured through a general security interest on the assets of the Plan. The commitment fee is ⅜ of 1% per annum on any unused monies and the application, or facility, fee is $75,000. The only other form of proposal submitted by the prospective third party lenders was preliminary and subject to further discussions with and review of the Plan by the prospective lender. In addition, the preliminary terms of that proposal provide for a higher rate of interest and application fee, although the commitment fee is marginally lower. The applicant represents that the trustees have determined that, considering all the fees, the terms submitted by the Bank were the least expensive and most favorable to the Plan.

9. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: a) the Loan is confined to a single transaction that will expire no later than August 31, 1993; b) the terms of the proposed Loan are more favorable and the costs incurred by the Plan are less costly that with an unrelated financial institution; c) the Bank had no input into the trustees' decision to solicit the Loan or to select the Bank in connection with the Loan; and d) the trustees believe that the proposed transaction is appropriate for the Plan and in the best interest of its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Union Labor Life Insurance Company (ULLICO), Located in Washington, DC

[Application No. D–8169]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates

[2] See Prohibited Transaction Exemption 91–6, January 4, 1991, 56 FR 449.

representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[3]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[4] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii), and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

c. The restrictions of sections 406(a), 406(b), and 407(a) of the Act, and the taxes imposed by sectio 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[5]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services ro the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act or section 4975(e)(2) (F), (G), (H), or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and

[3] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2), and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[4] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[5] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(1) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) for which ULLICO or any of its affiliates is the trust sponsor.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Obligations that bear interest or are purchased at a discount and which are secured by multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property); or

(b) Fractional undivided interests in any of the obligations described in clause (a) of this subsection B(1);

(2) Property which had secured any of the obligations described in subsection B(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificate holders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B. (1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means the person or persons who are primarily responsible for the sale of the certificates.

D. "Sponsor" means:

(1) ULLICO; and

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with ULLICO.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer' means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any sub-servicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Summary of Facts and Representations

1. ULLICO is a full-service insurance company licensed in fifty states and the District of Columbia, with its principal office in Washington, DC. As of December 31, 1991, it had assets of $1.945 billion, including capital and surplus of $78.4 million. ULLICO affiliates include Ulico Holding Company, Ulico Casualty Company, Ulico Indemnity Company, Union Standard of America Life Insurance Company, Zenith Administrators, Inc., Trust Fund Advisors, Inc., Health Trust Options, Inc., UNIONCARE, Inc., and TNDL, Inc. ULLICO represents that it has substantial experience in the financial services industry and with employee benefit plans.

Trust Assets

2. ULLICO seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in multi-family residential or commercial mortgage investment trusts.

Trust Structure

3. Each trust is established under a pooling and servicing agreement among a sponsor, a servicer and a trustee. With respect to the transactions covered by this exemption, ULLICO will serve as the trust sponsor. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Prior to or concurrently with the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. A broker-dealer acts as underwriter or placement agent with respect to the sale of the certificates.

ULLICO represents that it is anticipated that there will be an immediate pass-through of payment of principal and interest to certificateholders. However, ULLICO represents that it is possible that there will be a period of no more than one month between the time of payment by obligors to the trust and the payments to certificateholders. In those instances, funds are not permitted to be commingled with the assets of the servicer for any period longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distributor dates. The account is under the sole control of the trustee, who invests the account's assets in short-terms securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases where distributors are made from this segregated account, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time the report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

4. ULLICO requests exemptive relief for multi-class certificates described as "fast-pay/slow-pay" certificates. "Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different states maturities or the same saturates with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions he made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class passthrough arrangement and a single-class pass-through arrangement is the order in which distributors are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rate basis.[6]

[6] If a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

5. For various reasons, including tax considerations, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a limited time after the issuance of trust certificates. Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

6. The originator of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or property owner. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor. The originator of the receivables may also function as the trust sponsor or servicer. In the transactions covered by the requested exemption, ULLICO will act both as originator of the obligation and sponsor of the trust.

7. The duties of ULLICO as sponsor are limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

8. The trustee of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to ULLICO. The pooling and servicing agreement often provides that upon the occurrence of one or more events of default by the servicer, the trustee will succeed to the rights and responsibilities of the servicer If the trustee is unwilling or unable under applicable law to succeed to the duties and responsibilities of the servicer or if the holders of a specified percentage in aggregate principal amount of certificates so decide, a successor servicer will be appointed instead of the trustee. ULLICO represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the sponsor, servicer or out of trust assets. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

9. The servicer of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. ULLICO will act as the servicer with respect to the transactions covered by the requested exemption. In addition, as described below, ULLICO may be required to provide credit support by advancing funds in the event of late payment or default. The trustee will act as servicer in the event ULLICO is unable to complete its duties.

Certificate Price, Pass-Through Rate and Fees

10. As compensation for the receivables which are transferred to the trust, the sponsor received certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. In addition, the sponsor may retain an interest in the receivables in the trust consisting of an entitlement to receive a specified portion of principal and/or interest payments from receivables, which interest may later be sold by the sponsor. In some cases, the retained interest is subordinated to the certificates. In addition, in some transactions the originator may sell receivables to the trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for the receivables sold to the trust. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters. In some transactions, the sponsor or an affiliate may retain a portion of the certificates for its own account. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

11. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

ULLICO represents that the pass-through rate for certificates is generally related to the interest rate on loans included in the pool minus administrative costs such as the specified servicing fee, and is determined by the same market forces that determine the price of the certificates. ULLICO represents that there is a direct relationship between the price of certificates and the pass-through rate. For example, if certificates backed by comparable pools of mortgages are sold at different pass-through rates, the certificates having the higher pass-through rate would have a higher purchase price.

12. As compensation for performing its servicing duties, ULLICO will receive a fixed fee disclosed in the prospectus or private offering memorandum. ULLICO represents that this fee will be set by the market and the need to receive the required rating by the appropriate rating agencies. ULLICO may receive additional compensation by having the use of the amounts paid on the loans between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

13. In its role as servicer, ULLICO may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the

pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

14. Payments on receivables may be made by obligors to ULLICO servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit ULLICO to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, ULLICO would be entitled to the benefit received from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of ULLICO in the event of the ULLICO's bankruptcy or receivership.

Purchase of Receivables by the Servicer

15. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment, the cost of administering the trust generally increases, making the servicing of the trust or prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer.

Certificate Ratings

16. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support will be obtained by ULLICO to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

17. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e., act as an insurer). Typically, in these cases, the master service will first advance funds in a timely manner to cover any delinquent payments to the extent that it expects to recover those moneys out of future payments, or the master serivce, as the provider of the credit support, will be called upon (by itself on behalf of the trustee or directly by the trustee) to provide funds in such capacity to cover such payments to the full extent of its obligations under the credit support mechanism. However, in some cases the master servicer may not be obligated to advance funds, but instead will be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, the master servicer typically can recover advances either from the provider of credit support or from the future payment stream.

If the master servicer fails to advance funds and fails to call upon the credit support mechanism to provide funds to cover deliquent payments, the trustee may exercise its rights as beneficiary of the credit support to obtain funds under the credit support mechanism. Therefore, in all cases the independent trustee will be ultimately responsible for deciding when to exercise its rights as beneficiary of that credit support.

When a master servicer advances funds the amount so advanced is recoverable by the servicer from the provider of credit support or out of future payments or receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the dollar limit on the credit support declines as payments on receivables included in the trust are passed through to investors. These safeguards include the following:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the servicer to follow its normal servicing guidelines and will set forth the servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust, as set forth in the pooling and servicing agreement, the servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws up the credit support. Further, the servicer is required to deliver to the trustee annually a certificate of an executive officer of the servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the servicer has defaulted under any of its obligations, specifying any such default. The servicer's reports are reviewed at least annually by independent accountants to ensure that the servicer is following its normal servicing standards and that the master servicer's reports conform to the servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee.; and

(d) In cases where the master servicer and the insurer are affiliated or are the same entity, the credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. The floor amount may be a fixed dollar amount or a multiple of the balance of one or more of the largest obligations outstanding. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, where the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

18. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decisions to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, tax consequences of owning and selling the certificates, the rating of the certificates,

and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

19. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

20. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

21. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee or the servicer summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Summary

22. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which ULLICO seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates; and

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [47 FR 7520, January 23, 1981], Class Exemption for Certain transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned

upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[7]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

ULLICO represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan. In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act. Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, ULLICO represents that a servicer, trustee, or insurer with respect to a trust, or ULLICO as trust sponsor, or an obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. ULLICO represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, ULLICO represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to propose the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of November, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[7] The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA)

publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before January 14, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Army and Air Force Exchange Service (N1–334–92–1). Routine Administrative Records.
2. Department of Commerce, Census Bureau (N1–29–92–1). Business Division comprehensive records schedule.
3. Department of Commerce, Office of the Secretary (N1–40–92–5). Revisions to the comprehensive records schedule.
4. Department of Energy, Nevada Operations Office (N1–434–90–3). Borehole drilling, tunnel/shift mining files.
5. Department of Energy, Oak Ridge Operations Office, Strategic Petroleum Reserve Project Management Office (N1–434–91–2). Accounting, compliance reporting, fire safety development, and audit tracking files.
6. Department of Energy, Executive Secretariat (N1–434–92–2). Action coordination and Congressional reports tracking system files.
7. Department of Energy (N1–434–92–6). Routine work papers pertaining to Zero Gradient Synchrotrom (ZGS) program of the Argonne National Laboratory.
8. Department of Energy, Pittsburgh Naval Reactors Office (N1–434–93–1). Contract files.
9. Department of Energy, Office of Scientific and Technical Information (N1–434–93–2). Software collection.
10. Department of Energy (N1–434–93–4). ADP internal administration and operation files.
11. Department of Energy (N1–434–93–5). General audit and visitor access and control files.
12. Department of State, Bureau of Intelligence and Research (N1–59–93–13). Research review files.
13. Department of the Treasury, United States Secret Service (N1–87–92–2). Contractor criminal record checks and investigative case files.
14. National Archives and Records Administration (N2–26–93–1). Routine records of shore units segregated from U.S. Coast Guard holdings of the National Archives.
15. National Archives and Records Administration (N2–143–93–1). Routine records of the Department of the Navy's Bureau of Supplies and Accounts.
16. National Archives and Records Administration (N2–362–92–1). Motion picture unedited materials, work prints, trims and outtakes segregated from accessioned Pace Corps records.

Dated: November 23, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92–28867 Filed 11–27–92; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the National Commission on America's Urban Families will hold a meeting in Washington, DC, on Tuesday, December 8, and Wednesday December 9, at the Department of Health & Human Services, Room 309–F, 200 Independence Avenue, SW. 20201. The purpose of the meeting is to discuss the Commission's ongoing work. For the exact time please contact the Commission two days prior to the event at 202–690–6462.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW., room 305–F, Washington, DC 20201.

Gary Ashcraft,

Acting Executive Director.

[FR Doc. 92–29006 Filed 11–27–92; 8:45 am]

BILLING CODE 4150–04–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

November 24, 1992.

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 24, 1992. Permit applications may be inspected b·

interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant: J. Ward Testa, Michael A. Castellini, Institute of Marine Science, University of Alaska, Fairbanks, AK 99775–1080.

Activity for Which Permit Requested

Enter Site of Special Scientific Interest. Permit requested to enter the White Island site of special scientific interest in order to study the seal population there. Our objectives are to obtain precise estimates of the population size and productivity, and to obtain blood and urine samples for genetic, pollutant and pathological analyses. Permits to handle the seals and import specimen material are requested separately.

Location

White Island; access by snow machine.

Dates:

January 1, 1993–December 31, 1995.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92–28977 Filed 11–27–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–267]

Environmental Assessment and Finding of No Significant Impact Public Service Co. of Colorado Fort St. Vrain Nuclear Generating Station

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the emergency preparedness requirements of 10 CFR part 50, appendix E, Section IV.F.2 to the Public Service Company of Colorado (PSC or the licensee) for the Fort St. Vrain Nuclear Generating Station (FSV) and the adjacent Independent Spent Fuel Storage Installation (ISFSI).

Environmental Assessment

Identification of Proposed Action

The exemption will allow biennial exercise of the Decommissioning Emergency Response Plan following completion of the next scheduled (December 1992) emergency plan exercise. FSV is permanently shut down and all spent fuel has now been transferred to the ISFSI which is separately licensed by PSC under 10 CFR part 72. PSC will begin dismantling FSV following the Commission's approval of its decommissioning plan.

The Need for the Proposed Action

The exemption is needed to eliminate emergency plan exercise requirements that are appropriate for an operating plant but are not needed at the shutdown FSV or the ISFSI. Granting the proposed exemption would reduce unnecessary costs for PSC.

Environmental Impact of the Proposed Action

The proposed action to reduce requirements for emergency plan exercises will have no environmental impact because FSV is permanently shut down and defueled and the worst case accidents at FSV or the adjacent ISFSI would result in radiation exposures that were less than the Environmental Protection Agency's (EPA) Protective Action Guides. Therefore, the present Decommissioning Emergency Response Plan requires no offsite protective actions in the event of an accident.

The requested exemption would not authorize construction or operation, and would not authorize a change in licensed activities or effect changes in the permitted types or amounts of radiological effluents. With regard to potential non-radiological impacts, the Commission concludes that there are no measurable radiological or non-radiological impacts associated with the exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for FSV.

Agencies and Persons Consulted

The licensee initiated this exemption. The NRC staff is reviewing their request. No other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application dated May 13, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, and at the local public document room at the Greely Public Library, City Complex Building, Greely Colorado 80631.

Dated at Rockville, Maryland, this 20th day of November 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 92–28923 Filed 11–27–92; 8:45 am]

BILLING CODE 7590–01–M

Docket No. 50–339

Virginia Electric and Power Co.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of 10 CFR 50.49 to Virginia Electric and Power Company (the licensee), for the North Anna Power Station, Unit No. 2 (NA–2) located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow temporary relief from the requirements of 10 CFR 50.49, Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants. The temporary relief would be for the environmental qualification of the NA–2 control room chillers for the work activities associated with the Phase 1, Stage 1 Service Water Restoration Project (SWRP). The Phase 1, Stage 1 will be performed concurrently with the NA–1 Steam Generator Replacement Program (SGRP). This exemption would permit temporary cooling of the NA–1 control room chillers from the common bearing cooling water system to provide normal control room temperatures and provide a reliable backup cooling system to the NA–2 air conditioning design basis. The period for the NA–1 chillers to be operating on bearing cooling water is projected to be between 90 and 120 days.

NA–1&2 each have three control room air conditioner chillers located in a missile protected room of the service building off the respective unit's turbine building basement. Ventilation of each unit's chiller room is taken from and exhausted to the respective unit's turbine building basement. Hence, the chillers for each unit are located in the same environmental zone which is also common to the unit's turbine building basement. Therefore, as the result of an environmental qualification evaluation of the control room air conditioning systems, a station standing order was issued to require at least one of the opposite unit's chillers to remain operable while in a shutdown condition. Specifically, the station standing order requires that at least one control room chiller on the unit in Mode 5 or 6 be maintained operable while the other unit is in Mode 4 or above. This measure assures that the air conditioning system serving the control room and emergency switchgear room would be available during a postulated main steam line break accident in the turbine building.

However, with bearing cooling water supplied to the NA–1 chillers instead of service water, the reliability of the NA–1 chillers is called into question because bearing cooling is not safety-related. Bearing cooling would not be available in the event of a loss of offsite power event or design basis earthquake coincident with the main steam line break accident in the turbine building. Therefore, an exemption from 10 CFR 50.49 for the NA–2 chillers is requested for the period that the service water system is isolated from the NA–1 recirculation spray heat exchangers and the control room chillers.

While the shutdown unit's Technical Specifications (TS) do not require the air conditioning systems to remain operable in Modes 5 and 6, the environmental qualification design basis for the operating unit's air conditioning systems requires at least one of the shutdown unit's chillers to be operable as a backup to the operating unit.

The accident of concern results in an environmental condition in the NA–2 chiller room for which the NA–2 control room chillers are not qualified and may cease to function properly. The only postulated accident event that could cause this condition is the failure of a main steam line in the turbine building basement in proximity to the NA–2 chiller room. However, in order to have sufficient steam concentration in the area to disable the NA–2 chillers, the main steam trip valve on the line would also have to fail to a closed position.

This is unlikely because the trip valves are essentially check valves reversed to the flow of steam with the check disk physically held out of the steam flow path. Failure to hold the disk out of the steam flow path would cause the trip valve to slam shut. Failure of the valve where the disk is stuck open is, therefore, highly unlikely.

The Need for the Proposed Action

The proposed exemption is needed in order to permit the completion of highly desirable repairs and replacement activities in the NA Service Water System (SWS) without unduly extending the next several scheduled NA–1&2 refueling outages.

Environmental Impacts of the Proposed Action

The proposed exemption does not involve any measureable environmental impacts during normal operation since the plant configuration is changed only minimally and operation of NA–2 is not changed. The likelihood of the above accident scenario during the time the exemption would be in effect is low. Thus, the proposed exemption would not significantly affect the probability or consequences of potential reactor accidents and would not otherwise affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the staff concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the staff has concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require strict compliance with 10 CFR 50.49. Such action would not significantly enhance the protection of the environment, and would result in a significant loss of power to the licensee, as the next two refueling outages would have to be extended considerably.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the North Anna Power Station, Units No. 1 & No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

Based upon the foregoing environmental assessment, the staff concludes that the proposed action would not have a significant effect on the quality of the human environment and has determined, therefore, not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application dated September 11, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 20th day of November 1992.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–28924 Filed 11–27–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 15000004 EA 92-105]

Order Imposing Civil Monetary Penalty; Metals Evaluation and Testing Inc., Oakland, CA

I

During the period January 31, 1992, through February 5, 1992, Metals Evaluation and Testing, Inc. (MET) conducted radiography activities pursuant to the general license authorized by the Nuclear Regulatory Commission (NRC or Commission) in 10 CFR 150.20. The general license authorizes the performance of radiography in accordance with the terms and conditions specified in a specific license issued by an Agreement State and with the NRC regulations listed in 10 CFR 150.20(b).

II

An inspection of MET's activities was conducted on January 31 and February 5, 1992, at Moffett Field, California, an area under exclusive Federal jurisdiction. The results of this inspection indicated that MET had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon MET by letter dated August 21, 1992. The Notice states the nature of the violation, the provisions of the NRC's requirements that MET violated, and the amount of the civil penalty proposed for the violation. MET responded to the Notice in two letters dated September 15, 1992. In its response, MET admitted the violation (Violation I.A.), but requested that the civil penalty associated with the violation be remitted or mitigated based on arguments that are described in the Appendix to this Order.

III

After consideration of MET's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42. U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered That:

Metals Evaluation and Testing, Inc., pay a penalty in the amount of $7,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555.

MET may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and the Regional Administrator, NRC Region V, 1450 Maria Lane, Walnut Creek, California, 94596.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If MET fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event that MET requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of Violation I.A. as set forth in the Notice of Violation referenced in Section II above and admitted by MET, this Order should be sustained.

For the U.S. Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 17th day of November 1992.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Material Safety, Safeguards and Operations Support.

Appendix

Evaluations and Conclusions

On August 21, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. Metals Evaluation and Testing, Inc. (MET), responded to the Notice on September 15, 1992. In its responses, MET admitted Violation I.A. but protested the associated civil penalty as described below. The NRC's evaluation and conclusion regarding MET's responses is an follows:

Restatement of Violation I.A.

10 CFR 34.43(b) requires, in part, that licensees ensure that a survey with a calibrated and operable radiation survey instrument is made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The survey must include the entire circumference of the radiographic exposure device and any source guide tube.

Contrary to the above, on January 31, 1992, at NASA-Ames Moffett Field, California, a licensee radiographer did not perform an adequate survey after each radiographic exposure to determine that the sealed source had been returned to its shielded position. Specifically, the survey did not include the entire circumference of the radiographic exposure device and the source guide tube.

This is a repeat violation.

This is a Severity Level III Violation (Supplement VI). Civil Penalty—$7,500.

Summary of MET's Response

MET admits that its radiographer did not perform a survey of the entire circumference of the exposure device and guide tube as required by 10 CFR 34.43, but argues that a survey of the exit port of the device, which was in close proximity to the guide tube, was adequate to confirm that the source had returned to its shielded position, and thus that the survey satisfied the intent of § 34.43.

MET also: (1) Claims that it is difficult to change old survey technique habits; (2) appears to argue that the NRC is being arbitrary and inconsistent in proposing a significant civil penalty when, for a similar violation in 1991, the NRC did not propose a civil penalty or require a formal response; (3) appears to claim that the NRC failed to offer adequate notice of a change to the NRC's Enforcement Policy and cites NRC Information Notice 91-49, which said that the NRC would consider "strong enforcement action" for failure to perform "adequate" surveys, but which, according to MET, failed to mention that anything less than a complete circumferential survey would be presumed to be inadequate; and (4) cites a letter from the State of California senior inspection and compliance staff which, according to MET, offers that staff's opinion that "the severity of violations uncovered against California Licensees does not merit the amount of civil penalties imposed."

NRC Evaluation of MET's Response

The NRC staff does not agree with MET's statement that the radiographer performed a survey of the exit port of the exposure device. The NRC inspectors saw the radiographer walk to the scaffolding upon which the exposure device rested and lay the survey meter on the scaffolding next to the exposure device. Among other things, this so-called "survey" would not have detected a problem in which the source was retracted out of the guide tube and into the device, but was not fully retracted into the shielded position within the device. The detection of just such a problem is the primary reason for conducting a survey at the exit port of the device. Thus, the radiographer did not perform a survey of the exit port of the exposure device nor, as MET admits, did he perform an adequate survey of the device to include the full circumference of the device and the source guide tube. Clearly, the "survey" that occurred was not adequate to confirm that the source had returned to its fully shielded position, nor did it meet the intent of 10 CFR 34.43.

The NRC staff recognizes that it may be difficult to change work habits. However, it is MET's responsibility to assure that NRC

requirements are properly implemented. The Form 591 issued to MET in May 1991 clearly stated the requirement to survey the entire circumference of the exposure device. By signing the Form 591, MET acknowledged the violation and committed to take action to correct the violation within 30 days. During the June 15, 1992, Enforcement Conference, MET indicated that its corrective action for the survey violation noted on the Form 591 issued in May 1991 consisted of "counseling" its employees. While counseling may not have been effective in changing the work habits of its employees, MET certainly had more stringent sanctions at its disposal and could have used them to effect the necessary changes in work habits.

The provision of the NRC Enforcement Policy that mandates a Severity Level III classification for inadequate surveys became effective in January 1991. The violations noted on the Form 591 issued in May 1991 should have been classified as Severity Level III violations and assessed a civil penalty. NRC's oversight in 1991 does not warrant a reduction in the severity level for a recurrence of the same violation in 1992. On the contrary, the Enforcement Policy provides that the severity level of a violation may be increased if it can be considered to be repetitive. In this case, not only is the violation a repeat for MET, but it was actually caused by the same individual both times.

While NRC Information Notice 91-49, "Enforcement of Safety Requirements for Radiographers," does not specifically describe a failure to survey the entire circumference of the exposure device and guide tube as an example of a Severity Level III violation, it clearly explains the NRC position regarding the extreme importance of adequate surveys during radiographic operations. For the reasons noted above, the NRC staff does not consider the survey that was performed in this case to have been adequate. Furthermore, the Information Notice specifically references the requirements for surveys in 10 CFR 34.43, which clearly require a circumferential survey of the exposure device and a survey of the guide tube after every exposure. The Information Notice also provides a strong warning that the NRC will take escalated enforcement action for the failure to perform adequate surveys. Even if MET did not have specified notice of the change to the NRC Enforcement Policy, the Information Notice references the NRC Enforcement Policy, which is published in the Federal Register at 10 CFR part 2, appendix C in order to provide wide spread public notice. Publication in the Federal Register constitutes official, legally sufficient, notice of changes to the NRC's regulations and Enforcement Policy.

The letter from the State of California does not provide justification for reduction in the severity level or for mitigation of the civil penalty. That NRC and the State of California may have different enforcement policies does not justify mitigation of the sanction. The NRC Enforcement Policy considers the failure to do an adequate survey to determine that a radiographic source is returned to its fully shielded position to be a matter of significant regulatory concern. The violation occurred in NRC jurisdiction. The violation was categorized, and the civil penalty was assessed, in accordance with the NRC Enforcement Policy published at 57 FR 5791.

NRC Conclusion

The NRC staff has concluded that the violation occurred as stated and that neither an adequate basis for a reduction in the severity level nor for mitigation of the civil penalty was provided by Metals Evaluation and Testing, Inc. Consequently, the proposed civil penalty in the amount of $7,500 should be imposed.

[FR Doc. 92-28923 Filed 11-27-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-348 and 50-364]

Southern Nuclear Operating Company, Inc.; Withdrawal of Application for Amendment to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Southern Nuclear Operating Company, Inc., to withdraw its February 28, 1992, application for proposed amendments to Facility Operating License Nos. NPF-2 and NPF-8 for the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would have revised the thimble locations used for determining the quadrant power tilt ratio when one excore power range channel was inoperable.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on May 27, 1992 (57 FR 22267). However, by letter dated February 28, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 28, 1992, and the licensee's letter dated October 26, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Houston-Love Memorial Library, 212 West Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 18th day of November 1992.

For the Nuclear Regulatory Commission.

Stephen T. Hoffman,

Project Manager, Project Directorate II-1, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-28922 Filed 11-27-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co.; San Onofre, Unit 1

Exemption

I.

Southern California Edison Company (SCE or the licensee) is the holder of Facility Operating License No. DPR-13, which authorizes operation of the San Onofre Nuclear Generating Station Unit 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and Order of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in San Diego County, California.

II.

Title 10 of the Code of Federal Regulations, part 50 (10 CFR part 50), "Domestic Licensing of Production and Utilization Facilities," provides specific leakage testing requirements in appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment, and systems, and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for such tests. The purposes of the tests are to assure that (a) leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications or associated bases and (b) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service life of the containment, and systems and components penetrating primary containment.

III.

By letter dated October 1, 1992, Southern California Edison Company, requested exemptions from Title 10 of the Code of Federal Regulations, § 50.54 (o) and all leakrate testing delineated in appendix J, to 10 CFR Part 50. Permanent shutdown and defueling of the San Onofre Unit 1, reactor will occur following the current fuel cycle, Cycle 11. The requested exemption would avoid incurring unnecessary expense, radiation exposure and delay to the defueling schedule.

Section 50.54(o) requires containment leakrate testing as specified in appendix J of 10 CFR part 50. The tests assure that leakage will not exceed the allowable values specified in the Technical Specifications.

The Technical Specification requirements of leakage rate testing ensure that during operational periods, in the event of a design basis accident, containment integrity will not be compromised, and exposure will be well below 10 CFR part 100 values. Containment integrity is not required below mode 3, when the reactivity condition is below 1 percent delta k/k and the reactor coolant system is below 500 psig, and is not required to be re-established in the permanently defueled condition.

Once San Onofre, Unit 1 shuts down and reaches mode 5, the containment will be open in preparation for defueling operations. Radiological conditions within the containment following cessation of power operations and during fuel transfer will not differ from those previously determined acceptable. Following shutdown and defueling, when all fuel is removed from the reactor and placed in the spent fuel pool in a subcritical condition, San Onofre, Unit 1 will not be capable of any credible design basis accidents associated with the reactor.

Pursuant to 10 CFR section 50.12(a), "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—* * *. (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated * * *." The premature shutdown of San Onofre, Unit 1 meets the special circumstances defined by 50 12(a)(2)(ii) and (a)(2)(iii) and specifically applies to this exemption request:

- Application of the regulation to a permanently defueled reactor that is incapable of any credible design basis accidents associated with the reactor would not serve the underlying purpose of the rule.
- Compliance with the regulations would result in undue hardship and other costs that are specifically in excess of those contemplated when the regulation was adopted.

Authorization for exemption from 10 CFR 50.54(o) is authorized by law and has been granted to other utilities with similar circumstances. This exemption will not present an undue risk to the public health and safety with the permanent shutdown and defueling of Unit 1.

The basis for containment integrity is to mitigate the consequences of postulated accidents during reactor operations, including inadvertent criticality. Once mode 5 is reached, those credible design basis accidents associated with reactor operations are not possible. Therefore, this condition provided the basis for an exemption from 10 CFR 50.54(o) and appendix J and the exemptions are justified and acceptable.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a)(1), that an exemption as described in section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has determined, pursuant to 10 CFR 50.12(a)(2) that special circumstances exist, as noted in section III above. Therefore, the Commission hereby grants Southern California Edison Company, exemptions from the requirements of 10 CFR 50.54(o) and 10 CFR part 50, appendix J.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant impact on the quality of the human environment (57 FR 53358).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of November 1992.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-28926 Filed 11-27-92; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. SS93-1]

Special Study—International Mail

AGENCY: Postal Rate Commission.

ACTION: Notice of Undertaking of Study.

SUMMARY: The Commission solicits suggestions regarding the study that it has been asked to undertake of the relationship between the rates charged for international mail and its underlying costs.

DATES: Comments should be sent by January 4, 1993, to Charles L. Clapp, Secretary of the Commission, suite 300, 1333 H Street, NW., Washington, DC 20268-0001 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Acting Legal Adviser, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: The Postal Rate Commission has established Docket No. SS93-1 to study the relationship between the costs and rates charged for international mail, and whether this mail provides a fair contribution to the institutional costs of the Postal Service. This study was requested in a letter from Senator David Pryor, and Senator Ted Stevens, Chairman, and Ranking Minority Member, respectively, of the Subcommittee on Federal Services, Post Office, and Civil Service to the Senate Committee on Governmental Affairs. A copy of their letter may be obtained from the Secretary of the Commission. Their letter asks the Postal Rate Commission to conduct a comprehensive review of the historical relationship between rates and costs of the various services provided by international mail, and to compare them with the rates and costs of analogous domestic mail services. The Commission has also been asked to recommend improvements in data collection and reporting for international mail, and to comment on related matters.

The Commission welcomes suggestions from interested persons as to how the study should proceed, and what information it should include. These comments should be filed with the Secretary of the Commission on or before January 4, 1993. After reviewing these comments, the Commission will determine what form the study should take, and what additional opportunities for public participation in the study will be appropriate.

Issued by the Commission on November 23, 1992.

Charles L. Clapp,

Secretary.

[FR Doc. 92-28860 Filed 11-27-92; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

November 23, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Gulf States Utilities Co.
$4.52 Div. Pfd. $100.00 Par Value (File No. 7-9609)
Gulf States Utilities Co.
$5.80 Div. Pfd. $100.00 Par Value (File No. 7-9610)
Gulf States Utilities Co.
$8.80 Div. Pfd. $100.00 Par Value (File No. 7-9611)
Gulf States Utilities Co.
Dep. Pfd. Shs. No Par Value (File No. 7-9612)
Hadson Corp.
Common Stock, $.10 Par Value (File No. 7-9613)
Hartford Fire Insurance Co.
Class A Pfd. Ser. 2 $50.00 Par Value (File No. 7-9614)
Hartford Steam Boiler Inspection and Insurance Co.
Common Stock, No Par Value (File No. 7-9615)
Hatteras Income Securities, Inc.
Capital Stock, $1.00 Par Value (File No. 7-9616)
Heinz (H.J.) Co.
$1.70 3rd Cum. Pfd., 1st Ser. $10.00 Par Value (File No. 7-9617)
Holnam, Inc.
Common Stock, No Par Value (File No. 7-9618)
Homeplex Mortgage Investment Corp.
Common Stock, $.01 Par Value (File No. 7-9619)
Hong Kong Telecommunications Ltd.
American Depositary Receipts (rep. 30 Ord., HK$0.50 No Par Value (File No. 7-9620)
Horsham Corp.
Common Stock, No Par Value (File No. 7-9621)
Howell Corp.
Common Stock, $1.00 Par Value (File No. 7-9622)
H&Q Healthcare Fund
Common Stock, $.01 Par Value (File No. 7-9623)
Hudson Foods, Inc.
Class A Common Stock, $.01 Par Value (File No. 7-9624)
Huntingdon International Holdings, Plc
American Depositary Receipts (rep. 5 Ord. Shs. 5p Par Value (File No. 7-9625)
Hyperion Total Return Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-9626)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 15, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-28953 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31487; File No. SR-DTC-92-02]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change Relating to the Development of an Interface With the National Securities Clearing Corporation's Networking Service for Mutual Fund Transactions

November 19, 1992.

On March 2, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-92-2) that would allow DTC to provide to its members through DTC's Participant Terminal System the Networking service for mutual fund transactions provided by the National Securities Clearing Corporation ("NSCC"). On June 24, 1992, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments from interested persons.[1] No comments were received. On August 21, 1992, DTC filed Amendment No. 1 to the proposed rule change.[2] This order approves DTC's proposal as amended.

I. Description

The proposed rule change will create an interface that will give DTC participants full access to NSCC's Networking service and its participating mutual funds.[3] The proposal will enable participating mutual funds and participants who utilize Fund/SERV through DTC to exchange electronically, in a standardized format, non-trade account data such as subaccount information, closing position balances, and dividend processing records.[4] Networking users may access Networking services through a computer interface with DTC. Participants may use the Participant Terminal System (PTS),[5] or the Computer to Computer Facility (CCF), which permits participants to access DTC's computers through the participant's own computers.

DTC has represented that the Networking service is one of the Fund/SERV services that is covered by the original Fund/SERV interface agreement between DTC and NSCC.[6] Under this

[1] Securities Exchange Act Release No. 30813 (June 15, 1992), 57 FR 28225.

[2] Amendment to Fee Agreement between NSCC and DTC for the Networking Interface Service (August 11, 1992).

[3] Networking is a centralized and standardized data communications system for the exchange of customer account level activity information between broker-dealers and mutual fund processors. Networking standardizes transaction information by enabling a customer's account to appear identically (either on a fully disclosed basis or by account number) on the bank or broker user's records, as well as those of the mutual fund or its transfer agent. Networking handles only book-entry shares. When an account is "Networked," its physical shares are reconciled and converted to electronic book-entry shares.

[4] DTC already offers its members access to NSCC's Fund/SERV service through an interface agreement with NSCC. *See* Securities Exchange Act Release No. 27056 (July 24, 1989), 54 FR 31752. Fund/SERV is a centralized, automated processing system for mutual fund purchases and redemptions offered by NSCC.

[5] DTC's PTS network is an electronic system that permits direct communication between DTC and its participants, enabling participants to effect book-entry movements and other account related activities via remote terminal. *See* Securities Exchange Act Release No. 20519 (December 30, 1983), 49 FR 966.

[6] *See* DTC-NSCC Fund/SERV Linkage Agreement (June 29, 1989), Securities Exchange Act Release No. 27056 (July 24, 1989), 54 FR 31752 (order approving DTC members' access to NSCC's Fund/SERV). Letter from Karen G. Lind, Associate Counsel, DTC, to Jack Drogin, Attorney Adviser, Division of Market Regulation, Commission (May 18, 1992).

interface agreement, DTC will transmit to NSCC Fund/SERV Networking transaction data in the form and the time frames designated by NSCC. In turn, NSCC will process Fund/SERV Networking data input received from DTC.[7] DTC will not verify the accuracy of the information transmitted to or from NSCC.[8]

The proposal sets a fee for the proposed service based on the prevailing fees currently charged to NSCC participants. The fee agreement between DTC and NSCC requires a monthly fee of $250.00 per Networking Interface Participant, $.06 per sub-account holding funds with monthly income distributions, $.04 per sub-account holding funds other than with monthly income distributions, and $100.00 per CUSIP for each position file requested, in excess of the two "free" files per month.

II. Discussion

The Commission believes that DTC's proposal is consistent with section 17A of the Act because it facilitates the use of new data processing and communications techniques to encourage the development of uniform standards and procedures for the clearance and settlement of mutual fund purchase and redemption orders. As the Commission has stated before, Fund/SERV achieves more efficient, effective, and safer procedures for the clearance and settlement of mutual fund transactions by offering one central processing location where mutual fund purchase and redemption orders are submitted in one standardized format.[9]

Networking, which is a part of Fund/SERV, similarly provides participants with the ability to transmit mutual fund customer account information in a centralized and automated fashion. Before Networking, banks and broker-dealers were required to devise and maintain different communications systems to convey customer account information to each mutual fund processor.[10]

Thus, the Commission believes Networking will provide banks and broker-dealers with a more efficient means of communicating customer account information between broker-dealers and funds, and will further enhance clearance and settlement of customer-side mutual fund transactions.

As stated above, DTC's proposal will permit DTC members, such as banks, which are not members of NSCC, to access Networking. The proposal therefore will provide those DTC members with an efficient method of updating customer account information and will provide to them an efficient method of obtaining timely updated customer account information. In the absence of this information, banks and broker-dealers might otherwise request physical certificates as a check to ensure the actual amount of shares in a customer's account. Thus the proposal should facilitate the immobilization of securities certificates, consistent with section 17A(e) of the Act.[11]

Finally, DTC will charge participants a fee to cover any expenses incurred by DTC in the course of facilitating access to the proposed service. The Commission believes that, as required by section 17A(b)(3)(D) of the Act,[12] the proposed fee is reasonable and equitably allocated among the participants using the Networking service.

III. Conclusion

For the reasons discussed in this Order, the Commission finds that the proposal is consistent with section 17A of the Act.

It is Therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change, SR-DTC-92-02 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28960 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[7] For a description of the DTC-NSCC Fund/SERV interface, *see* Securities Exchange Act Release No. 27056 *supra* note 6.

[8] Likewise, NSCC is not responsible for the accuracy and adequacy of any Fund/SERV data submitted to NSCC, although NSCC is responsible for losses resulting from NSCC's own gross negligence or willful misconduct in the processing of Fund/SERV data received from DTC. DTC-NSCC Fund/SERV Linkage Agreement (June 29, 1989), Sections 4 and 5. DTC, like NSCC, does not guarantee Fund/SERV transactions. DTC must notify NSCC before 10 a.m. (Eastern Time) on T+5 that it has ceased to act for a participant in order to limit DTC's liability. If DTC gives NSCC timely notice regarding its decision to cease to act for a participant who has defaulted on its Fund/SERV payment obligations, DTC's liability would be limited to an amount equal to that participant's required Fund/SERV contribution. If DTC notifies NSCC later than 10 a.m. (Eastern Time) on T+5 that it has ceased to act for a participant, and NSCC cannot reverse or recover the credits made to mutual fund processors with respect to that DTC participant, DTC will pay NSCC all amounts due, resulting from the participant's use of Fund/SERV. DTC-NSCC Fund/SERV Linkage Agreement (June 29, 1989), Section 3. *See* Securities Exchange Act Release No. 27056, *supra* note 6, for a discussion of required participant Fund/SERV contributions to DTC's Next-Day Funds Settlement system.

[9] Securities Exchange Act Release Nos. 24088 (February 10, 1987), 52 FR 5320 and 26506 (January 31, 1989), 54 FR 6051.

[10] Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544.

[11] 15 U.S.C. 78q-1(e) (1988).

[12] 15 U.S.C. 78q-1(b)(3)(D) (1988).

[13] 15 U.S.C. 78s(b)(2) (1988).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

November 23, 1992.

The above named national securities exchange has file applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Breed Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7-9627)

BSN Corporation
Warrants to Purchase Common Stock, expiring November 15, 1992, No Par Value (File No. 7-9628)

Drug Research Corporation Plc
American Depositary Shares (each representing one callable Ordinary Share), Par Value Four Irish Pence (File No. 7-9629)

Kranzco Realty Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-9630)

Ramsay HMO, Inc.
Common Stock, $.001 Par Value (File No. 7-9631)

Viratek, Inc.
Common Stock, $.10 Par Value (File No. 7-9632)

CMAC Investment Corporation
Common Stock, $.001 Par Value (File No. 7-9633)

Hibernia Corp.
Rights to Subscribe to Class A Common Stock, No Par Value (File No. 7-9634)

Tri-Continental Corp.
Rights to Subscribe to Additional Shares of Common Stock, No Par Value (File No. 7-9635)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 15, 1992, written data, views and arguments concerning the above referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve

the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-28951 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 23, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act Of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

American Heritage Life Investment Co.
Common Stock, $1 Par Value (File No. 7-9636)
Virateck, Inc.
Common Stock, $.10 Par Value (File No. 7-9637)
Ramsay HMO, Inc.
Common Stock, $.001 Par Value (File No. 7-9638)
Santander Overseas Bank, Inc.
Non-Cum. Guarantee Pfd Stock, $25 Par Value (File No. 7-9639)
Hiberina Corporation
Rights to Subscribe (File No. 7-9640)
Ford Motor Company
Depository Shares, $1.00 Par Value (File No. 7-9641)
Breed Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7-9642)
Kranzco Realty Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7-9643)
Chiquita Brands International, Inc.
1.32 Dep. Shares Mandatorily Exch. Cum. Pfd Stock (File No. 7-9644)
Santa Fe Energy Trust
Depositary Units Evidenced by Secure Principal Energy Receipts "SPERS" (File No. 7-9645)
CMAC Investment Corporation
Common Stock, $.001 Par Value (File No. 7-9646)
Natural Alternatives International, Inc.
Common Stock, $.01 Par Value (File No. 7-9647)
Burlington Northern, Inc.
Series A Cum. Conv. Pfd Stock (File No. 7-9648)
Value Health, Inc.
Common Stock, No Par Value (File No. 7-9649)
Drug Research Corporation Plc
American Depositary Shares (File No. 7-9650)
Worldtex, Inc.
Common Stock, $.01 Par Value (File No. 7-9651)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-28952 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19116; File No. 812-8050]

American Skandia Life Assurance Corp., et al.

November 20, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for approval under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: American Skandia Life Assurance Corporation ("ASLAC"), American Skandia Life Assurance Corporation Variable Account B ("Account B"), American Skandia Trust ("AST") and Skandia Life Equity Sales Corporation ("SLESCO").

RELEVANT 1940 ACT SECTION: Order requested under section 26(b) approving the proposed substitution.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 26(b) of the 1940 Act approving the substitution of shares of the American Skandia Trust Money Market Portfolio (the "AST Money Market Portfolio") for shares of the Alger American Money Market Portfolio (the "AA Money Market Portfolio") and the Neuberger & Berman Advisers Management Trust Liquid Asset Portfolio (the "Liquid Assets Portfolio") to fund certain flexible purchase payment deferred variable annuity contracts ("Annuities") issued by ASLAC.

FILING DATE: The application was filed on August 14, 1992 and amended on November 6, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission 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 15, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Corporate Drive, Shelton, Connecticut 06484.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 272-3045, or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a free from the Commission's Public Reference Branch.

Applicants' Representations

1. ASLAC is a stock life insurance company admitted to do business in the District of Columbia and 50 states.

2. Account B, a separate account of ASLAC, is registered under the 1940 Act as a unit investment trust. ASLAC established Account B for the purpose of funding certain flexible purchase payment deferred variable annuity contracts, including the Annuities. Account B has eighteen sub-accounts, each of which invests exclusively in one of the portfolios of four registered open end investment companies: AST, Neuberger & Berman Advisers Management Trust ("AMT"), Alger American Fund ("AA Fund"), and Alliance Variable Products Series Fund, Inc. ("Alliance Fund").

3. AST is an open end diversified management investment company organized under the laws of Massachusetts as a business trust. AST presently offers two series of securities: the Henderson International Growth Portfolio and the Lord Abbett Growth and Income Portfolio. AST is planning to add two new series, one of which is the AST Money Market Portfolio. AMT, AA Fund and Alliance Fund each presently offer four, five and three portfolios, respectively, among which are the Alger American Money Market Portfolio (the "AA Money Market Portfolio") and the Neuberger & Berman Advisers Management Trust Liquid Asset Portfolio (the "Liquid Assets Portfolio"). Each money market portfolio (the AST Money Market Portfolio, the AA Money Market Portfolio and the Liquid Assets Portfolio) has the objective to earn high current income consistent with preservation of principal and maintenance of liquidity.

4. SLESCO, a registered broker-dealer, is the principal underwriter of the variable and market value adjusted fixed annuity contracts issued by ASLAC, including the Annuities.

5. The Annuities subject to this application are the American Skandia Advisors Plan ("ASAP") and the LifeVest Personal Security Annuity ("PSA"). The Annuities are designed for use in connection with retirement plans qualifying for special income tax treatment under the Internal Revenue Code and for use either individually or with plans not qualifying for such special income tax treatment. Purchase payments under the Annuities may be allocated to fourteen of the eighteen sub-accounts of Account B. Annuity holders of ASAP also may allocate their account value or portions thereof to various fixed account options offered by ASLAC.

6. Annuity holders may transfer all or part of their account value or cash value from one available sub-account to another at any time. A transfer charge of ten dollars is charged for each transfer after the twelfth in any Annuity year. No sales charge is deducted by reason of a transfer. With certain exceptions, surrenders from any Annuity are subject to a contingent deferred sales charge during the first seven years subsequent to each purchase payment.

7. ASLAC proposes to offer shares of the AST Money Market Portfolio through sub-accounts of Account B for investment by present and future Annuity holders, and to cease offering shares of the AA Money Market and the Liquid Asset Portfolios to those Annuity holders. This will consolidate all money market sub-accounts into one sub-account (the "Consolidation").

8. In the registration statements filed by Account B as Registrant, as to which ASLAC is the depositor, and under the Annuities, ASLAC has expressly retained the right to eliminate sub-accounts, combine two or more sub-accounts, or substitute one or more new underlying mutual funds or portfolios for others in which one or more sub-accounts are invested.

9. Applicants propose the following procedures to effect the Consolidation:

a. The prospectuses for ASAP and PSA have been or will be amended pursuant to post-effective amendments, describing the Consolidation as set forth in the application.

b. The Measuring Date with respect to a particular jurisdiction will be the last to occur of

(1) The effective date of the post-effective amendments;

(2) The granting of the requested exemptive relief;

(3) Approval, if required, of the state insurance department of the jurisdiction concerned; or

(4) The date determined by the management of ASLAC.

c. For each jurisdiction (particular state) and Annuity, written notice and appropriate prospectuses will be mailed to all Annuity holders within three business days of the Measuring Date. The notices will include the necessary information regarding the Consolidation, transfer request forms and prepaid postage return envelopes.

d. As of the Measuring Date, allocations or transfers of purchase payments, account value, or cash value to the AA Money Market sub-account or Liquid Asset sub-account will be allocated to the AST Money Market sub-account.

e. Through the twenty-ninth calendar day after the Measuring Date, Annuity holders may transfer account value or cash value out of the AA Money Market sub-account and the Liquid Asset sub-account with no transfer or similar charges, and without such transfers being counted as such, to any other sub-account offered under ASAP or PSA.

f. If the Annuity holder had previously approved telephone transactions, then telephone instructions will be accepted.

g. The thirtieth day after the Measuring Date will be the Automatic Transfer Date. On the Automatic Transfer Date, all Account values or cash values of Annuity Holders allocated to the AA Money Market or Liquid Asset Portfolio will be transferred to the AST Money Market sub-account.

h. As to those jurisdictions that provide a "free-look" period, purchase payments will be allocated to the AST Money Market sub-account as of the Measuring Date. Transfer instructions received will be priced in accordance with the normal procedures under the applicable Annuities and in accordance with the allocation rules for such Annuities as described in the prospectuses and outlined in the Annuity contracts or certificates.

i. All transfers will be effected at the net asset values of the sub-accounts in conformity with section 22(c) of the 1940 Act and rule 22c-1 thereunder. Such transfers will be effected by selling the underlying portfolio securities of the Liquid Asset Portfolio and the AA Money Market Portfolio and applying the proceeds to the purchase price of securities issued by the other Portfolios selected by the Annuity holder. Annuity holders will not incur any fees or charges as a result of the transfer of Account value from the Liquid Asset sub-account or the AA Money Market sub-account, nor will their rights, or ASLAC's obligations, under any Annuity be altered in any way. All expenses incurred in connection with the proposed Consolidation will be paid by ASLAC. The proposed transfers will not cause the Annuity and Account B fees and charges currently being paid by existing Annuity holders to be greater after the Consolidation than before the Consolidation. The level of management fees to be charged pursuant to the proposed investment management agreement for the AST Money Market Portfolio is not higher than those presently charged for management of the Liquid Asset Portfolio and the AA Money Market Portfolio.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act generally prohibits the depositor or trustee of a registered unit investment trust holding the security of a single issuer from substituting another security for such security unless the Commission approves the substitution. The proposed termination of two sub-accounts of Account B, the creation of the new AST Money Market sub-account, and the proposed Consolidation procedure may involve a substitution of securities within the meaning of section 26(b) of the 1940 Act. Applicants therefore request an order of the Commission pursuant to section 26(b) approving the proposed Consolidation.

2. ASLAC has determined that it is in the best interests of Annuity holders to replace the two money market sub-

accounts with one sub-account with money market investment goals. One underlying money market portfolio can be expected to attain a size that achieves economies of scale.

3. Applicants assert that it is reasonable to anticipate that Annuity holders will not suffer detriment from the anticipated expense ratio and level of advisory fees from the AST's Money Market Portfolio as compared to those for the Liquid Asset and the AA Money Market Portfolios.

4. The proposed default substitution, which may occur only if Annuity holders do not give timely instructions, will be only temporary because Annuity holders always may exercise their own judgment as to the most appropriate alternative investment. Annuity holders who have not annuitized may transfer their account or cash value to any other sub-account offered under the Annuities at any time before or after the proposed Consolidation. No sales load deductions will be made in connection with any transfers among the sub-accounts. The proposed transactions will be made at net asset values. For a 29 day period after the Measuring Date, Annuity holders may transfer values in the Liquid Asset and AA Money Market Portfolios to any of the remaining sub-accounts of Account B (or, for holders of ASAP, to the available fixed account options) without any costs or transfer charges.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested order approving the proposed Consolidation pursuant to section 26(b) of the 1940 Act is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28949 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19112; 811-3509]

Asset Management Portfolios; Notice of Application

November 20, 1992

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Asset Management Portfolios.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 17, 1991 and amended on November 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyer, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 4900 Sears Tower, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or C. David Messman, Branch Chief, (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

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 Massachusetts business trust and open end diversified management investment company consisting of two series: The Diversified Assets Portfolio and that Government Assets Portfolio. On July 2, 1982, applicant registered under the Act, and filed a registration statement to register its securities under the Securities Act of 1993. Applicant's registration statement was declared effective on December 8, 1982, and its initial public offering commenced on January 27, 1983.

2. Goldman Sachs & Co. ("Goldman Sachs") is the investment adviser and distributor for each series of the applicant. Goldman Sachs determined to amalgamate the money market funds that it managed. On April 19, 1990, the Board of Trustees of applicant voted to dissolve applicant. On April 30, 1990, Goldman Sachs informed applicant's shareholders of the plan to amalgamate the money market funds. Shareholders were asked to redeem their shares voluntarily and invest the proceeds in series of Goldman Sachs—Institutional Liquid Assets ("ILA"). Shareholders in the Diversified Assets Portfolio were offered shares in either of the two classes of the Money Market Portfolio of ILA. Shareholders in the Government Assets Portfolio were offered shares in either of the two classes of the Government Portfolio of ILA Shareholders either agreed to redeem and invest the proceeds elsewhere or signed an authorization form whereby the shares would be redeemed and the proceeds would be invested in shares of ILA. Those clients that did not choose to sign an authorization form redeemed their shares and invested the proceeds elsewhere.

3. Between April 30, 1990 and March 11, 1991, applicant's public shareholders redeemed their shares at a price equal to net asset value. No redemption fee or sales load was charged in connection with redemptions of applicant's shares or purchases of shares of ILA. The only shareholder to retain its shares was the Goldman Sachs Group L.P. (an affiliate of Goldman Sachs).

4. On October 15, 1991, applicant's remaining portfolio securities were liquidated, its outstanding expenses (including liquidation expenses in the approximate amount of $2,500) were paid, and the remaining cash distributed to Goldman Sachs Group L.P.

5. Applicant has no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is engaged in only those business activities necessary for the winding-up of its affairs. Applicant intends to file an instrument of termination with the Secretary of State of the Commonwealth of Massachusetts.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28957 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-19110; 812-8108]

Boston Financial Tax Credit Fund VII, a Limited Partnership, et al.; Application

November 20, 1992.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Boston Financial Tax Credit Fund VII, a Limited Partnership, a Massachusetts limited partnership (the "Partnership"), and its managing general partner, Arch Street VII, Inc., a Massachusetts corporation (the "Managing General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order exempting the Partnership from all provisions of the Act. The order would permit the Partnership to invest in limited partnerships that engage in the ownership and operation of housing for low and moderate income persons.

FILING DATE: The application was filed on September 30, 1992 and amended on November 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 15, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: c/o The Boston Financial Group Incorporated, 101 Arch Street, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: Fran M. Pollack-Matz, Senior Attorney, at (202) 504–2801 or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was organized on September 14, 1992, under the Uniform Limited Partnership Act of the Commonwealth of Massachusetts. The Partnership is intended to serve as a vehicle for equity investment in apartment complexes to be qualified, in the opinion of counsel, for the low income housing tax credit under the Internal Revenue Code of 1986, as amended (the "Code").

2. The Partnership will operate as a "two-tier" entity, *i.e.*, the Partnership, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships") that, in turn will engage in the development, rehabilitation, ownership, and operation of apartment complexes in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456").

3. The Partnership's investment objectives are

(a) To provide current tax benefits in the form of tax credits that investors may use to offset their Federal income tax liability,

(b) To preserve and protect the Partnership's capital with the possibility of realizing a profit through the sale or refinancing of apartment complexes,

(c) To provide limited cash distributions from the operations of apartment complexes, and

(d) To provide cash distributions from Sale or Refinancing transactions, as defined in the Partnership's partnership agreement (the "Partnership Agreement").

4. On September 28, 1992, the Partnership filed a registration statement under the Securities Act of 1933 (the "Securities Act"), for the sale of up to 100,000 units of limited partnership interest ("Units") at $1,000 per Unit with a minimum investment of five units ($5,000) per investor.

5. Subscriptions for Units must be approved by the Managing General Partner, and such approval will be made conditional upon representations as to suitability of the investment for each subscriber. The form of subscription agreement for Units provides that each subscriber will represent, among other things, that he meets the general investor suitability standards established by the Partnership and set forth in the prospectus under the heading "Who Should Invest." Units will be sold in certain states only to persons who meet additional or alternative standards that will be set forth in the prospectus, any supplement to the prospectus, or the subscription agreement; provided, however, that in no event shall the Partnership employ any such suitability standard which is less restrictive than that set forth in the application. The Partnership Agreement also imposes certain restrictions on the transfer and assignment of the Units, including that each proposed assignee must deliver to the Managing General Partner evidence of his suitability. The Partnership will not redeem or repurchase Units, does not anticipate formation of a public market for the Units, and thus believe purchases of Units should be considered illiquid investments.

6. The Partnership will be controlled by its general partners, the Managing General Partner and Arch Street VII Limited Partnership (together, the "General Partners"). The limited partners, consistent with their limited liability status, will not be entitled to participate in the control of the Partnership's business. However, the majority in interest of the limited partners will have the right to amend the Partnership Agreement (subject to certain limitations), dissolve the Partnership or approve the sale at one time of all or substantially all of the assets of the Partnership, and remove any General Partner and elect a replacement therefor. In addition, under the Partnership Agreement, each limited partner is entitled to review all books and records of the Partnership at any and all reasonable times.

7. The Partnership Agreement provides that certain significant actions cannot be taken by the Managing General Partner without the express consent of a majority in interest of the limited partners. Such actions include:

(a) Until the end of the 10-year period commencing on the date of the prospectus, the sale in a 12-month period of Local Limited Partnership interests constituting more than 33% of the Partnership's then existing total investment in Local Limited Partnership interests;

(b) The sale at any one time of all or substantially all of the assets of the Partnership, except for sales in connection with the liquidation and winding up of the Partnership's business upon its dissolution; and

(c) Dissolution of the Partnership. The admission of a successor or additional General Partner would also require express consent under the Partnership Agreement.

8. The Partnership will normally acquire at least a 95% interest in the operating profits, losses, and tax credits of the Local Limited Partnerships, with the balance remaining with the local general partners. The Partnership will normally acquire a substantial (in the sense of a greater than 50% interest in such cash distribution or at a minimum in the form of a cumulative priority interest in such cash distributions) interest in the cash distributions of the Local Limited Partnership, with the

balance remaining with the Local General Partners. Should the Partnership invest in any Local Limited Partnership in which it acquires less than 50% of the limited partnership interest, the Local Limited Partnership Agreement will provide that the Partnership will have at least a 50% vote to: amend the partnership agreement of the Local Limited Partnership; dissolve the Local Limited Partnership; remove the local general partner and elect a replacement; and approve or disapprove the sale of substantially all of the assets of the Local Limited Partnership. In addition, the Partnership will require that the Local Limited Partnership agreements provide to the limited partners of the Local Limited Partnerships substantially all of the rights required by Section VII of the guidelines adopted by the North American Securities Administrators Association, Inc. ("NASAA").

9. Boston Financial Securities, Inc., an affiliate of the General Partners (the "Selling Agent"), will receive commissions up to 7% of the aggregate gross proceeds on the sale of the Units. The Selling Agent also will receive an expense allowance of up to .5% of the gross proceeds to defray accountable due diligence activities and an underwriting advisory fee equal to up to 1.5% of the gross proceeds. The Selling Agent may authorize other members ("Soliciting Dealers") of the National Association of Securities Dealers, Inc. ("NASD") to sell Units. The Selling Agent will pay a concession to each Soliciting Dealer of up to the entire commission received by it on all sales of Units by such Soliciting Dealer and may reallow all or any portion of its expense allowance to such Soliciting Dealer. In addition, the Selling Agent expects to reallow a portion of the underwriting advisory fee to certain Soliciting Dealers. Selling commissions and fees equal to 9% in the aggregate of gross proceeds are customarily charged in securities offerings of this type and are consistent with the guidelines of the NASD.

10. All compensation to be paid to the General Partners and their affiliates is specified in the Partnership Agreement and the prospectus, and no compensation will be payable to the General Partners or their affiliates not so specified. The fees and other forms of compensation that will be paid to the General Partners and their affiliates will not have been negotiated through arm's length negotiations. Terms of all such compensation, however, are believed by applicants to be fair and not less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. Applicants state that the Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various states which prescribe such guidelines, including, without limitation, the statement of policy adopted by NASAA applicable to real estate programs in the form of limited partnerships. In addition, compensation in various forms will be paid to the local general partner of each Local Limited Partnership.

11. All proceeds of the public offering of Units will initially be placed in an escrow account with Shawmut Bank, N.A. ("Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in the "Shawmut Interest Bearing Account," a federally insured money market deposit account. The offering of Units will terminate not later than 24 months from the date upon which the Partnership's registration statement is declared effective. If subscriptions for at least 5,000 Units have not been received by one year from the date upon which the Partnership's registration statement is declared effective, no Units will be sold and funds paid by subscribers will be returned promptly, together with a *pro rata* share of any interest earned thereon. Upon receipt of the prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership and held in trust pending investment in Local Limited Partnerships. Any net proceeds not utilized to acquire Local Limited Partnership interests or for other Partnership purposes will be invested and held in highly liquid, non-speculative securities set forth in the application and which provide adequately for the preservation of capital ("Temporary Investments"). The Partnership intends to apply capital raised in its public offering to the acquisition of Local Limited Partnership interests as soon as possible and does not intend to trade or speculate in Temporary Investments.

Applicants' Arguments

1. Section 6(c) authorizes the SEC to grant an exemption from the Act to the extent "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]." Applicants seek an order under sections 6(c) exempting the Partnership from all provisions of the Act.

2. Applicants assert that the requested relief is consistent with the protection of investors and the purposes and policies underlying the Act. Applicants assert, among other things, that investment in low and moderate income housing in accordance with the national policy expressed in title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form.

3. Release No. 8456 lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for the type of exemptive relief which the Partnership seeks: (a) "Interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable * * *;" and (b) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to ensure investor protection. Interests in the Partnership will be sold only to, and transfers will be permitted only to, investors who meet specified suitability standards (as described above) which the Partnership believes are consistent with the requirements in Release No. 8456, with the guidelines of those states which prescribe suitability standards, and with the securities laws of all states where the Units will be sold. Such investors will receive extensive reports concerning the Partnership's business and operations.

4. All compensation to be paid to the General Partners and their affiliates is specified in the Partnership Agreement and the prospectus and no compensation will be payable to the General Partners or any of their affiliates not so specified.

5. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort the Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Local Limited Partnership by various federal, state and local agencies, provide protection to investors in Units comparable to that provided by the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28959 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19113; 811-3020]

CMA Asset Trust; Notice of Application

November 20, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: CMA Asset Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 27, 1992, and amended on November 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1992, 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 such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On March 24, 1980, applicant as a Massachusetts business trust. On March 24, 1980, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on April 3, 1980, on which date applicant commenced its initial public offering.

2. On July 15, 1980, applicant's trustees approved a resolution whereby applicant was consolidated with CMA Money Trust (the "Original Trust") pursuant to rule 6c-5(T) of the Act.[1] Under rule 6c-5(T), no security holder authorization of the consolidation was required.

3. On August 15, 1980, the shares of applicant were exchanged for an equivalent number of shares of the Original Trust. The Original Trust in turn redeemed the shares of applicant that it acquired through the exchange, receiving as redemption proceeds the portfolio assets of applicant. Shares valued at $691,901,501 were exchanged and redeemed in this manner. All such exchange and redemption activities were conducted pursuant to the requirements set forth in rule 6c-5(T).

4. All expenses incurred in connection with applicant's consolidation were borne by the applicant's investment adviser, Fund Asset Management, Inc. (the "Adviser"). On August 4, 1992, applicant's board of trustees recommended applicant's dissolution and deregistration to its sole remaining shareholder, the Adviser, who approved the dissolution by written consent. Applicant retained $12,647.36 to cover its expenses incurred in with its deregistration and dissolution. Any funds remaining will be distributed to the Adviser.

5. Applicant is not a party to any litigation or administrative proceeding. Applicant has no assets other than those reserved to cover applicant's dissolution expenses, and no liabilities other than those incurred in connection with the dissolution. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs. Applicant intends to file an Instrument of Termination with the Secretary of State of the Commonwealth of Massachusetts as soon as practicable following its deregistration.

[1] *See* Investment Company Act Release No. 11277 (July 25, 1980) (adopting rule 6c-(T)). On March 14, 1980, the Board of Governors of the Federal Reserve System (the "Board") promulgated credit control regulations applicable to certain registered investment companies, including money market funds. To facilitate compliance with the special deposit requirements imposed by the Board, a number of so-called "clone" funds were organized by investment companies to duplicate already existing money market funds. Following the Board's recission of the credit control regulations, rule 6c-5(T) was adopted as a temporary rule, on an emergency basis, to create "safe harbor" procedures pursuant to which money market clone funds, such as applicant, could be consolidated into the original funds, such as applicant, could be consolidated into the original funds on which they were based, subject to the supervision of the fund's board of directors or trustees.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28956 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19111 ; 811-3775]

Exempt Assets Portfolios; Notice of Application

November 20, 1992

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Exempt Assets Portfolios.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 17, 1991 and amended on November 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1992, 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 Fifth Street, NW., Washington, DC 20549. Applicant, 4900 Sears Tower, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or C. David Messman, Branch Chief, (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

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 Massachusetts business trust and open-end diversified management investment company On June 21, 1983, applicant registered under the Act and filed a registration statement to register its securities under the Securities Act of 1933. Applicant's registration statement was declared effective on October 12, 1983, and its initial public offering commenced on November 1, 1983.

2. Goldman Sachs & Co. ("Goldman Sachs") is the investment adviser and distributor of applicant. Goldman Sachs determined to amalgamate the money market funds that it managed. On April 19, 1990, the Board of Trustees of applicant voted to dissolve applicant. On April 30, 1990, Goldman Sachs informed applicant's shareholders of the plan to amalgamate the money market funds. Shareholders were asked to redeem their shares voluntarily and invest the proceeds in Goldman Sachs Institutional Liquid Assets ("ILA"). Shareholders were offered shares in one of the two classes of the Institutional Tax-exempt Diversified Portfolio of ILA. Shareholders either agreed to redeem and invest the proceeds elsewhere or signed an authorization form whereby the shares would be redeemed and the proceeds would be invested in shares of ILA. Those clients that did not choose to sign an authorization form redeemed their shares and invested the proceeds elsewhere.

3. Between April 30, 1990 and March 11, 1991, applicant's public shareholders redeemed their shares at a price equal to net asset value. No redemption fee or sales load was charged in connection with redemption of applicant's shares or purchases of shares of ILA. The only shareholder to retain its shares was the Goldman Sachs Group L.P. (an affiliate of Goldman Sachs).

4. On October 15, 1991, applicant's remaining portfolio securities were liquidated, its outstanding expenses (including liquidation expenses in the approximate amount of $2,500) were paid, and the remaining cash was distributed to the Goldman Sachs Group L.P.

5. Applicant has no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is engaged in only those business activities necessary for the winding-up of its affairs. Applicant intends to file an instrument of termination with the Secretary of State of the Commonwealth of Massachusetts.

For the Commission, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 92-28958 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19114; 811-3063]

Merrill Lynch Ready Assets Trust II; Notice of Application

November 20, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Merrill Lynch Ready Assets Trust II.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 27, 1992, and amended on November 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1992, 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 such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company which was organized as a Massachusetts business trust. On May 27, 1980, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on June 10, 1980, on which date applicant commenced its initial public offering.

2. On August 1, 1980, applicant's trustees approved a resolution whereby applicant was consolidated with Merrill Lynch Ready Assets Trust (the "Original Trust") pursuant to rule 6c-5(T) of the Act.[1] Under rule 6c-5(T), no securityholder authorization of the consolidation was required.

3. On August 22, 1980, the shares of applicant were exchanged for an equivalent number of shares of the Original Trust. The Original Trust in turn redeemed the shares of applicant that it acquired through the exchange, receiving as redemption proceeds the portfolio assets of applicant. Shares valued at $1,054,468,322.34 were exchanged and redeemed in this manner. All such exchange and redemption activities were conducted pursuant to the requirements set forth in rule 6c-5T.

4. All expenses incurred in connection with applicant's consolidation were borne by the applicant's investment adviser, Fund Asset Management, Inc. (the "Adviser"). On August 4, 1992, applicant's board of trustees recommended applicant's dissolution and deregistration to its sole remaining shareholder, the Adviser, who approved the dissolution by written consent. Applicant retained $13,192.76 to cover its expenses incurred in with its deregistration and dissolution. Any funds remaining will distributed to the Adviser.

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[1] *See* Investment Company Act Release No. 11277 (July 25, 1980) (adopting rule 6c-5(T)). On March 14, 1980, the Board of Governors of the Federal Reserve System (the "Board") promulgated credit control regulations applicable to certain registered investment companies, including money market funds. To facilitate compliance with the special deposit requirements imposed by the Board, a number of so-called "clone" funds were organized by investment companies to duplicate already existing money market funds. Following the Board's rescission of the credit control regulations, rule 6c-5(T) was adopted as a temporary rule, on an emergency basis, to create "safe harbor" procedures pursuant to which money market clone funds, such as applicant, could be consolidated into the original funds on which they were based, subject to the supervision of the fund's board of directors or trustees.

5. Applicant is not a party to any litigation or administrative proceeding. Applicant has no assets other than those reserved to cover applicant's dissolution expenses, and no liabilities other than those incurred in connection with the dissolution. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28955 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25682]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 23, 1992.

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) an 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 14, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or delcaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al. (70-7947)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its wholly owned nonutility subsidiary companies, Entergy Enterprises, Inc. (formerly Electec, Inc.) ("Enterprises"), 639 Loyola Avenue, New Orleans, Louisiana 70113 and Entergy Services, Inc. ("Services"), 225 Baronne Street, New Orleans, Louisiana 70112, ("Applicants") have filed an amendment to their application-declaration under sections 2(a)(8), 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and rules 40, 43, 45, 87, 90 and 91 thereunder.

The Commission issued a notice of the filing of the application-declaration on May 22, 1992 (HCAR No. 25545) ("May Notice"). The City of New Orleans, the Arkansas Public Service Commission, the Mississippi Public Service Commission and the Louisiana Public Service Commission have requested a hearing. The requests for hearing of the City of New Orleans, the Arkansas Public Service Commission, and the Mississippi Public Service Commission were subsequently withdrawn "contingent on the Securities and Exchange Commission's incorporation in its order approving the requested transactions of the conditions listed in the attached Settlement Agreement between Entergy and New Orleans, Arkansas and Mississippi." The Louisiana Public Service Commission did not withdraw its request for hearing and it is not a party to the settlement agreement. Because of the settlement agreement, Applicants have materially amended their application-declaration requiring the Commission to issue this supplemental notice.

The May Notice states that "Services proposes to enter into an agreement with NEWCO [, a to-be-formed subsidiary company of Enterprises,] whereby Services will provide certain services to NEWCO (including, without limitation, management, financial, accounting, payroll and legal) at cost."

The settlement agreement contemplates reimbursement at cost plus five percent for services provided by "regulated utilities" to "nonregulated businesses." The settlement agreement states, "the term 'regulated utility' shall include New Orleans Public Service, Inc., Louisiana Power and Light Company, Arkansas Power and Light Company, Mississippi Power and Light Company, Entergy Operations, Inc., System Fuels, Inc., System Energy Resources, Inc., and Entergy Services, Inc., and such other similar subsidiaries as Entergy shall create whose activities and operations are primarily related to the domestic sale of electric energy at retail or at wholesale to affiliates, or the provision of services or goods thereto." "Nonregulated businesses" are defined to include Enterprises "and such other subsidiaries and affiliates as Entergy shall create which are not domestic regulated electric utilities primarily engaged in the business of selling electric energy at retail or at wholesale to affiliates or are not primarily engaged in the business of providing services or goods to regulated electric utility affiliates."

Services seeks an exemptive order from the "at-cost" standard of section 13(b) authorizing it to provide services to NEWCO at cost plus five percent.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28948 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25681]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 20, 1992.

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 applications(s) and/or declaration(s) should submit their views in writing by December 14, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System (70-7006)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed

post-effective amendment to its declaration pursuant to Sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

By orders dated December 10, 1984, January 10, 1986 and November 22, 1988 (HCAR Nos. 23523, 23987 and 24752, respectively), the Commission authorized NEES to issue and sell from time-to-time through December 31, 1992, an aggregate of up to 963,319 shares of its authorized but unissued common shares, $1 par value, pursuant to the NEES Goals Program ("Program"). Through September 30, 1992, NEES has issued 551,335 shares pursuant to the Program leaving a balance of 411,984 authorized but unissued shares.

NEES seeks authority to extend the period for issuing the remaining common shares pursuant to the Program through December 31, 1996. The proceeds from the continued sale of the common shares will be added to the general funds of NEES and be used for any of all of the following purposes: (1) Investment in its subsidiaries through loans or advances to such subsidiaries, purchases of additional shares of their capital stocks or capital contributions; (2) payment of NEES indebtedness; or (3) general corporate purposes.

Central Power and Light Company, et al. (70-7817)

Central Power and Light Company, 539 North Carancahua Street, Corpus Christi, Texas 78401, Public Service Company of Oklahoma, 212 East 6th Street, Tulsa, Oklahoma 74119, Southwestern Electric Power Company, 428 Travis Street, Shreveport, Louisiana 71156 and West Texas Utilities Company, 301 Cypress, Abilene, Texas 79601 (collectively, "Applicants"), each an electric public-utility subsidiary of Central and South West Corporation ("CSW"), a registerd holding company, have filed a post-effective amendment under sections 9(a), 10 and 12(c) of the Act and rule 42 thereunder to its application-declaration filed with this Commission under sections 9(a), 10 and 12(c) of the Act and rule 42 thereunder.

By orders dated October 23, 1986, October 12, 1988 and December 26, 1990 (HCAR Nos. 24219, 24726 and 25229, respectively), the Commission authorized, through December 31, 1992, each of the Applicants to acquire and retire up to 20% of the par value of its preferred stock ("Preferred") and up to 10% of the aggregate principal amount of its first mortgage bonds ("Bonds") issued and outstanding on September 30, 1986, June 30, 1988 and September 30, 1990, respectively, in open market and negotiated transactions at prices not exceeding the then current general redemption prices for such securities.

The Applicants now request the authority, through December 31, 1994, to acquire and retire up to 20% of the par value of each company's Preferred and up to 10% of the aggregate principal amount of each company's Bonds issued and outstanding on September 30, 1992 (either the Preferred, Bonds or both being "Securities"). In addition, the Applicants propose to effect such acquisitions on the open market at negotiated prices determined in the market place pursuant to cash purchases, using internally generated funds and/or cash on hand from short-term borrowings (as previously authorized by the Commission [1] ("Cash Acquisition"). The Applicants state that, based on market conditions at the time of the transaction, it is possible that the Applicants could negotiate for the purchase of their Securities at prices higher than the then current general redemption price and still achieve savings. It is stated that the Applicant's Securities will be acquired pursuant to a Cash Acquisition only if an estimated present value savings is achieved, as calculated on the basis of the net difference between interest payments on a hypothetical new issue of comparable securities (i.e., as if new securities, and not cash, were used to finance the acquisition of the Securities) and those Securities refunded or purchased is, on an after-tax basis, greater than the present value of all repurchasing, redemption, tendering and issuing costs, assuming an appropriate discount rate. The present value calculation will employ a discount factor based on the estimated after-tax cost of capital associated with the hypothetical new issue by the Applicant of comparable securities.

OLS Energy-Berkeley (70-7939)

OLS Energy-Berkeley ("Berkeley"), located at One Gatehall Drive, 3rd Floor, Parsippany, New Jersey 07054, an indirect nonutility subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act.

By order dated August 1, 1989 (HCAR No. 24931), the Commission, among other things, authorized Energy Initiatives, Incorporated, a wholly owned indirect subsidiary company of GPU, to acquire through a newly formed, wholly owned subsidiary, Camchino Energy Corporation, general and limited partnership interests, aggregating a 50 percent interest, in OLS Power Limited Partnership ("Partnership"). The Partnership was authorized to acquire, directly or indirectly, all of the outstanding common stock of, among other companies, Berkeley.

Berkeley is the lessee of a qualifying cogeneration facility ("Facility") located in California. Prior to the acquisition, Berkeley entered into a revolving credit agreement ("Credit Agreement") with General Electric Capital Corporation ("GECC"), the owner of the Facilities, to provide for the short-term working capital requirements of the Facility.

By orders dated February 9, 1990, December 26, 1990 and July 12, 1991 (HCAR Nos. 25038, 25230 and 25342, respectively), the Commission authorized Berkeley to enter into amendments to its Credit Agreement to, among other things: (a) Increase the aggregate amount of the notes which may be outstanding thereunder; (b) extend the time during which notes may be outstanding thereunder; and (c) reduce the rate of interest payable on any notes outstanding. Berkeley issued a secured promissory note (the "Note") to GECC evidencing its borrowings under the Credit Agreement. By order dated March 26, 1992 (HCAR No. 25501), the Commission authorized Berkeley to borrow under its Credit Agreement and the Note issued thereunder as amended, until December 31, 1992.

Berkeley now requests authority to extend the time during which it may make borrowings under its Credit Agreement and the Note issued thereunder, as amended, through December 31, 1994.

Mississippi Power Company (70-7941)

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, a wholly owned electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 6(a), 7, 9(a), 10, 12(c) and 12(d) of the Act and rules 42, 44, 50 and 50(a)(5) thereunder.

By order dated August 7, 1992 (HCAR No. 25601), Mississippi was authorized, among other things, to issue and sell, at any time on or before June 30, 1994, preferred stock ("Preferred") in an aggregate par or stated value of up to $50 million under the competitive bidding procedures of rule 50 of the Act as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623). The

[1] *See* HCAR Nos. 24855, 24966, 25090 and 25288 (Apr. 5, 1989, Oct. 10, 1989, May 15, 1990 and Mar. 29, 1991, respectively).

Commission reserved jurisdiction, among other things, over the issuance and sale of up to $50 million of Preferred under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5), such that the aggregate amount of all Preferred issued and sold would not exceed $50 million, pending completion of the record.

Mississippi now proposes to increase the aggregate par or stated value of the Preferred to $70 million. Mississippi requests authorization to issue and sell, through June 30, 1994, and additional $20 million of Preferred under: (1) The competititve bidding procedures of rule 50 of the Act as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623); or (2) an exception from the competitive bidding requirements of rule 50 under subsection (a)(5).

Northeast Utilities, et al. (70–8062)

Northeast Utilities ("Northeast"), a registered holding company, and its wholly owned subsidiary companies, Charter Oak Energy, Inc. ("Charter Oak") and COE Development Corp. ("COE Development") (collectively, "Applicants"), all of 107 Selden Street, Berlin, Connecticut 06037, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 87, 90 and 91 thereunder.

The Applicants seek authorization, among other things, for a two-year extension of authorities granted by orders dated May 17, 1989 (HCAR No. 24893) ("1989 Order"), January 28, 1992 (HCAR No. 25461) ("January 1992 Order"), and October 16, (HCAR No. 25655) ("October 1992 Order"). Charter Oak also seeks authorization for expansion of those authorities to allow Charter Oak to engage in consulting services.

In the 1989 Order, Northeast was authorized to establish Charter Oak in order to invest and participate in qualifying small power production and cogeneration facilities ("Qualifying Facilities"). The 1989 Order authorized Charter Oak to invest and participate in qualifying cogeneration facilities in any geographic area. However, its investment and participation in qualifying small power production facilities was limited to facilities located in the service territories of Northeast and the New England Power Pool. The 1989 Order also authorized Northeast to invest in Charter Oak up to $7.5 million each year through December 31, 1992. Under the 1989 Order, Charter Oak has engaged in the preliminary development of Qualifying Facilities.

In the January 1992 Order, Charter Oak was authorized to explore the potential for investment and participation in independent power production ("IPP") facilities. The January 1992 Order specified, however, that Charter Oak was not to invest in, or participate in the construction of, IPP facilities without further Commission approval. Pursuant to the 1989 Order and the January 1992 Order, Charter Oak has engaged in the preliminary development of Qualifying Facilities and IPP facilities with, in some instances, unaffiliated third parties. In such instances, the development, however, has not involved the formation of partnerships, joint ventures, or other business entities.

In the October 1992 Order, Northeast and Charter Oak were authorized to establish and finance a new wholly owned subsidiary, COE Development Corporation ("COE Development"), to engage in preliminary development of Qualifying Facilities and IPP facilities. COE Development was authorized to engage in preliminary development activities with, in some instances, unaffiliated third parties. In such instances, the development, however, was not to involve the formation of partnerships, joint ventures, or other business entities.

The October 1992 Order authorized Charter Oak to invest in COE Development up to $4.5 million in 1992, which funds would be acquired by Charter Oak itself from the 1992 Northeast investment therein. The new wholly owned subsidiary was also authorized to engage in preliminary development activities in part with services directly provided by Northeast companies. However, the October 1992 Order provided that no Charter Oak affiliate would invest in, or participate in the development of, IPP facilities without further Commission approval.

The Applicants now seek authorization for a two-year extension—through December 31, 1994—of the above-described authorities granted in the 1989 Order, the January 1992 Order, and the October 1992 Order. The Applicants also seek authorization to (1) increase the annual investment of Northeast in Charter Oak from $7.5 million to $10 million; (2) increase the annual amount Charter Oak is authorized to spend from $7.5 million to $10 million; (3) increase the annual investment of Charter Oak in COE Development from $4.5 million to $9 million; and (4) increase the annual amount COE Development is authorized to spend from $4.5 million to $9 million.

Northeast's investment in Charter Oak, and Charter Oak's investment i COE Development, may take the form of additional acquisitions of common stock, capital contributions, open account advances or subordinated loans. Any such open account advances or subordinated loans would bear interest at a rate based on Northeast's cost of funds in effect on the date of issue, but in no case in excess of the prime rate at a bank designated by Northeast.

In addition, Charter Oak proposes to engage in consulting services relative to Qualifying Facilities and IPP facilities. The consulting services could include (1) discussion with and advice to utilities and other persons on their power needs; (2) advice to utilities and other persons on the structure of Qualifying Facilities and IPP facilities; (3) engineering services to utilities and other persons and advice on engineering services provided by third parties; and (4) pre-operational services and certain support services.

The pre-operational services, as well as the support services, would be provided for and under the direction and management of the owners or operators of Qualifying Facilities and IPP facilities. Those services, moreover, could be provided either directly or indirectly through direct or indirect subsidiaries of Charter Oak (subject however to further Commission authorization in the case of subsidiaries.)

The application-declaration states that neither Northeast nor Charter Oak shall become, in consequence of the consulting services in which Charter Oak would engage, an owner or operator of Qualifying Facilities or IPP facilities.

Finally, the application-declaration references the Energy Policy Act of 1992, section 711 of which adds to the Act a new Section 32. Section 32 authorizes the acquisition by registered holding companies, without prior authorization, of interests in "exempt wholesale generators" ("EWGs"). The Applicants propose to invest in EWGs without prior authorization to the extent that such authorization is not required under the Act and applicable rules or regulations promulgated thereunder.

Yankee Atomic Electric Company (70–8083)

Yankee Atomic Electric Company ("Yankee Atomic"), 580 Main Street, Bolton, Massachusetts 01740, a subsidiary company of New England Electric System and Northeast Utilities, both registered holding companies, has

filed a declaration under sections 6(a) and 7 of the Act.

Yankee Atomic proposes to issue and sell, from time to time through December 31, 1994, short-term notes ("Notes") to banks up to an aggregate principal amount of $3 million at any one time. The Notes will be payable in less than one year from the date of issuance. The interest rate will not exceed the prime lending rate of the banks plus 4%. Yankee Atomic will pay fees of up to ½% on the total amount of the line to the banks in lieu of compensating balance arrangements. Certain of such borrowings may be without prepayment privileges. Based on fees of ½% on the total amount of the line, the effective interest cost would be approximately 10.5% per annum, assuming a prime rate of 6%.

The proposed borrowings will be repaid from time to time depending on the cash requirements of Yankee Atomic. The proceeds of such borrowings will be used for working capital needs relating to accounts receivable for engineering services.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28954 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25688]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 25, 1992.

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 16, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates, et al. (70-8099)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and its wholly owned subsidiaries, EUA Power Corporation ("EUA Power"), 40 State Street, P.O. Box 326, Manchester, New Hampshire 01305, EUA Service Corporation ("EUA Service"), P.O. Box 543, West Bridgewater, Massachusetts 02379, and Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, have filed a joint application-declaration with the Commission pursuant to sections 6(a), 7, 9(a), 10, 11(a) and 12 (b), (c), (d) and (f) of the Act and rules 42(a), 43(a), 44(a), 45(a) and 45(c) thereunder.

To resolve various matters presently in dispute, as well as any and all other issues and claims among them, EUA, EUA Power and the officially appointed Bondholders Committee in EUA Power's bankruptcy proceeding ("Bondholders Committee") have entered into a settlement agreement, dated November 18, 1992 ("Settlement Agreement").[1] The terms and conditions set forth in the Settlement Agreement will become effective on the latter of the date of entry ("Effective Date") of (i) the requested order of the Commission, and (ii) the order of the bankruptcy court approving the Settlement Agreement.[2]

Pursuant to the Settlement Agreement, EUA Power requests authority to redeem its outstanding shares of common and preferred stock from EUA. Upon such redemption, EUA Power will become a stand-alone company and will no longer be a subsidiary company of EUA.[3]

In addition, EUA Service requests authorization to provide certain administrative services to EUA Power through November 18, 1994, on a cost basis (including a return on the capital invested by EUA in EUA Service) consistent with the requirements under the Act. Specifically, EUA Service will market electricity on a short-term basis, keep the financial books and records of EUA Power, manage EUA Power's cash resources and perform such other routine administrative services as the Bondholders Committee may request of EUA Service from time to time until EUA Power's Chapter 11 case is closed. EUA Power has agreed to indemnify EUA Service for any claims or liabilities that may arise in connection with such services.

EUA Power also requests authority to assign to Montaup EUA Power's right to receive discounted engineering services from United Engineers and Constructors ("UE&C") under an agreement dated November 1, 1991 among the joint owners of Seabrook Nuclear Power Project ("Seabrook") and UE&C, and Montaup requests authority to accept such assignment. Montaup will reimburse EUA for 90% of the amount of services it receives as a result of such assignment.

EUA and EUA Power further request authority to carry out certain transactions in connection with the tax allocation agreements. Under the Settlement Agreement, the parties have agreed that, to the extent permissible under the tax laws and rule 45(c) of the Act, the tax attributes of EUA Power (*e.g.*, net operating loss carry forwards, investment tax credits and alternative minimum tax credits) will first be utilized by or allocated among the members of the EUA tax group, and thereafter, EUA will cooperate with EUA Power and the Bondholders Committee to maximize, to the extent permissible, the amount of tax attributes that may be available to EUA Power upon the deconsolidation of EUA Power from the EUA tax group. In addition, the parties have agreed that no further amounts will be paid to EUA Power for its tax attributes under the tax allocation agreements or otherwise regardless of the date upon which such deconsolidation occurs.

EUA also requests Commission approval of the confirmation of its duties and obligations under a Limited

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[1] EUA Power filed for protection under Chapter 11 of the United States Bankruptcy Code on February 28, 1991 and has since been operating its business as a debtor-in-possession.

[2] On the Effective Date, EUA will cause to be paid to EUA Power $20 million in consideration of, among other things, the mutual releases contained in the Settlement Agreement. EUA Power has agreed to use that portion of the $20 million to pay in full the amount outstanding under a certain debtor-in-possession financing facility ("DIP Financing") provided by Connecticut Light and Power Company and the United Illuminating Company. The DIP Financing was previously authorized by the Commission (HCAR Nos. 25609 and 25386, dated August 21, 1992 and September 28, 1991, respectively).

[3] The applicants state that the redemption may require approval of other agencies and the bankruptcy court.

Guaranty, dated May 4, 1990, in favor of the joint owners of Seabrook with respect to the decommissioning fund for Seabrook.

Finally, EUA requests authorization to issue and sell through December 31, 1994 short-term notes ("Notes") in an aggregate amount not to exceed $20 million outstanding at any one time. The Notes will be issued by EUA to banks pursuant to informal credit line arrangements which will provide for borrowings at a floating prime rate or at available fixed money market rates. Notes bearing interest at the floating prime rate will be prepayable at any time without premium or penalty. Notes bearing interest at available money market rates, which in all cases will be less than the prime rate at the time of issuance, will not be prepayable without penalty. The bank credit lines may be subject in some cases to commitment fees equal to ¼% of the line of credit. The Notes will mature not more than one year from the date of issuance, but none will mature after December 31, 1994. The Notes will be repaid by any combination of the following methods: (1) the issuance of new notes; (2) internal funds; and (3) the issuance and sale of permanent securities for which authority will be sought under a separate application with the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 92-29090 Filed 11-25-92; 12:32 pm]

BILLING CODE 8010-01-M

[Rel. No. IC-19117; 811-3824]

Tax-Free Accounts, Inc.; Application

November 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Tax-Free Accounts, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 24, 1992 and amended on November 6, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 18, 1992, 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, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of the State of Maryland. On August 13, 1983, applicant registered under the Act and filed a registration statement pursuant to section 8(b) of the Act. Also on August 13, 1983, a registration statement under the Securities Act of 1933 was filed. The registration statement was declared effective and the initial public offering commenced on November 25, 1983.

2. Applicant originally was established as an investment vehicle for the customers of a major money center bank and subsequently was expanded to allow participation by customers of other institutions. However, most of applicant's shares were held by the original money center bank. In 1987, that bank redeemed all of its shares in applicant in connection with its establishment of a proprietary money market mutual fund. As a result, applicant's assets were reduced to a size that rendered its portfolio difficult and inefficient to manage. Applicant's board of directors therefore determined that dissolution and liquidation of applicant was appropriate.

3. At a meeting held on April 15, 1988, the board of directors recommended the dissolution of applicant. In October 1987, applicant's shareholders were asked in telephone conversations, subsequently confirmed by letter, to redeem shares of applicant. Shareholders were permitted to reinvest the proceeds (without the payment of any fees) in another money market mutual fund advised by applicant's investment advisor, Nuveen Advisory Corp. ("NAC").

4. Applicant's portfolio securities either matured and were paid in accordance with their terms or sold at applicant's cost. No brokerage commissions were paid by applicant in connection with such sales.

5. On December 31, 1987, applicant had total assets of $32,152,883, comprising 32,152,883 shares at a net asset value of $1.00 per share. By February 28, 1988, all remaining shareholders of applicant, except NAC, had redeemed their shares in applicant, thereby making NAC the sole shareholder. On June 27, 1988, NAC, as sole remaining shareholder, tendered its shares to applicant. Each shareholder received $1.00 per share. Distributions in complete liquidation has been made to all shareholders besides NAC.

6. Applicant has retained $5,000 of redemption proceeds in cash in escrow, which is due to NAC as applicant's sole remaining shareholder, to satisfy the claims of any unknown creditors or shareholders. Such assets will not be invested in any securities and will be distributed to NAC in 1993.

7. NAC has agreed to assume all known and unknown unpaid liabilities of applicant as of December 15, 1988, including fees and expenses related to liquidation and dissolution.

8. The sole shareholder of applicant as of April 20, 1988, was NAC. NAC voted to dissolve applicant pursuant to a written consent of sole shareholder dated April 20, 1988.

9. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

10. Applicant has filed Articles of Dissolution with the State of Maryland on December 15, 1988.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR. Doc. 92-28950 Filed 11-27-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Legal Adviser

[Public Notice 1729]

Property Claims Against the Government of Estonia

The Department of State has recently received the following information from the Government of the Republic of Estonia about filing claims under Estonian domestic law for restitution of or compensation for property that was illegally confiscated in Estonia.

Estonia's claims program is open to any individual who was an Estonian national at the time his or her property was confiscated or descendants of such an individual (if the original owner is no longer alive). While the general filing deadline for claims was January 17, 1992, two categories of claimants may file late claims—persons who were physically unable to file before the deadline and persons living overseas who were not aware of the deadline. A commission meets once or twice a month to decide whether or not to accept such late claims.

Application forms may be obtained from the Estonian Embassy, 9 Rockefeller Plaza, J–1421, New York, N.Y. 10020.

The Office of the Assistant Legal Adviser for International Claims and Investment Disputes, 2100 K Street, NW., suite 402, Washington DC 20037–7180, also has copies available.

A claimant wishing to apply should take the following steps:

1. Complete the application form in Estonian (or in English if necessary). Make a copy and have the signature notarized on both copies. If possible, it is best to have the application notarized by the Estonian Embassy.

2. Write a credible, convincing letter in Estonian (or in English if necessary) explaining why the application is being submitted after the deadline. For most American citizens and residents, the reason will be that they were not aware of the deadline.

3. If the claimant was not the owner of the property at the time it was confiscated, then:

(A) Enclose a copy (certified if possible) of the death certificate of the original owner of the property if the owner was born after 1900; and

(B) Enclose a certified copy of the claimant's birth certificate and any other documents proving his or her relationship to the original owner. If the claimant's last name is different from that of the original owner, include marriage certificates or other legal proof of the name change.

4. Enclose copies (certified if possible) of any documents pertaining to the property such as deeds, wills, exact or approximate location, maps, description of the house, etc.

5. Keep one copy of all of the above documents for the claimant's own records and send the originals and one copy as soon as possible to: Evald Pagel; Keskkomisjoni Sekretar; Eesti Vabariigi Oigusvastaselt Voorandatud Vara Tagastamise Ja Kompenseerimise Keskkomisjom; Suur Karja 19; Tallinn EE0104 Eesti (Estonia).

Claimants who have difficulty collecting the required documentation may wish immediately to send the application form and a letter explaining the reason for late filing, and then send the documentation later. Adjudication of claims has not yet started and it is possible that the acceptance of late-filed claims will be more limited once adjudication has begun.

Claimants who need additional information, or wish to discuss the application of these guidelines to specific cases should contact an attorney in Estonia or the central claims authority at the address above.

Dated: November 18, 1992.

Ronald J. Bettauer,

Assistant Legal Adviser for International Claims and Investment Disputes.

[FR Doc. 92–28906 Filed 11–27–92; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended November 20, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48474
Date Filed: November 17, 1992
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1460 dated November 13, 1992; Expedited South Atlantic-Africa resos; r–1–002k; r–2–002q
Proposed Effective Date: January 1, 1993

Docket Number: 48475
Date Filed: November 17, 1992
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/C 0076 dated August 4, 1992; TC3 (to/from US Territories) Reso 002
Proposed Effective Date: Upon Government Approval

Docket Number: 48476
Date Filed: November 17, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0529 dated November 3, 1992; Composite Reso 002oo as it pertains to non-U.S. Markets
Proposed Effective Date: December 1, 1992

Docket Number: 48477
Date Filed: November 17, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0521 dated September 15, 1992; Resolution 003rr as it pertains to non-U.S. markets
Proposed Effective Date: October 1, 1992

Docket Number: 48480
Date Filed: November 20, 1992
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1325 dated November 13, 1992; Expedited Within Europe resos r–1 to r–4; TC2 Reso/P 1326 dated November 13, 1992; Expedited Within Europe resos r–5 to r–7
Proposed Effective Date: December 29/January 1/March 1, 1993

Docket Number: 48481
Date filed: November 19, 1992
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1435 dated September 22, 1992; Mexico-Europe Resos R–1 To R–24
Proposed Effective Date: April 1, 1993

Docket Number: 48482
Date filed: November 19, 1992
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1300 dated Sept. 25, 1992; Within Middle East Resos r–1 To r–7
Proposed Effective Date: April 1, 1993

Docket Number: 48483
Date filed: November 20, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Telex—Reso 033—Finland; Local Currency Rate Changes
Proposed Effective Date: Upon Government Approval

Docket Number: 48484
Date filed: November 19, 1992
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 0954 dated November 3, 1992; North & Central Pacific Expedited Reso 002p
Proposed Effective Date: January 1, 1993

Docket Number: 48485
Date filed: November 19, 1992
Parties: Members of the International

Air Transport Association
Subject: TC31 Reso/P 0953 dated November 3, 1992; Expedited North & Central Pacific Reso OOc (r 1); TC31 Reso/P 0956 dated November 3, 1992; Expedited North & Central Pacific Reso 046f (r 2) and O56f (r 3)
Proposed Effective Date: Expedited December 1/January 4, 1993
Docket Number: 48486
Date filed: November 19, 1992
Parties: Member of the International Air Transport Association
Subject: TC2 Reso/P 1324 dated November 13, 1992; Expedited Within Europe Resos 072g & 092m
Proposed Effective Date: January 1, 1993
Docket Number: 48487
Date filed: November 19, 1992
Parties: Members of the International Air Transport Association
Subject: TC123 Reso/P 0103 dated November 9, 1992; North/Mid/South Atlantic Reso 003L r-1; TC123 Reso/P 0104 dated November 9, 1992; North/Mid/South Atlantic Reso 002 r-2
Proposed Effective Date: January 1, 1993
Docket Number: 48489
Date filed: November 20, 1992
Parties: Member of the International Air Transport Association
Subject: PSC/Reso/065 dated November 12, 1992; Expedited Resos 720a (r-1) & 722 (r-2)
Proposed Effective Date: December 1, 1992
Docket Number: 48490
Date filed: November 20, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/P 0809 dated Nov. 10, 1992; Expedited Composite Resos 002y (r-1), 003L (r-2) & 004d (r-3)
Proposed Effective Date: Expedited January 1, 1993
Docket Number: 48491
Date filed: November 20, 1992
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1461 dated November 17, 1992; Expedited South Atlantic-Europe resos, r-1-002j, r-2-015v
Proposed Effective Date: January 1, 1993
Docket Number: 48492
Date filed: November 20, 1992
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 0959 dated November 13, 1992; Expedited TC 3 (except Japan)-North America Reso 073r
Proposed Effective Date: February 1, 1993

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-28901 Filed 11-27-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 20, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48493
Date filed: November 20, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 18, 1992
Description: Application of KLM Royal Dutch Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations, requests an amendment of its foreign air carrier permit engaging in foreign air transportation of persons, property and mail between a point or points in the Netherlands via intermediate points to a point or points in the United States and beyond.

Docket Number: 48075
Date filed: November 18, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 16, 1992
Description: Second Amendment to Application of Laker Airways (Bahamas) Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, to permit Laker to add the co-terminal point Hartford, CT, to the U.S. co-terminal points Laker has applied to serve from Freeport, Bahamas.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-28902 Filed 11-27-92; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[(Order 92-11-31); Dockets 48381 and 48388]

Applications of Capitol Air Express, Inc. for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Capitol Air Express, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate, overseas, and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than December 7, 1992.

ADDRESSES: Objections and answers to objections should be filed in Dockets 48381 and 48388 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: November 20, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-28903 Filed 11-27-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; General Aviation and Business Airplane Subcommittee: JAR/FAR 23 Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of JAR/FAR 23 Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the JAR/FAR 23 Harmonization Working Group by the General Aviation and Business Airplane Subcommittee. This notice informs the public of the activities of the General Aviation and Business Airplane

Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, General Aviation and Business Airplane Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267-9554; FAX: (202) 267-9562.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The General Aviation and Business Airplane Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for standard and commuter category airplanes and engines in part 23 of the Federal Aviation Regulations, and parallel provisions of parts 91 and 135 of the Federal Aviation Regulations.

The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2-5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the General Aviation and Business Airplane Subcommittee those rulemaking projects related to JAR/FAR 23 Harmonization which were then in the process of being coordinated between the JAA and the FAA. The Harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of a Notice of Proposed Rulemaking—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The General Aviation and Business Airplane Subcommittee, consequently, established the JAR/FAR 23 Harmonization Working Group.

Specifically, the Working Group's tasks are the following: The JAR/FAR 23 Harmonization Working Group is charged with making recommendations to the General Aviation and Business Airplane Subcommittee concerning the FAA disposition of the following rulemaking subjects recently coordinated between the JAA and the FAA:

Task 1-Review JAR Issues: Review JAR 23 Issue No. 4 (which excludes commuter category airplanes) and No. 5 (which includes commuter category airplanes), and compare them with Amendment 23-42 to FAR 23, and the proposals in Notices 3 and 4 from the Part 23 Airworthiness Review. Identify technical differences between JAR 23 and FAR 23 which can be harmonized.

Task 2-Systems and Equipment: Based on the results of the Task 1 review, identify the changes to Subparts D and F of FAR 23 that are appropriate for harmonization, and those provisions that should not be harmonized, if any.

Task 3-Powerplant: Based on the results of the Task 1 review, identify the changes to Subpart E of FAR 23 that are appropriate for harmonization, and those provisions that should not be harmonized, if any.

Task 4-Flight Test: Based on the results of the Task 1 review, identify the changes to Subparts A, B and G of FAR 23 that are appropriate for harmonization, and those provisions that should not be harmonized, if any.

Task 5-Airframe: Based on the results of the Task 1 review, identify the changes to Subparts C and D of FAR 23 that are appropriate for harmonization, and those provisions that should not be harmonized, if any.

Reports

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed presentation to the subcommittee of the results of Task 1 before proceeding with Tasks 2-5.

C. Give a detailed conceptual presentation on Tasks 2-5 to the Subcommittee before proceeding with the work stated under item D, below. Each presentation should identify what proposed amendments will be included in each notice, and whether any additional notices will be need to be drafted in addition to the four identified in item D, below. These reports may be combined or presented separately at the discretion of the working group chair.

D. Draft a separate Notice of Proposed Rulemaking for Tasks 2-5 proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

E. Give a status report on each task at each meeting of the Subcommittee.

The JAR/FAR 23 Harmonization Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent General Aviation and Business Airplane Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should *write* the person listed under the caption "FOR FURTHER INFORMATION CONTACT" expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the JAR/FAR 23 Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on November 19, 1992.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-28931 Filed 11-27-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Airworthiness Assurance Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of the airworthiness assurance working group.

SUMMARY: Notice is given of the establishment of an Airworthiness Assurance Working Group by the Transport Airplane and Engine Subcommittee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591,

Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport category airplanes and engines in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33, 35).

Before the establishment of the Aviation Rulemaking Advisory Committee, the agency's Research, Engineering, and Development Advisory Committee established a Transport Airplane Safety Subcommittee. In turn that subcommittee established the Airworthiness Assurance Task Force to deal with issues arising out of the tragic aircraft accident in Hawaii involving an Aloha Airlines B–737. The ARAC Transport Airplane and Engine Subcommittee was tasked with assuming jurisdiction over the Airworthiness Assurance Task Force. This was accomplished, and this notice renames the Task Force as the Airworthiness Assurance Working Group and restates its tasks.

Specifically, the Airworthiness Assurance Working Group's tasks are:

Task 1-Corrosion: Develop recommendations concerning whether new or revised requirements and compliance methods for corrosion prevention and control programs should be instituted and made mandatory for the Airbus A–300, British Aerospace BAC 1–11, Boeing B–707, B–727, B–737, B–747, Douglas DC–8, DC–9/MD–80, DC–10, Fokker F–28, and Lockheed L–1011.

Task 2-Repairs: Develop recommendations concerning whether new or revised requirements and compliance methods for structural repair assessments of existing repairs should be instituted and made mandatory for the Airbus A–300, British Aerospace BAC 1–11, Boeing B–707, B–727, B–737, B–747, Douglas DC–8, DC–9/MD–80, DC–10, Fokker F–28, and Lockheed L–1011.

Task 3-Structural Fatigue Audit: Develop recommendations on whether new or revised requirements for structural fatigue evaluation and corrective action should be instituted and made mandatory as the airplane ages past its original design life goal.

Task 4-Supplemental Structural Inspection Programs: Conduct a review of existing supplemental structural inspection programs to determine whether any new or revised requirements should be instituted and made mandatory as the airplane ages past its original design life goal. This review should cover the following airplanes: Airbus A–300, British Aerospace BAC 1–11, Boeing B–707, B–727, B–737, B–747, Douglas DC–8, DC–9/MD–80, DC–10, Fokker F–28, and Lockheed L–1011.

Reports

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held after the publication of this notice.

B. Give a detailed conceptual presentation to the Subcommittee, and receive it's concurrence, before proceeding with the work stated under item D, below.

C. Draft a Notice of Proposed Rulemaking,proposing requested or modified new or revised requirements, a supporting economic, and other required analysis, with any other collateral documents the Working Group determines to be needed.

D. Give a status report on each task at each meeting of the Subcommittee.

The Airworthiness Assurance Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Airworthiness Assurance Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on November 19, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–28936 Filed 11–27–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Small Transport and Commuter Airworthiness Assurance Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of the small transport and commuter airworthiness assurance working group.

SUMMARY: Notice is given of the establishment of a Small Transport and Commuter Airworthiness Assurance Working Group by the Transport Airplane and Engine Subcommittee.

DATES: William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9954; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991 (which held its first meeting on May 23, 1991 (56 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standard for transport category airplanes, engines, and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33, 35).

Before the establishment of the Aviation Rulemaking Advisory Committee, the agency's Research, Engineering, and Development Advisory Committee established a Transport Airplane Safety Subcommittee. In turn that subcommittee established the Airworthiness Assurance Task Force to

deal with issues arising out of the tragic aircraft accident in Hawaii involving an Aloha Airlines B–737. The ARAC Transport Airplane and Engine Subcommittee was tasked with assuming jurisdiction over the Airworthiness Assurance Task Force. This was accomplished, and a notice of establishment renaming the Task Force and restating its tasks is published elsewhere in this issue of the **Federal Register.**

After discussing the Airworthiness Assurance Task Force, the subcommittee identified a need to establish a similar working group to deal with similar airworthiness assurance issues for airplanes typically operated by regional and commuter airlines. These airplanes generally weigh less than 75,000 pounds maximum certificated takeoff weight, and they do not have supplemental inspection programs based on damage tolerant criteria or equivalent. Based on these considerations, the subcommittee recommended and the FAA agreed to form this parallel group. This notice establishes the Small Transport and Commuter Airworthiness Assurance Working Group to consider those issues.

Specifically, the Small Transport and Commuter Airworthiness Assurance Working Group's tasks are:

Task 1. Develop criteria, requirements, and guidance to set operational limits on airplanes of less than 75,000 maximum certificated takeoff weight type used in scheduled air carrier or commuter service, which were not certificated to damage-tolerance criteria or do not have approved supplemental inspection programs or equivalent.

Task 2. Develop criteria, requirements and guidance necessary to operate beyond the operational limits established under task 1. These may be presented as a rule, an advisory circular, or a combination of them, and may include guidance for supplemental inspection programs.

Reports

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation to the Subcommittee before proceeding with the work stated under item C, below.

C. Draft a Notice of Proposed Rulemaking proposing requested or modified new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Give a status report on each task at each meeting of the Subcommittee.

The Small Transport and Commuter Airworthiness Assurance Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should *write* the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request will be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Small Transport and Commuter Airworthiness Assurance Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on November 19, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–28935 Filed 11–27–92; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at New Orleans International Airport, New Orleans, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at New Orleans International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 30, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. William Perkins, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Edward Levell, Jr., Director of Aviation, New Orleans International Airport at the following address: New Orleans Aviation Board, Box 20007, New Orleans, Louisiana 70141.

Comments from air carriers and foreign air carriers may be in the same form as provided to the New Orleans Aviation Board, New Orleans International Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. William Perkins, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at New Orleans International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (145 CFR part 158).

On November 13, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the New Orleans Aviation Board was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than march 12, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1993.

Proposed charge expiration date: March 5, 2000.

Total estimated PFC revenue: $78,883,199.00.

Brief description of proposed project(s):

Projects to Impose and Use PFC's

ARFF Perimeter Road, Stage I
North GA Apron, Stage I
Airfield Lighting Control System
Rehabilitate Runways and Taxiways
Update Airfield Guidance Sign System
Centerline Lighting on Taxiway "E"
Fire Fighting Burn Pit
East Air Cargo Apron, Stage I
Fire Code Compliance Program, Phase II, Stage II
Astestos Removal Program
West Terminal Utilities Expansion
Concourse D Reconstruction
West Terminal Expansion

Projects Only to Impose PFC's

ARFF Perimeter Road, Stage II
ARFF Perimeter Road, Stage III
North GA Apron, Stage II
East Air Cargo Apron, State II
East/West Taxiway (VFR Runway)
East/West Taxiway Land Acquisition
North GA Access Road
North GA Apron, Stage III
East Air Cargo Access Roads

Proposed class or classes of air carriers to be exempted from collecting PFC's:

Part 135 on-demand air taxi/commercial operators (ATCO)

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and programming Branch ASW-610D, 4400 Blue Mound Road, Fort Worth, Texas 76193-0611.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the New Orleans Aviation Board. Issued in Forth Worth, Texas, on November 13, 1992.

Hugh W. Lyon,

Assistant Manager, Airports Division.

[FR Doc. 92-28933 Filed 11-27-92; 8:45 am]

BILLING CODE 4910-13-M

San Jose International Airport, San Jose, CA; Notice of Intent To Rule

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application to use the revenue from a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, California.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to use the revenue from a PFC at San Jose International Airport under the provision of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) and 14 CFR part 158. On November 12, 1992, the FAA determined that the application to use the revenue from a PFC submitted by the city of San Jose was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 27, 1993.

DATES: Comments must be received on or before December 30, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA. 90009 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010-1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph Tonseth, Director of Aviation, San Jose International Airport, at the following address: 1661 Airport Boulevard, San Jose, California 95110-1285.

Comments from air carriers and foreign air carriers may be in the same form as provided to the city of San Jose under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010-1303 Telephone: (415) 876-2805.

The applications may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of proposed PFC: $3.00.

Approved charge effective date: September 1, 1992.

Proposed charge expiration date: August 1, 1995.

Total estimated PFC revenue: $12,739,000.00.

Brief description of proposed project: Runway 12R/30L Extension; Airport Sign Program. Class or classes of air carriers which the public agency has requested not be required to collect.

PFCs: None.

Availability of Application

Any person may inspect the application in person at the FAA office listed above. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of San Jose.

Issued in Hawthorne, California, on November 12, 1992.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 92-28932 Filed 11-27-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Notification of Funds Availability for National High-Speed Ground Transportation Technology Demonstration Program

SUMMARY: Section 1036(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, Pub. L. No. 102-240 (December 18, 1991)) established the National High-Speed Ground Transportation Demonstration Program (Program) to be managed by the Secretary of Transportation. The authority for this program can be found at 49 U.S.C. 309(b)(2). (The Program is separate and distinct from the National Magnetic Levitation Prototype Development Program authorized by section 1036(b) of ISTEA). The Secretary's responsibilities under the Program are being administered by the Federal Railroad Administration (FRA).

Under this Notification of Funds Availability (NOFA), the FRA invites eligible applicants to submit an Expression of Interest in the Program. The goal of the Program is to demonstrate advancements in high-speed ground transportation technology that can contribute to the development of more efficient, safe, and economical intercity transportation systems (demonstrations).

FUNDING: The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1993 provided FRA with the ability to award up to $5 million in grants or contracts during Fiscal Year 1993 for demonstrations to be funded under the Program. The Program has been authorized at a higher dollar amount; however, additional demonstrations are subject to the availability of funds.

DEADLINE FOR EXPRESSIONS OF INTEREST: All Expressions of Interest must be received by FRA by close of business Friday, January 29, 1993.

BACKGROUND INFORMATION: Substantial interest has been shown in high-speed ground transportation and the potential contributions that this form of transportation might make as part of the national transportation system. The Department of Transportation's 1991 policy statement entitled, Moving America—A Statement of National Transportation Policy, recognized that high-speed ground transportation offers the potential for addressing congestion in the national airway and highway systems.

No clear consensus has developed as to the type of high-speed ground transportation system that will best meet this country's transportation needs or as to how to develop these systems. Several different proposals have been made in different regions of the country encompassing various forms of steel wheel on steel rail and magnetically levitated (maglev) high-speed systems. Some proposals involve the development of a new, dedicated infrastructure, while others take a more incremental approach, improving on existing rail systems and developing progressively higher speed service.

Questions have arisen concerning the effectiveness of the various forms of high-speed ground transportation as an alternative to more traditional forms of transportation in use in this country. Other questions have been raised concerning the technical feasibility of specific proposals, the cost to develop such systems, safety and passenger acceptance. The goal of the Program is to increase our knowledge about the issues associated with the development of high-speed ground transportation systems in the United States and thereby facilitate the introduction of more efficient, safe and economical intercity transportation.

The purpose of the Program is to learn more about the capabilities of recent advances in high-speed ground transportation and technologies that can contribute to the development of high-speed systems. This will be accomplished through the demonstration of these technologies as components of high-speed systems in operation or under construction in the United States.

PURPOSE OF EXPRESSIONS OF INTEREST: Under ISTEA, the FRA has broad discretion in determining the types of technologies to be demonstrated and the manner in which demonstrations are to be funded. The purpose of the Expressions of Interest is to help FRA identify the level of interest in the Program among eligible participants, the types of technologies that are available for demonstration, the potential contributions that such demonstrations can make to our knowledge of issues facing establishment of high-speed ground transportation systems in the U.S., the cost of these demonstrations, and whether grants or contracts are appropriate for specific demonstrations or types of demonstrations. Besides assisting FRA in determining content and approach for subsequent solicitation(s) of grant applications or contract proposals for specific projects, the Expressions of Interest will also be utilized in establishing the mailing list for subsequent solicitations.

ELIGIBLE PARTICIPANTS: Any United States private business, state government, local government, organization of state or local government, or any combination of such entities is eligible to apply for funding under the Program, except that any business owned in whole or in part by the Federal Government is not eligible.

While businesses owned in whole or in part by the Federal Government are not eligible to apply for funding under the Program, eligible participants may contract with such businesses to assist in the proposed demonstration.

Pursuant to section 1036(c) of ISTEA (49 U.S.C 309(b)(2)(D)), any proposed demonstration to be incorporated into a project or a system located in a State that prohibits under state law the expenditure of any non-Federal public funds or revenues on the construction or operation of that project or system is not eligible for funding under this Program.

ELIGIBLE TECHNOLOGY DEMONSTRATIONS: Technology Demonstrations must demonstrate an advancement in high-speed ground transportation technology or technologies that can show a demonstrable benefit to the research and development, design, construction or ultimate operation of any maglev technology or high-speed steel wheel on rail technology. Proposed demonstrations may address any of the broad range of topics associated with the development of maglev or high-speed steel wheel on steel rail in the United States including, but not limited to:

- Innovations in guideway or track design and construction;
- Enhancements to the safety and reliability of high-speed ground transportation systems;
- Impacts on the environment of specific technological innovations in comparison to other high-speed ground transportation technologies;
- Means to minimize the land use associated with development of high-speed ground transportation systems;
- Effects on human factors related to high-speed ground transportation;
- Measures to assess and minimize energy and power consumption and cost;
- Designs to promote integration of high-speed ground transportation systems with other modes of transportation;
- Innovations in signaling, communications and control systems design; and
- Means to lower the cost of construction or operation of high-speed ground transportation systems.

The proposed demonstrations must be incorporated as a component, subsystem, or system in a revenue service high-speed ground transportation system under construction or in operation at the time application is ultimately made under the Program. Qualifying high-speed ground transportation systems include:

Amtrak's Northeast Corridor main line service between Washington, DC and Boston, MA; Amtrak's Empire Corridor service in the State of New York; any high-speed rail corridor designated by the Secretary of Transportation pursuant to section 1010 of ISTEA; and any system which has been awarded a franchise by a State agency to develop an intercity high-speed ground transportation system or to demonstrate in revenue service an innovative high speed ground transportation system capable of providing intercity service and which has in place all approvals, permits and financing necessary to commence construction.

FORMAT FOR EXPRESSIONS OF INTEREST: Expressions of Interest should be brief (10 pages or less) and indicate the name and address of the prospective applicant, describe the technology proposed for demonstration, identify the high-speed ground transportation system where the technology is proposed for demonstration, identify the proposed time frame (start and completion date), and a rough (bottom line) cost estimate of the demonstration.

The Expression of Interest should also address in narrative form the following aspects of the proposed demonstration:

- The contribution of the proposed demonstration to the current level of knowledge on the applicability of high-speed ground transportation systems to the nation's transportation system;

• The likelihood that the technology proposed to be demonstrated will promote or accelerate improvements in high-speed ground transportation service in the United States;

• The effects of the technology proposed for demonstration on actual and projected ridership;

• The potential that the technology proposed to be demonstrated may contribute to the safety, efficiency, or reliability of high-speed ground transportation or other forms of ground transportation;

• The percentage of the cost of the demonstration that will be provided by private industry or other non-Federal funds; and,

• The prospective applicant's eligibility, right and ability to demonstrate the subject technology in the U.S., relevant capabilities and experience.

The Expression of Interest should also provide evidence that the owner or operator of the high-speed ground transportation system will permit the proposed demonstration, and an affirmative statement that the State in which the demonstration is proposed does not prohibit under state law the expenditure of any non-Federal public funds or revenues on the construction or operation of the high speed ground transportation system on which the proposed demonstration will take place.

SUBMISSION OF EXPRESSIONS OF INTEREST: An original and six (6) copies of each expression of interest referencing the National High-Speed Ground Transportation Technology Demonstration Program should be submitted to: Federal Railroad Administration, Attention: Robert L. Carpenter, Officer of Procurement Services (RAD–30), 400 Seventh Street, SW., room 8222, Washington, DC 20590.

FURTHER TECHNICAL INFORMATION: For any clarifications or additional technical information related to the Program, interested persons should contact Mark Yachmetz, Office of Railroad Development (RDV–4), Federal Railroad Administration, 400 Seventh Street, SW., room 5106, Washington, DC 20590. Phone: (202) 366–6593; FAX (202) 366–3046.

Dated: November 23, 1992.

James T. McQueen,

Associate Administrator for Railroad Development.

[FR Doc. 92–28927 Filed 11–27–92; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 92–111]

Recordation of Trade Name: "Ashley Furniture Industries, Inc."

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

SUMMARY: On Thursday, September 24, 1992, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ASHLEY – FURNITURE INDUSTRIES, INC.," was published in the Federal Register (57 FR 44228). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than November 23, 1992. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulation (19 CFR 133.14), the name **"ASHLEY FURNITURE INDUSTRIES, INC."** is recorded as the trade name used by **ASHLEY FURNITURE INDUSTRIES, INC.,** a corporation organized under the laws of the state of California, located at 350 Madison Street, Arcadia, Wisconsin 54612. The trade name is used in connection with furniture.

EFFECTIVE DATE: November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Gina D'Onofrio, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202) 482–6960.

Dated: November 24, 1992.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 92–28984 Filed 11–27–92; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

Commissioner's Advisory Group; Notice of Open Meeting

There will be a meeting of the Commissioner's Advisory Group on December 9–10, 1992. The meeting will be held in room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8 a.m. on both Wednesday, December 9 and Thursday, December 10. The agenda will include the following topics:

Wednesday, December 9, 1992

Update on Tax Systems Modernization
Corporate Files On-Line (CFOL)
Document Processing System (DPS)
100 Percent Penalty Task Force
IRS University: Status Report
Quality: History, Current Trends in Corporate Training & Education
Currency & Banking Reporting Requirements (Form 8300)
Netting of Debits and Credits
Progress Report on Employment Tax Initiatives Form 942

Thursday, December 10, 1992

CAG Reflections on All-Employees Ethics Awareness Workshops
Status of the AICPA Practitioner Ethics Survey Circular 230
Review of Payroll Tax Reporting System
W–2 Implementation
Taxpayer Burden: Information Reporting Returns
Non-Filer Program
Task Force on 3rd Party Transfer Price Information
Awards/Recognition Ceremony

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Patti Andrews, Senior Program Analyst, no later than December 2, 1992. Ms. Andrews can be reached on (202) 622–6450 (not toll-free).

If you would like to have the committee consider a written statement, please call or write: Ms. Patti Andrews, Executive Secretariat, C:ES, Internal Revenue Service, 1111 Constitution Avenue, NW., room 3308, Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: Patti Andrews, Program Analyst, (202) 622–6450 (not toll-free).

Shirley D. Peterson,

Commissioner.

[FR Doc. 92–28859 Filed 11–27–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

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 effect 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, 1992. 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 1993 which began on October 1, 1992.

DATES: These COLAs are effective December 1, 1992. The headstone or marker allowance rate is effective October 1, 1992.

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 38 U.S.C. 2306(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.

Section 8041 of Public Law 101-508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O. G. C. Prec. 17-90), VA General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

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, Office of Memorial Programs 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 1992 under the above computation method was $96. Therefore, effective October 1, 1992, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 1993 is $96.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 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 3.0 percent cost-of-living increase in social security benefits effective December 1, 1992. 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, 1992:

Table 1.—Improved Pension

	Maximum annual rates
(1) Veterans permanently and totally disabled (38 U.S.C. 1521):	
Veteran with no dependents	$7,619
Veteran with one dependent	9,980
For each additional dependent	1,296
(2) Veterans in need of aid and attendance (38 U.S.C. 1521):	
Veteran with no dependents	12,187
Veteran with one dependent	14,548
For each additional dependent	1,296
(3) Veterans who are housebound (38 U.S.C. 1521):	
Veteran with no dependents	9,313
Veteran with one dependent	11,673
For each additional dependent	1,296
(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):	
Neither veteran in need of aid and attendance or housebound	9,980
Either veteran in need of aid and attendance	14,548
Both veterans in need of aid and attendance	19,114
Either veteran housebound	11,673
Both veterans housebound	13,369
One veteran housebound and one veteran in need of aid and attendance	16,239
For each dependent child	1,296
(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):	
Surviving spouse alone	5,108
Surviving spouse and one child in his or her custody	6,689
For each additional child in his or her custody	1,296
(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):	
Surviving spouse alone	8,167
Surviving spouse with one child in his or her custody	9,746
For each additional child in his or her custody	1,296
(7) Surviving spouses who are housebound (38 U.S.C. 1541):	
Surviving spouse alone	6,243
	Maximum annual rates
Surviving spouse and one child in his or her custody	7,822
For each additional child in his or her custody	1,296
(8) Surviving child alone (38 U.S.C. 1542)	1,296

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

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 $1,724. (38 U.S.C. 1521(g))

Parents' DIC

DIC shall be paid monthly to parents of a decreased veteran in the following amounts (38 U.S.C. 1315):

TABLE 2

(One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $360 reduced on the basis of the parent's annual income according to the following formula:)

	For each $1 of annual income	
The $360 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	800	$8,667

No DIC is payable under this table if annual income exceeds $8,667.

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 $258 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income

The $258 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	8,667

No DIC is payable under this table if annual income exceeds $8,667.

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 $243 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 $243 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	11,653

No DIC is payable under this table if combined annual income exceeds $11,653.

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 $192 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, $8,667 (Pub. L. 95–588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance, $9,229 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $11,653 (Pub. L. 95–588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $12,216 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran or surviving spouse), $7,084 (Pub. L. 95–588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $2,764 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-TIME PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $7,586 (Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $10,939 (Pub. L. 95–588, section 306(b)).

Dated: November 23, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

[FR Doc. 92–28929 Filed 11–27–92; 8:45 am]

BILLING CODE 8320–01–M

Cost-of-Living Adjustments for Service-Connected Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Veterans' Compensation Cost-of-Living Adjustment Act of 1992, Public Law 102–510, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates. These COLAs affect the compensation and dependency and indemnity compensation (DIC) programs.

DATES: These COLAs are effective December 1, 1992, the date provided by Public Law 102–510.

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: The Veterans' Compensation Cost-of-Living Adjustment Act of 1992, Public Law 102–510, provides for a COLA for each of the rates in sections 1114, 1115(1), 1162, 1311, 1313, and 1314 of title 38, United States Code, that were increased by the amendments made by the Veteran's Compensation Rate Amendments of 1991, Public Law 102–152. Under the provisions of Public Law 102–510, VA is required to increase these benefit rates by the same percentage as increases in the benefit amounts payable under title II of the Social Security Act. In the Computation of increased rates, amounts of $0.50 or more will be rounded to the next higher dollar amount and amounts of less than $0.50 will be rounded to the next lower dollar amount. The increased rates are also required to be published in the **Federal Register.**

The Social Security Administration has announced that there will be a 3.0 percent cost-of-living increase in social security benefits. Therefore, applying the same percentage, the following increased rates for VA compensation and DIC programs will be effective December 1, 1992:

DISABILITY COMPENSATION (38 U.S.C. 1114)

Disability evaluation (percent)	Monthly rate
10	$85
20	162
30	247
40	352
50	502
60	632
70	799
80	924
90	1,040
100	1,730

(38 U.S.C. 1114(k) through (s))	Monthly rate
38 U.S.C. 1114(k)	$70; 2,152; 70; 3,015
38 U.S.C. 1114(l)	2,152
38 U.S.C. 1114(m)	2,371
38 U.S.C. 1114(n)	2,698
38 U.S.C. 1114(o)	3,015
38 U.S.C. 1114(p)	3,015
38 U.S.C. 1114(r)	1,295; 1,928
38 U.S.C. 1114(s)	1,935

ADDITIONAL COMPENSATION FOR DEPENDENTS (38 U.S.C. 1115(l))

(38 U.S.C. 1115(l))	Monthly rate
38 U.S.C. 1115(l)(A)	$103
38 U.S.C. 1115(l)(B)	174; 54
38 U.S.C. 1115(l)(C)	71; 54
38 U.S.C. 1115(l)(D)	82
38 U.S.C. 1115(l)(E)	191
38 U.S.C. 1115(l)(F)	160

CLOTHING ALLOWANCE (38 U.S.C. 1162) $466 PER YEAR

DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311(a))

Pay grade	Monthly rate
E–1	$634
E–2	654
E–3	672
E–4	714
E–5	732
E–6	749
E–7	785
E–8	829
E–9[1]	866
W–1	803
W–2	835
W–3	860
W–4	911

CLOTHING ALLOWANCE (38 U.S.C. 1162) $466 PER YEAR—Continued

Pay grade	Monthly rate
O–1	803
O–2	829
O–3	888
O–4	939
O–5	1,035
O–6	1,168
O–7	1,262
O–8	1,383
O–9	1,483
O–10 [2]	1,627

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, the surviving spouse's monthly rate is $934.

[2] If the veteran served as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, the surviving spouse's monthly rate is $1,744.

DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311(b) THROUGH (d))

(38 U.S.C. 1311(b) through (d))	Monthy rate
38 U.S.C. 1311(b)	$73
38 U.S.C. 1311(c)	191
38 U.S.C. 1311(d)	93

DIC TO CHILDREN (38 U.S.C. 1313)

(38 U.S.C. 1313)	Monthly rate
38 U.S.C. 1313(a)(1)	$319
38 U.S.C. 1313(a)(2)	460
38 U.S.C. 1313(a)(3)	595
38 U.S.C. 1313(a)(4)	595; 117

SUPPLEMENTAL DIC TO CHILDREN (38 U.S.C. 1314)

(38 U.S.C. 1314)	Monthly rate
38 U.S.C. 1314(a)	$191
38 U.S.C. 1314(b)	319
38 U.S.C. 1314(c)	162

Dated: November 23, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

[FR Doc. 92–28930 Filed 11–27–92; 8:45 am]

BILLING CODE 8320–01–M

Medical Care Reimbursement Rates for FY 93

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 1993. These per diem 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, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Walter J. Besecker, Director, Medical Care Cost Recovery Office (165), Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 535–7689.

SUPPLEMENTARY INFORMATION: The Interagency per diem billing rates for FY 1993 are as follows:

Medicine	$717
Surgery	1041
Spinal Cord Injury	677
Neurology	634
Blind Rehabilitation	572
Psychiatry	365
Intermediate Medicine	282
Rehabilitation Medicine	509
Alcohol and Drug	301
Nursing Home	202
Prescription—Refill	18
Outpatient [1]	147
Dental Outpatient	88

[1] 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 23, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

[FR Doc. 92–28928 Filed 11–27–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 230
Monday, November 30, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Board's public meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning the Department of Energy's Operational Readiness Review and other matters related to the proposed restart of the HB-Line, Savannah River Site, South Carolina.

TIME AND DATE:

5:30 p.m. December 15, 1992—
Department of Energy presentations;
8:00 p.m. December 15, 1992—
Opportunity for interested persons to present oral comments concerning the matters to be considered.

PLACE: Aiken Technical College, The Amphitheater, Conference Center Building, Aiken, South Carolina.

STATUS: Open.

MATTERS TO BE CONSIDERED: The open public meeting and hearing will address the Department of Energy's Operational Readiness Review and other matters related to the proposed restart of the HB-Line, Savannah River Site, South Carolina. The public hearing portion is independently authorized by 42 U.S.C. 2286b.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (202) 208-6400. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of the oral presentation. Those who contact the Board prior to close of business on December 8, 1992, will be scheduled for time slots, beginning at approximately 8:00 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Amphitheater at the Aiken Technical College, at the start of the 5:30 p.m. meeting.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board members may question presenters to the extent deemed appropriate. The Board will hold the record open until December 30, 1992, for the receipt of materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the DOE's public reading room at the Gregg-Granite Library, 171 University Parkway, University of South Carolina, Aiken, SC 29801.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

At this meeting, the Board will be briefed by the Department of Energy, its contractors, and outside experts and will review the DOE's Operational Readiness Review and other technical issues pertaining to the proposed restart of the HB-Line at Savannah River Site, South Carolina. The Department of Energy will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting.

DOE advised the Board that it will make public the WSRC and DOE operational readiness reports for the HB-Line and the internal oversight assessments by the Office of Nuclear Safety and the Office of Environment, Safety and Health. DOE advised that it will make these reports available to the public, prior to the December 15 hearing, at the Gregg-Granite Library, University of South Carolina, Aiken, SC.

Dated: November 24, 1992.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 92-29067 Filed 11-25-92; 9:47 am]

BILLING CODE 6820-KD-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 9:00 a.m., December 17, 1992.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW, Washington DC 20004.

STATUS: Closed. Exemption 3. Portions of the meeting may also be closed under Exemption 1; Exemption 7; and Exemption 9.

MATTERS TO BE CONSIDERED: The Board will deliberate upon safety issues related to be HB-Line, Savannah River Site, South Carolina, including, but not limited to, consideration of testimony and documents received at the public meeting and public hearing conducted in Aiken, South Carolina, on December 15, 1992, regarding the Department of Energy's Operational Readiness Review and other matters related to the proposed restart of the HB-Line.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, or Carole J. Council, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (202) 208-6400.

SUPPLEMENTARY INFORMATION: The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers under the Atomic Energy Act of 1954, as amended.

Dated: November 24, 1992.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 92-29068 Filed 11-25-92; 9:47 am]

BILLING CODE 6820-KD-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:09 a.m. on Tuesday, November 24, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Director Stephen R. Steinbrink (Acting

Comptroller of the Currency) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting on less than seven days' notice to the public, of the following matters:

Memorandum and resolution re: Statement of Policy on Assistance to Operating Insured Depository Institutions.

Memorandum and resolution re: Proposed amendments to Part 357 of the Corporation's rules and regulations, entitled "Determination of Economically Depressed Regions," which would reflect the Corporation's most recent periodic review and reasonable application of the factors which the Corporation considers in determining which regions are economically depressed.

Recommendation regarding the form of Federal Register notice for publication of the Corporation's determination to provide assistance to an institution prior to the appointment of conservator or receiver.

By the same majority vote, the Board further determined that no notice earlier than November 23, 1992, of the changes in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: November 24, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–29059 Filed 11–25–92; 9:37 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e) (2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:20 a.m. on Tuesday, November 24, 1992, the Corporation's Board of Directors determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following:

Application of Security State Bank, Anamosa, Iowa, an insured State nonmember bank, for consent to assume the liability to pay deposits made in the Anamosa Branch of Midland Savings Bank FSB, Des Moines, Iowa, and for consent to convert the Savings Association Insurance Fund insured deposits of the Anamosa Branch to Bank Insurance Fund insured deposits upon the consummation of the proposed transaction.

Matters relating to the Corporation's corporate activities.

Matters relating to the Corporation's supervisory activities.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: November 24, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–29060 Filed 11–25–92; 9:37 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:06 a.m. on Monday, November 23, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) The Corporation's supervisory activities; (2) certain financial institutions; and (3) a proposed Settlement Agreement with Ernst & Young.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (C)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(2), (c)(4), (c)(6), (c)(8), (C)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, DC

Dated: November 24, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR DOC. 92–29061 Filed 11–25–92; 9:37 am]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 1, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Cyprus Tonopah Mining Corp.*, Docket No. WEST 90–363–RM, etc. (Issues include whether the judge erred in holding that Cyprus violated 30 C.F.R. §§ 56.3200 and 56.3130 by failing to properly maintain the stability of highwalls at its open pit mine, and that such violations were the result of Cyprus' unwarrantable failure to comply with these safety standards.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: November 24, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92–29069 Filed 11–25–92; 10:15 am]

BILLING CODE 6735–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, December 2, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Rules of Procedure*, 29 C.F.R. Part 2700. The Commission will consider and act upon its Rules of Procedure taking into consideration the proposed revisions that were published for comment at 55 Fed. Reg. 4853 (February 12, 1990) and the comments received in response.

Any person attending this meeting who requires special accessibility

features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-8339 for toll free.

Dated: November 24, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92-29070 File d 11-25-92; 10:15 am]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, December 2, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Request by Tandy Corporation, Fort Worth, Texas, to establish an uninsured national credit card bank.

Discussion Agenda

2. Publication for comment of proposed amendments to Regulation E (Electronic Fund Transfers) to cover Electronic Benefit Transfer (EBT) programs established by federal, state, or local government agencies.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-29091 Filed 11-25-92; 3:40 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, December 2, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve system employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting. This copy of the Board's November 13, 1992, notice was made and resubmitted to the Federal Register on November 23, 1992.

Dated: November 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-29092 Filed 11-25-92; 3:40 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 54893, Friday, November 20, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, November 25, 1992.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Further consideration of proposed amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to implement section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 regarding uniform real estate underwriting standards. (Proposed earlier for public comment; Docket No. R-0765)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. This copy of the Board's November 25, 1992, notice was made and submitted to the Federal Register on November 25, 1992.

Dated: November 18, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-29146 Filed 11-25-92; 3:43 am]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors Committee Meeting

TIME AND DATE: Meetings of the Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services, Office of the Inspector General Oversight, and Audit and Appropriations Committees will be held on December 6, 1992. The meetings will commence at 11:00 a.m. and will be held in the following order, with each meeting continuing until all business has been concluded:

1. Provision for the Delivery of Legal Services Committee;
2. Office of the Inspector General Oversight Committee; and
3. Audit and Appropriations Committee.

PLACE: Howard Johnson Resort Hotel, 1805 Hotel Plaza Boulevard, The Orange, Polk, and Seminole Rooms, Lake Buena Vista, Florida, (407) 828-8888.

PROVISION FOR THE DELIVERY OF LEGAL SERVICES COMMITTEE MEETING:

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of October 18, 1992 Meeting Minutes.
3. Consideration of Status Report on the Staff Analysis of Law School Clinical Programs.

OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE MEETING:

STATUS OF MEETING: *Open,* except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Committee will consider and vote on approval of the draft minutes of the executive session held on November 16, 1992.[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its two reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of November 16, 1992 Meeting.

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[1] As to the Board's consideration and approval of the draft minutes of the executive session held on the above-noted date, the closing is authorized as noted in the **Federal Register** notice corresponding to that Board meeting.

3. Consideration of Inspector General's Report on the General Activities of the Office of the Inspector General.
4. Consideration of Inspector General's Proposal to Request Congress to Appropriate Funds to the Office of the Inspector General as a Separate Line Item.
5. Consideration of Inspector General's Fiscal Year 1994 Budget Request for the Office of the Inspector General.

CLOSED SESSION:

6. Approval of Minutes of November 18, 1992 Executive Session.

OPEN SESSION: (Resumed)

7. Consideration of Motion to Adjourn Meeting.

AUDIT AND APPROPRIATIONS COMMITTEE MEETING

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of November 23, 1992 Meeting.
3. Consideration of Report by the Provision for the Delivery of Legal Services Committee.
4. Consideration and Review of Fiscal Year 1992 Consolidated Operating Budget and Expenses.
5. Consideration and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget.
6. Public Comment Regarding the Fiscal Year 1994 Appropriation Request For the Corporation.
7. Consideration of Proposed Fiscal Year 1994 Appropriation Request For the Corporation.

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate individuals who are blind or have visual impairment.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: November 25, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–29134 Filed 11–25–92; 3:42 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors and Committee Meetings

TIME AND DATE: Meetings of the Legal Services Corporation Board of Directors and Operations and Regulations Committee will be held on December 7, 1992. The meetings will commence at 8:00 a.m. and will be held in the following order, with each meeting continuing until all business has been concluded:

1. Operations and Regulations Committee Meeting; and
2. Board of Directors Meeting.

PLACE: Howard Johnson Resort Hotel, 1805 Hotel Plaza Boulevard, The Orange, Polk, and Seminole Rooms; Lake Buena Vista, Florida, (407) 828–8888.

OPERATIONS AND REGULATIONS COMMITTEE MEETING:

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of October 19, 1992 Meeting.
3. Consideration of Resolutions on Proposed Changes to Parts 1607, 1609, 1610, 1611, and 1626 of the Corporation's Regulations.
4. Consideration of Proposed Changes to Part 1612 of the Corporation's Regulations.

BOARD OF DIRECTORS MEETING

STATUS OF MEETING: *Open,* except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive sessions held on September 26, 1992 and October 19, 1992. In addition, the Board will hear and consider the report of the General Counsel on litigation to which the Corporation is a party. Further, the Board will consider the employment contract of the Corporation's Inspector General. The Board will also consider the President's report regarding disposition of the Corporation's Regional Offices. Finally, the Board will hear and consider its Special Counsel's report on the status of the matter *Gawler v. LSC, et al.* The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d) (e), and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its two reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of October 19, 1992 Meeting.
3. Chairman's and Members' Reports.
   a. Consideration of Meeting Schedule for Calendar Year 1993.
   b. Status Report on the Migrant Labor/ Ombudsman Seminar Project.
4. Consideration of Operations and Regulations Committee Report.
5. Consideration of Office of the Inspector General Oversight Committee Report.
6. Ratification of Notational Votes Approving:
   a. The Management Report on the Inspector General's Semiannual Report for the Period of April 1, 1992 to September 30, 1992.
   b. Release of a Portion of the Transcript of the Executive Session of the Board of Directors Held on October 19, 1992 to the Inspector General.
7. Consideration of Provision for the Delivery of Legal Services Committee Report.
8. Consideration of Audit and Appropriations Committee Report.
   a. Consideration and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget.
   b. Consideration of Proposed Fiscal Year 1994 Appropriation Request.
9. Consideration of Special Reauthorization Committee Report.
10. President's Report.
11. Inspector General's Report.

CLOSED SESSION:

12. Consideration of Employment Contract of the Inspector General.
13. Consideration of President's Report Regarding Disposition of the Regional Offices.
14. Consideration of Board's Special Counsel's Report on the Matter of *Gawler v. LSC, et al.*
15. Consideration of the General Counsel's Report on Pending Litigation to Which the Corporation is a Party.
16. Approval of Minutes of Executive Session Held on September 26, 1992.
17. Approval of Minutes of Executive Session Held on October 19, 1992.

OPEN SESSION: (Resumed)

18. Consideration of Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate individuals who are blind or have visual impairment.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: November 25, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–29135 Filed 11–25–92; 3:42 pm]

BILLING CODE 7050–01–M

[1] As to the Board's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register**, notice(s) corresponding to that/those Board meeting(s).

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Monday, December 7, 1992.

PLACE: Suite 250, 1301 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Representation determinations issued pursuant to the Delegation Order to the Executive Director.

(2) Representation Manual revision re time limits for filing carrier interference allegations and requests to impound ballots.

(3) NMB Case Tracking system including revision of docketing and related procedures.

(4) NMB ballot automation process.

(5) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Mr. William Gill, Jr., Executive Director, Tel: (202) 523–5920.

William A. Gill, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 92–29121 Filed 11–25–92; 3:41 pm]

BILLING CODE 7550–01–M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting.

Notice is hereby given that the Railroad Retirement Board will hold a meeting on December 3, 1992, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Requirements Document for Medical Evidence Development and Status of Policy.

(2) San Francisco Regional Director's Vacancy.

(3) Codification of Board Orders.

(4) Debt Collection.

(5) Pre-Recovery Waiver.

(6) Audit Compliance Function.

(7) Nancy Johnston v. Railroad Retirement Board.

(8) Travel Approval Policy.

(9) Budget Approval Policy.

(10) Special Service Awards.

(11) Washington Legislative/Liaison Office and Base Point Office Space.

(12) Board Meeting Transcripts—Changes, Revisions, etc.

(13) Regulations—Part 203, Employees Under the Act.

(14) Regulations—Part 228, Computation of Survivor Annuities.

(15) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.

(16) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment insurance Act.

(17) Regulations—Part 266, Representative Payment.

(18) Regulations—Part 328, Voluntary Leaving of Work.

(19) Regulations—Part 336, Duration of Normal and Extended Benefits.

(20) Regulations—Part 345, Contribution and Contribution Reports.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: November 24, 1992.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92–29147 Filed 11–25–92; 3:44 pm]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 57, No. 230
Monday, November 30, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Washington University School of Medicine, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 92-26044 appearing on page 48600 in the issue of Tuesday, October 27, 1992, in the third column, in the first full paragraph, in the next to last line, "28 mm" should read "2800 mm".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 334 (Sub-No. 8), and (Sub-No. 8A)]

Joint Petition for Rulemaking on Railroad Car Hire Compensation; Joint Petition for Exemption of Arbitration Rule and Motion to Dismiss

Correction

In rule document 92-27255 beginning on page 53450 in the issue of Tuesday, November 10, 1992, make the following correction:

§ 1039.14 [Corrected]

1. On page 53451, in the third column, in § 1039.14(c), in the second line, insert "(3)" before the three stars.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 9-92; Delegation of Authority and Assignment of Responsibilities to the Assistant Secretary for Employment Standards Program

Correction

In notice document 92-27160 beginning on page 53514 in the issue of Tuesday, November 10, 1992, make the following corrections:

1. On page 53515, in the first column, in (4), in the second line, "existing" was misspelled and in (5), in the last line, "health" should be capitalized.

2. On the same page, in the third column, in (23), in the first line, "11245" should read "11246" and in (24), beginning in the third line, "8 U.S.C. 1182(m)(E)(ii)" should read "8 U.S.C. 1182(m)(2)(E)(ii)".

3. On page 53516, in the third column, in the second full paragraph, in the first line, "1." should read "l.".

BILLING CODE 1505-01-D

RAILROAD RETIREMENT BOARD

1993 Monthly Compensation Base and Other Determinations

Correction

In notice document 92-27355 beginning on page 53805 in the issue of Thursday, November 12, 1992, in the third column, in "5.", in the third line, "$2,205.00" should read "$2,025.00".

BILLING CODE 1505-01-D

federal register

Monday
November 30, 1992

Part II

Office of Personnel Management

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1992, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing Operations Division, room 6A12, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 606–0950.

The following exceptions were current on June 30, 1992.

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time, or intermittent employment in wage board type occupations (i.e., positions excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by:

(1) Appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or

(2) Reassignment, promotion or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (level 2 and 3) in field establishments outside central office and regional office cities of OPM where examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (i) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Administration, and in the International Boundary and Water Commission; or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS–9, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be (1) bona fide high school science or mathematics teachers; or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational

program or to be employed as a teacher. No one shall be employed under this provision in routine clerical positions, routine trades and labor positions—unless such employment clearly relates to a scientific, professional, or technical curriculum—or in excess of 1,040 working hours a year. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)–(s) (Reserved)

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who:

(1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or

(2) Have been certified by counselors of State vocational rehabilitation agencies or the Veterans' Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v) Between May 13 and September 30 only, temporary Summer Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule and requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by OPM; or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1938, as amended.

(w) Part-time or intermittent positions, the duties of which involve routine work up to and including the GS–4 level of difficulty or equivalent under the Federal Wage System, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met:

(1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full time during any period in which their school is officially closed and during any school vacation period;

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by the Office of Personnel Management, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. However, such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13, and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed one additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) Positions at grade GS–2 and below for summer employment as defined in § 213.3101(d), of assistants to scientific, professional, and technical employees, when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc) Positions at GS–15 and below when filled by persons identified as Interchange Executives by the President's Commission on Executive Exchange. Appointments made under this authority may not extend beyond 2 years.

(dd)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 92–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) (Reserved).

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with requirements

published in the Federal Personnel Manual.

(jj) Legal intern positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS–9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–9 through –15 on the staff of the Council.

(d)-(f) (Reserved).

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 35 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts. Appointments under this authority may not exceed January 20, 1994.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2) One position of Curator (Arts), GM–1015–15, in the Office of the Under Secretary for Management.

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c) (Reserved).

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrumentmen, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any 1 calendar year.

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS–16.

(f) (Reserved).

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the office.

(h) *Bureau of Administration.* (1) One Presidential Trip Specialist. No new appointments may be made under this authority after June 11, 1981.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) (Reserved).

(3) Positions of part-time, intermittent, or temporary Customs Inspectors, and Port Directors in Alaska paid at a rate not above GS–9 and for not more than 130 working days in a service year.

(4) (Reserved).

(5) Positions at GS–9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/Officer, Customs Aid (sampling), Customs Warehouse Officer, Port Director, Interpreter, and Laborer, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his/her service year. An individual appointed under this exception may not be employed in the Bureau of Customs under a combination of this and any other exception for more than 700 hours in his/her service year.

(6) Two hundred positions of Criminal Investigator for special assignments.

(7)–(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years, but may be extended for not to exceed an additional 90 days to complete critical projects.

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after October 8, 1992.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(2) Two positions of Senior Visiting Pension Actuary, GS–1510–14/15. Appointments to these positions must be for periods not to exceed 24 months.

(f) (Reserved).

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) (Reserved).

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS–5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceed 1 year.

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1) Not to exceed 30 positions at grades GS–6/15 in the Office of Emergency Operations, Office of the Deputy Assistant Secretary of Defense (Mobilization Planning and Requirements). No new appointments may be made under this authority after March 31, 1993.

(2)–(5) (Reserved).

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and*

Air Force). (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs on the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or the separation of a dependent's sponsor: Provided, that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Fifteen secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(c) *Defense Contract Audit Agency.* (1) Not to exceed two positions of Accounting Fellow, Auditor, GM–511–14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, or estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, VA.* (1) the Provost and professors in grades GS–13 through 15.

Section 213.3107 Department of the Army

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch, Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1) [Reserved].

(2) Nonsupervisory trades, crafts, and manual labor positions at grades WG–6 and below on survey, construction, short-term maintenance, or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when OPM has determined that it is specifically applicable to a given situation; ordinarily, it will not be used for employment in OPM central office, regional, and branch office cities or in cities where there is a local OPM area office to service the employing establishment.

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, chapel organist and choir-master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e) *U.S. Army School of the Americas, Fort Benning, Georgia.* (1) Positions of Translator (Typing), GS–1040–5/9, and

Supervisory Translator, GS–1040–11. No new appointments may be made under this authority after December 31, 1985.

(f) *Central Identification Laboratory.* (1) One position of Scientific Director, GM–190–15, and four positions of Forensic Scientist, GM–190–14. Initial appointment to these positions is NTE 3–5 years, with provision for indefinite numbers of renewals in 1-, 2-, or 3-year increments.

(g) *Defense Language Institute.* (1) All positions on the faculty and staff which are classified in the GS–1700 occupational group, the GS–1040 Language Specialist series, and the GS–303 Bilingual Clerk Series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, Pa.* (1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(2) Nine senior policy analyst positions, GS–14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) (Reserved).

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head and Instructor.

Section 213.3108 Department of the Navy

(a) *General.* (1) (Reserved).

(2) Positions of Student Pharmacist for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating nonfederal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(3) (Reserved).

(4) Not to exceed 50 positions of resident-in-training at U.S. naval regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from nonfederal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351–54.

(5) (Reserved).

(6) Positions of Student Operating Room Technician for temporary, part-time or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technical program in a participating nonfederal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of student social worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided,* that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of student practical nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees enrolled in a nonfederal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) (Reserved).

(10) Positions of medical technology intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in nonfederal institutions. Employment under this authority may be on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of medical intern at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating nonfederal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of student speech pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating nonfederal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(13) Positions of student dental assistant in U.S. naval dental centers, clinics, and departments, when filled by students who are enrolled in an approved dental assistant program in a participating nonfederal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the librarian, organist-choirmaster, registrar, the dean of admissions, and social counselors at the Naval Academy

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) *Office of Naval Research.* (1) Scientific and technical positions, GS/GM–13/15, in the Office of Naval Asian Office in Tokyo, Japan, which covers East Asia, New Zealand and Australia. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Seventy positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, Instructors in Physical Education, Instructors in Music (choirmasters), one Training Instructor (Parachuting), one Training Instructor (Code of Conduct and Evasion), and two Physical Therapists (Athletic Trainers).

(e) Not to exceed five positions, GS–12 through GS–15, in the Specialized Management Office (WR–ALC/QL) at Robins Air Force Base, Georgia, which will provide logistic support management staff guidance for highly sensitive and high priority programs and projects. Employment under this authority is not to exceed May 30, 1988.

(f) *Air Force Office of Special Investigations.* (1) Not to exceed 250 positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Materiel Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) *Air University, Maxwell Air Force Base, Alabama.* (1) Positions of professor, instructor, or lecturer.

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special) at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) (Reserved).

(3) U.S. Marshal in the Virgin Islands.

(b) *Immigration and Naturalization Service.* (1) Not to exceed 350 positions, at grades GS–15 and below, engaged in planning for and implementing the processing of claims for resident status which may be submitted by aliens already in the United States as authorized by immigration control and reform legislation. New appointments under this authority may not be made after April 15, 1993.

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, USSR. Employment under this authority may not exceed 4 years. No new appointments may be made under this authority after September 30, 1991.

(c) *Drug Enforcement Administration.* (1) (Reserved).

(2) One hundred and fifty positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided*, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is

fixed at the Federal minimum rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved)

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) (Reserved)

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) (Reserved)

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved)

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) Park Ranger positions (appropriate specializations) at salaries equivalent to GS–2 through GS–5 to perform practical and technical work supporting the management of Park Service areas and resources in the functional areas of interpretation, resources management, visitor protection, and visitor services; and positions at salaries equivalent to grades GS–6 and GS–7 in which the duties are supervisory or consist of highly specialized technical work in support of National Park Service operations in the functional areas delineated above. The total number of Park Ranger and Park Technician positions at salaries equivalent to GS–6 and GS–7 excepted under this paragraph shall not exceed 200. Employment under this paragraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by OPM and the Department. These standards include as a minimum the following number of previous seasons' experience at a salary equivalent to the next lower grade or equivalent experience in a Federal, State, or local park:

(i) For IGS–7: Two seasons at IGS–6 level in the National Park Service.

(ii) For IGS–6: Two seasons at IGS–5 level in the National Park Service.

(iii) For IGS–5: One season at IGS–4 level or its equivalent in experience.

(iv) For IGS–4: One season at IGS–3 level or its equivalent in experience.

(v) For IGS–3: One season at IGS–2 level or its equivalent in experience.

Employment under this paragraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this paragraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(2) (Reserved).

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values or conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the Statistical Reporting Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; caretakers at temporarily closed camps or improved areas; forest workers engaged primarily for fire prevention of suppression activities and other forest workers employed at headquarters other than forest supervisor and regional offices; State performance assistants in the Agricultural Stabilization and Conservation Service; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided,* that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of § 213.3102.

(6) (Reserved).

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b) (Reserved).

(c) *Forest Service.* (1) (Reserved)

(2) Positions in Alaska of Laborers, Boat Operators, Mechanics, Equipment Operators, and Carpenters whose duties require the operation of boats in coastal waters and/or the establishment and maintenance of work camps in remote areas.

(d) *Agricultural Stabilization and Conservation Service.* (1) (Reserved)

(2) Members of State Committees: *Provided,* that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Farmers Home Administration.* (1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program.

(3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM, be further extended for additional periods not to exceed 1 year each.

(4)–(5) (Reserved)

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Federal Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions when working in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of Milk Market Administrators.

(g)–(i) (Reserved).

(j) *Food and Nutrition Service.* (1)–(2) (Reserved).

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(k)–(l) (Reserved).

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the Continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) (Reserved)

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) indefinite employment for the duration of each decennial census for key employees located at the Master District Offices (MDO) and Processing Offices (PO): *Provided,* that temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)-(h) (Reserved)

(i) *Office of the Under Secretary for International Trade.* (1) Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1) Subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethal, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.#

(k) (Reserved).

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1984.

(c) (Reserved).

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) (Reserved).

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the cooperating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided,* that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(13) Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year.

(14) Not to exceed 30 positions at grades GS–11/13 associated with the postdoctoral training program for interdisciplinary toxicologists in the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina.

(c) (Reserved).

(d) *Social Security Administration.* (1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

(e) (Reserved).

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants.

(g)–(i) (Reserved).

(j) *Health Care Financing Administration.* (1) (Reserved).

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointments under this authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) (Reserved).019

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3126 Defense Nuclear Facilities Safety Board

(a) All positions on the staff. No new appointments may be made under this authority after December 26, 1991.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 U.S. Information Agency

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3129 Thrift Depositor Protection Oversight Board

(a) All positions. No new appointments may be made under this authority after December 31, 1994.

Section 213.3130 Securities and Exchange Commission

(a)–(b) (Reserved).

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows:

(1) Seven positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year terms; incoming Fellows appointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2).

(e) Not to exceed 10 positions of accountant, GS–12/13, when filled by persons selected as SEC Accounting Fellows for the Full Disclosure Program. Employment under this authority may not exceed 2 years.

(f) Not to exceed four positions of accountant, GS–14/15, when filled by persons selected as SEC Accounting Fellows for the Capital Markets Risk Assessment Program. Employment under this authority may not exceed 2 years.

Section 213.3131 Department of Energy

(a) (Reserved).

(b) *Bonneville Power Administration.* (1) Five Area Managers.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, or the Secretary of Agriculture under 7 U.S.C. 1961 or the Small Business Administration under 15 U.S.C. 636(b)(1), declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members. No new appointments may be made under this authority after May 1, 1977.

Section 213.3133 Federal Deposit Insurance Corporation

(a) All Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks or savings and loan institutions, of liquidating loans to banks or savings and loan institutions, or of paying the depositors of closed insured banks or savings and loan institutions. New appointments may be made under this authority only during the 5-year period following a bank or savings and loan institution closing and/or establishment of a consolidated liquidation site.

(b) Not to exceed 300 positions in field offices of the Resolution Trust Corporation. No new appointments may be made under this authority after September 30, 1992.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

Section 213.3137 General Services Administration

(a) (Reserved).

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

(c) All law clerk positions in the Board of Contract Appeals' Law Clerk Fellows Program. Appointments under this authority at GS–11 and GS–12 will be limited to 2 years with provision for a 1-year extension at the GS–13 level only in cases of exceptional circumstances, as determined by the Chief Judge and Chairman.

Section 213.3138 Federal Communications Commission

(a) Fifteen positions of Telecommunications Policy Analyst or Supervisory Telecommunications Policy Analyst, GS–301–13/14/15. Initial appointment to these positions will be for a period of not to exceed 2 years with provision for two 1-year extensions.

Section 213.3141 National Labor Relations Board

(a) Election Examiners for temporary, part-time, or intermittent employment in connection with elections under the Labor-Management Relations Act.

Section 213.3142 Export-Import Bank of the United States

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

Section 213.3146 Selective Service System

(a) State Directors.
(b)–(c) (Reserved).
(d) Executive Secretary, National Selective Service Appeal Board.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.
(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.
(c)–(e) (Reserved)
(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

Section 213.3152 U.S. Government Printing Office

(a) Not to exceed three positions of Research Associate at grades GS–15 and below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed 1 additional year.
(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

Section 213.3156 Commission on Civil Rights

(a) Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Public Law 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Section 213.3174 Smithsonian Institution

(a) Not to exceed 25 positions at grades GS–11 and below which support planning and production of the Annual American Folklife Festival. Employment under this authority may not exceed 6 months in connection with any one Festival.
(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.
(c) Positions at GS–15 and below at the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, and one Social Science Program Administrator.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.*
(1) One position of Assistant Director, Artists-in-Education Programs, Office for Partnerships.
(2) One position of Assistant Director for State Programs.
(3) One position of Director of Literature Programs.
(4) One position of Assistant Director of Theatre Programs.
(5) One position of Director of Folk Arts Programs.
(6) One position of Director, Opera/Musical Theatre Programs.
(7) One position of Assistant Director of Opera/Musical Theatre Programs.
(8) One position of Assistant Director of Literature Programs.
(9) One position of Director of Local Test Programs, Office of the Deputy to the Chairman for Public Partnership.
(10) One position of Deputy Chairman for Public Partnership.
(11) Four Project Evaluators.
(12) One position of Director of Museum Programs.
(13) One position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.
(14) One position of Assistant Director of Music Programs.
(15) One position of Director of Expansion of Arts Programs.
(16) One position of Director of Media Arts Programs.
(17) One position of Director, Challenge and Advancement Grant Program.
(18) One position of Assistant Director, Challenge and Advancement Grant Programs.
(19) One position of Art Specialist, International Programs.
(20) One position of Director of Inter Arts Program.
(21) One position of Assistant Director of Expansion of Arts Programs.
(22) One position of Assistant Director of Media Arts Programs.
(23) One position of Assistant Director of Design Arts Program.
(24) One position of Assistant Director of Dance Programs.
(25) One position of Assistant Director of Visual Arts Programs.
(26) One position of Assistant Director of Museum Programs.
(27)–(29) (Reserved)
(30) One position of Director of Education Programs.
(31) One position of Director of Music Programs.
(32) One position of Director of Theater Programs.
(33) One position of Director of Dance Programs.
(34) One position of Director of Visual Arts Programs.
(35) One position of Director of Design Arts Program.
(36) (Reserved)
(37) One Director for State Programs.
(38) One Director for Artists-in-Education Programs.
(39) One position of Assistant Director of Inter-Arts Program.

(40) One position of Assistant Director of the International Program.

Section 213.3184 Department of Housing and Urban Development

(a) One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years.

Section 213.3187 Federal Housing Finance Board

(a) All positions. No new appointments may be made under this authority after December 31, 1992.

Section 213.3191 Office of Personnel Management

(a) Not to exceed 500 positions in Federal Job Information Centers, to be filled under the Community Outreach Information Network program. Appointments under this authority may not exceed 90 days, and no one may receive more than one appointment under the authority.

(b)–(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) Not to exceed 25 positions of Marine Traffic Controller (Pilot), at grade GS–11 and below for temporary, intermittent or seasonal employment in the State of Louisiana. Temporary appointments may not exceed 1 year, and temporary appointees may be reappointed under this authority only after a break in service of at least 6 months. Intermittent or seasonal employment may not exceed 180 working days in a service year, except that this limitation for an individual employee may be extended to 220 days when necessitated by emergencies caused by unusual flooding conditions or high river stages.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) (Reserved)

(c) *Federal Highway Administration.* (1) Temporary, intermittent, or seasonal employment in the field service of the Federal Highway Administration at grades not higher than GS–5 for subprofessional engineering aide work on the highway surveys and construction projects, for not to exceed 180 working days a year, when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) (Reserved)

(e) *Maritime Administration.* (1)–(2) (Reserved)

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved)

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers: including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

(a) Positions at GS–15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s) does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS–15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire Executive Civil Service

The provisions established under paragraphs (a) through (i) are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the

requirements and conditions governing career or career-conditional appointments, including investigation by OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least 26 weeks, or 1040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for the graduate degree and provide experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for formally arranged schedules of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy the requirements for graduation and must provide the experience necessary for career or career-conditional appointment in selected occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S. Truman Foundation Scholarship Program under the provisions of Public Law 93–642 to permit scheduled periods of attendance at institutions of higher education combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements of programs established by agreement between the Harry S. Truman Scholarship Foundation and the employing agency and provide the experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Student positions established in support of the Cooperative Education (Vocational Education) Programs for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high school diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(f) Positions under the Federal Junior Fellowship Program, a career-related work-study program covered under the provisions of Executive Order 12015.

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate or diploma program in an accredited college, technical, trade, vocational, or business school which provides for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate or diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(h)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) (Reserved).

(m) Positions when filled under any of the following conditions: (1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of a less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

Section 213.3203 Executive Office of the President

(a) (Reserved).

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)–(c) (Reserved).

(d) Twelve positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 and GS–12 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 2½ years.

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks,

Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) Not to exceed 10 positions engaged in functions mandated by Public Law 99–190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contracts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years.

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employments under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever occurs first.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Four positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) *National Defense University.* (1) Sixty-one positions of professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.* (1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical school surgical residency programs. Employment under this authority shall not exceed 12 months.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301–12, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b) (Reserved).

(c) One Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

(d) Six positions of professor, associate professor, or professional academic staff at the Air University, Maxwell Air Force Base, Alabama, associated with courses of instruction of less than 10 months duration, for employment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) *Office of International Cooperation and Development.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Department's Director of Personnel.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992.

(b) (Reserved).

(c) *Minority Business Development Agency.* (1) One position of minority business opportunity specialist at grades GS–9 through GS–15. This authority may not be used for new appointments after December 31, 1977.

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Positions of Chairman and Member, Wage Appeals Board.

(b) *Office of the Inspector General.* (1) Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering.

Section 213.3216 Department of Health and Human Services

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Statistics.

(2) One Public Health Education Specialist, GS–1725–15, in the Centers for Disease Control, Atlanta, Georgia.

(b)–(c) (Reserved)

(d) *National Library of Medicine.* (1) Ten positions of Librarian, GS–9, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional and technical positions at grades GS–11 and above in the medical research program. Employment under this authority may not exceed 7 years for any individual.

Section 213.3228 U.S. Information Agency

(a) *Voice of America.* (1) Not to exceed 200 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

Section 213.3231 Department of Energy

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, DC. Appointments under this authority shall not exceed 3 years.

Section 213.3234 Federal Trade Commission

(a) Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of an individual Fellow may not exceed 4 years.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) Three GS–11 Medical Officer positions under a fellowship program on geriatrics.

(b) Director, Health Care Services; Director, Member Services, Director, Logistics; and Director, Plans and Programs.

Section 213.3237 General Services Administration

(a) One position of Deputy Director of Network Services.

Section 213.3242 Export-Import Bank of the U.S.

(a) One position of Food Service Worker WG–7804–3/4/5, in the Office of the President and Chairman.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3257 National Credit Union Administration

(a) *Central Liquidity Facility.* (1) All managerial and supervisory positions at pay levels greater than the equivalent of GS–13.

Section 213.3259 ACTION

(a) *Office of Domestic and Anti-Poverty Operations.* (1) Not to exceed 25 positions of Program Specialist at grades GS–9 through GS–15.

(b) *Office of Policy and Research.* (1) Three positions of Program Specialist at grades GS–7 through GS–15.

Section 213.3264 U.S. Arms Control and Disarmament Agency

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3274 Smithsonian Institution

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grade GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3278 Armed Forces Retirement Home

(a) *Naval Home, Gulfport, Mississippi.* (1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) (Reserved).

(b) *National Endowment for the Humanities.* (1) Humanities Administrator, Reference Materials Programs, Division of Research Programs.

(2) Humanities Administrator (Assistant Director), Humanities Projects in Higher Education Program, Division of Education Programs.

(3) Deputy to the Director, Division of Education Programs.

(4) Director, Division of Research Programs.

(5) Director, Deputy to the Director, and seven positions of Humanities Administrators, Division of State Programs.

(6) Director and Deputy to the Director, Division of Fellowships and Seminars.

(7) One Humanities Administrator, Fellowships for College Teachers, Division of Fellowships and Seminars.

(8) Seven Humanities Administrators, Humanities Projects in Media Program, Division of Public Programs.

(9) One Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(10) One Assistant Director for the Elementary and Secondary Education Program, Division of Education Programs.

(11) One Assistant Director for the Museums and Historical Organizations Program, Division of Public Programs.

(12) Four Humanities Administrators, Museums and Historical Organizations Program, Division of Public Programs.

(13) Five Humanities Administrators, Elementary and Secondary Education Program, Division of Education Programs.

(14) Director, Division of Public Programs.

(15) Deputy to the Director, Division of Public Programs.

(16) One Humanities Administrator, Younger Scholars Programs, Division of Fellowships and Seminars.

(17) One Humanities Administrator, Public Humanities Projects, Division of Public Programs.

(18) Director, Division of Education Programs.

(19) One Humanities Administrator (Assistant Director), Texts Programs, Division of Research Programs.

(20) One Humanities Administrator, Centers for Advanced Study, Division of Research Programs.

(21) One Challenge Grants Officer.

(22) One Assistant Director, Humanities Projects in Media Program, Division of Public Programs.

(23) One Humanities Administrator, Publications Program, Division of Research Programs.

(24) Deputy to the Director, Division of Research Programs.

(25) One Humanities Administrator, Summer Seminars for College Teachers, Division of Fellowships and Seminars.

(26) Two Humanities Administrators, Humanities Projects in Libraries and Archives, Division of Public Programs.

(27) One Humanities Projects Assessment Officer and one Humanities Administrator, Division of State Programs, Outreach Office.

(28) One Humanities Administrator, Public Humanities Projects, Division of Public Programs.

(29) One Humanities Administrator, Interpretive Research Programs, Division of Research Programs.

(30) One Humanities Administrator, Office of Challenge Grants.

(31) (Reserved).

(32) One Assistant Director, Fellowships Program, Division of Fellowships and Seminars.

(33) (Reserved).

(34) One Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(35) Two Humanities Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(36) Three Humanities Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(37) Two Humanities Administrators, Summer Seminars for Secondary School Teachers, Division of Fellowships and Seminars.

(38) One Humanities Administrator, Summer Stipends, Division of Fellowships and Seminars.

(39) One Humanities Administrator, Travel to Collections, Division of Fellowships and Seminars.

(40) One Humanities Administrator, Translation Program, Reference Works Program, Division of Research Programs.

(41) One Humanities Administrator, Editions Program, Reference Works Program, Division of Research Programs.

(42) (Reserved).

(43) One Humanities Administrator, Foundations of American Society Program, Division of Fellowships and Seminars.

(44) One Humanities Administrator, Humanities Projects in Museums and Historical Organizations, Division of Public Programs.

(45) Five Humanities Administrators, Division of Preservation and Access.

(46) Director, Division of Preservation and Access.

(47) One Humanities Administrator, Centers for Advanced Study, International Research, and Selected Areas, Division of Research Programs.

(48) Director, Office of Planning and Budget.

(49) One Humanities Administrator, Tools Program, Reference Materials Program, Division of Research Programs.

(50) One Humanities Administrator, Division of Preservation and Access.

(51) One Humanities Administrator, Project Research, Interpretive Research Program, Division of Research Programs.

(52) One Humanities Administrator, Humanities, Science, and Technology Program, Interpretive Research Program, Division of Research Programs.

(53) One Humanities Administrator, Office of the Assistant Chairman for Programs and Policy.

(54) Four Humanities Administrators, Office of the Assistant Chairman for Programs and Policy.

(55) One Humanities Administrator, Fellowships Program, Division of Fellowships and Seminars.

(56) One Humanities Administrator, Seminars Program, Division of Fellowships and Seminars.

(57) One Humanities Administrator, Guides Program, Reference Materials Program, Division of Research Programs.

(58) One Humanities Administrator, Public Challenge Grants Program, Division of Public Programs.

Section 213.3285 Pennsylvania Avenue Development Corporation

(a) One position of Civil Engineer (Construction Manager).

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 213.3924 Department of Transportation

(a) *Federal Railroad Administration.* (1) Regional Director of Railroad Safety, Fort Worth, Texas.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisors

CEA 1 Secretary to the Chairman.
CEA 4 Secretary to the Chairman.
CEA 5 Secretary to the Council Member.
CEA 6 Secretary to the Council Member.

Council on Environmental Quality

CEQ 2 Executive Assistant to the Chairman.
CEQ 3 Confidential Assistant to the Chairman.
CEQ 4 Confidential Assistant to the Chairman.

Office of Management and Budget

OMB 46 Special Assistant to the Associate Director for Legislative Affairs.
OMB 59 Public Affairs Assistant to the Director of External Affairs.
OMB 62 Staff Assistant to the Director, reporting to the Executive Assistant to the Director.
OMB 66 Secretary to the Associate Director for Economic Policy.
OMB 72 Confidential Assistant to the Associate Director for Human Resources, Veterans, and Labor.
OMB 75 Deputy Director to the Director of External Affairs.
OMB 79 Special Assistant to the Deputy Director.
OMB 80 Confidential Assistant to the Executive Assistant to the Director.
OMB 81 Confidential Assistant to the Executive Assistant to the Director.
OMB 82 Confidential Assistant to the Executive Assistant to the Director.
OMB 83 Legislative Assistant to the Associate Director for Legislative Affairs.
OMB 84 Confidential Assistant to the Associate Director for Legislative Affairs.
OMB 85 Legislative Assistant to the Associate Director for Legislative Affairs.
OMB 87 Secretary (Typing) to the Deputy Director.
OMB 88 Special Assistant to the Associate Director for Legislative Affairs.
OMB 91 Staff Assistant to the Associate Director for Legislative Affairs.
OMB 96 Confidential Assistant to the Associate Director for Legislative Reference and Administration.

Office of National Drug Control Policy

ONDCP 1 Special Assistant to the Director and White House Liaison (Executive Secretariat).
ONDCP 3 Confidential Assistant to the Deputy Director, Demand Reduction.
ONDCP 6 Confidential Assistant to the Special Assistant to the Director.
ONDCP 12 Special Assistant to the Chief of Staff.
ONDCP 15 Legislative Assistant to the Director, Congressional Relations.
ONDCP 20 Staff Assistant to the Special Assistant to the Director and White House Liaison.
ONDCP 21 Confidential Assistant to the Special Assistant to the Director.
ONDCP 23 Confidential Assistant to the Director.
ONDCP 25 Confidential Assistant to the General Counsel.
ONDCP 27 Confidential Assistant to the Director, Congressional Relations.
ONDCP 28 Special Assistant to the Associate Director, State and Local Affairs.
ONDCP 29 Special Assistant for Prevention to the Deputy Director, Demand Reduction.
ONDCP 30 Special Assistant for Treatment/Health for State and Local Affairs to the Associate Director, State and Local Affairs.
ONDCP 32 Staff Assistant to the Chief of Staff/National Security Advisor.
ONDCP 33 Special Assistant to the Deputy Director, Supply Reduction.
ONDCP 34 Confidential Assistant to the Associate Director, State and Local Affairs.
ONDCP 35 Staff Assistant to the Special Assistant to the Director.
ONDCP 36 Special Assistant to the Chairman, President's Drug Advisory Council.
ONDCP 37 Staff Assistant to the Chairman, President's Drug Advisory Council.
ONDCP 38 Staff Assistant for Scheduling to the Special Assistant to the Director.
ONDCP 39 Staff Assistant to the Associate Director, State and Local Affairs.
ONDCP 40 Attorney-Advisor to the General Counsel.
ONDCP 42 Public Affairs Specialist (Press Secretary) to the Deputy Chief of Staff.
ONDCP 46 Staff Assistant for Scheduling to the Special Assistant to the Director.
ONDCP 47 Executive Assistant to the Director.
ONDCP 48 Confidential Assistant to the Special Assistant to the Director.
ONDCP 49 Special Assistant to the Director.
ONDCP 51 Confidential Assistant to the Special Assistant to the Director.
ONDCP 53 Confidential Assistant to the Chairman, President's Drug Advisory Council.
ONDCP 54 Staff Assistant to the Deputy Director, Demand Reduction.
ONDCP 55 Associate General Counsel.
ONDCP 56 Confidential Assistant to the Deputy Chief of Staff.
ONDCP 59 Confidential Assistant to the Special Assistant to the Director.
ONDCP 60 Confidential Assistant to the Associate Director, State and Local Affairs.
ONDCP 61 Confidential Assistant to the Director, Office of Public Affairs.

Office of Science and Technology Policy

OSTP 1 Public Information Assistant to the Director.
OSTP 8 Confidential Secretary to the Director.

OSTP 9 Administrative Assistant (Typing) to the Director.
OSTP 10 Confidential Assistant to the Director.

Office of the United States Trade Representative

USTR 10 Confidential Assistant to the Ambassador/United States Trade Representative.
USTR 20 Deputy Assistant United States Trade Representative for Congressional Affairs.
USTR 21 Confidential Assistant to the Deputy United States Trade Representative.
USTR 25 Confidential Assistant to the General Counsel.
USTR 28 Congressional Affairs Officer to the Assistant United States Trade Representative for Congressional Affairs.
USTR 30 Confidential Assistant to the Deputy United States Trade Representative—Geneva.
USTR 31 Confidential Secretary to the Ambassador/United States Trade Representative.
USTR 32 Associate Director, Office of Private Sector Liaison, to the Assistant United States Trade Representative for Public Affairs and Private Sector Liaison.
USTR 33 Confidential Secretary to the Chief Textile Negotiator.

Section 213.3304 Department of State

ST 38 Staff Assistant to the Assistant Secretary, Bureau of Public Affairs.
ST 43 Secretary to the Assistant Secretary, Bureau of Intelligence and Research.
ST 51 Special Assistant to the Legal Adviser.
ST 59 Secretary (Steno) to the Under Secretary for Economic Affairs.
ST 67 Secretary (Steno) to the Assistant Secretary, Bureau of Politico-Military Affairs.
ST 68 Staff Assistant to the Special Assistant for White House Liaison, Bureau of Public Affairs.
ST 81 Secretary (Steno) to the Assistant Secretary, Bureau of Near East and South Asian Affairs.
ST 105 Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs.
ST 107 Secretary to the Assistant Secretary, Bureau of Economic and Business Affairs.
ST 112 Member, Policy Planning Staff, to the Director, Policy Planning Staff.
ST 113 Senior Policy Advisor to the Ambassador-at-Large for Refugee Affairs.
ST 116 Staff Assistant to the Counselor of the Department.
ST 117 Confidential Clerk to the Secretary.
ST 124 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 127 Secretary (Steno) to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 128 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs.
ST 129 Staff Assistant to the Secretary.
ST 132 Secretary (Typing) to the Assistant Secretary, Bureau of International Organization Affairs.
ST 134 Secretary (Steno) to the Deputy Secretary.
ST 139 Protocol Officer (Visits) to the Chief of Protocol.
ST 145 Member, Policy Planning Staff, to the Director, Policy Planning Staff.
ST 149 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 161 Secretary (Steno) to the Under Secretary for Management.
ST 167 Protocol Officer (Visits) to the Chief of Protocol.
ST 168 Staff Assistant to the Legal Adviser.
ST 170 Special Assistant to the Deputy Secretary.
ST 173 Special Assistant to the Under Secretary for Public Affairs.
ST 175 Legislative Management Officer to the Principal Deputy Assistant Secretary for Legislative Affairs.
ST 179 Congressional Relations Officer to the Principal Deputy Assistant Secretary for Legislative Affairs.
ST 180 Director of Programs to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 181 Director, Office of Public Liaison, to the Senior Deputy Assistant Secretary, Bureau of Public Affairs.
ST 189 Staff Assistant to the Deputy Assistant Secretary for Legislative Affairs.
ST 205 Secretary (Steno) to the Assistant Secretary for East Asian and Pacific Affairs.
ST 209 Protocol Officer (Visits) to the Chief of Protocol.
ST 214 Secretary (Typing) to the Assistant Secretary, Bureau of Economic and Business Affairs.
ST 219 Policy Advisor to the Ambassador-at-Large/Permanent Representative to the Organization of American States.
ST 224 Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs.
ST 243 Program Specialist to the Chief of Protocol.
ST 244 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs.
ST 248 Special Assistant to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 249 Staff Assistant to the Deputy Secretary.
ST 250 Public Information Officer to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 252 Protocol Officer (Visits) to the Chief of Protocol.
ST 258 Secretary (Steno) to the Inspector General.
ST 259 Special Assistant to the Legal Adviser.
ST 262 Associate Director, Office of Equal Employment Opportunity and Civil Rights, to the Deputy Assistant Secretary for Equal Employment Opportunity and Civil Rights.
ST 263 Special Assistant to the Secretary.
ST 265 Staff Assistant to the Secretary.
ST 266 Special Assistant to the Secretary.
ST 267 Secretary to the Assistant Secretary, Bureau of Public Affairs.
ST 268 Staff Assistant to the Secretary.
ST 269 Supervisory Protocol Officer to the Chief of Protocol.
ST 271 Member, Policy Planning Staff, to the Director, Policy Planning Staff.
ST 272 Staff Assistant to the Deputy Secretary.
ST 276 Member, Policy Planning Staff, to the Director, Policy Planning Staff.
ST 277 Special Assistant to the Director, Policy Planning Staff.
ST 278 Secretary (Steno) to the Director, Policy Planning Staff.
ST 281 Foreign Affairs Officer (Visits) to the Chief of Protocol.
ST 282 Special Assistant to the Ambassador-at-Large for Refugee Affairs.
ST 284 Secretary (Steno) to the Coordinator for Counterterrorism.
ST 285 Staff Assistant to the Assistant Secretary for International Narcotics Matters.
ST 289 Secretary to the Permanent United States Representative to the United Nations.
ST 290 Secretary (Steno) to the Ambassador-at-Large for Burdensharing.
ST 291 Senior Policy Advisor to the Assistant Secretary for Legislative Affairs.
ST 293 Special Assistant to the U.S. Negotiator for Defense and Space.
ST 294 Secretary (Steno) to the Under Secretary for Security Assistance, Science, and Technology.
ST 295 Secretary (Steno) to the Assistant Secretary, Bureau of Consular Affairs.

ST 296 Secretary (Steno) to the Chief Financial Officer.
ST 298 Foreign Affairs Officer to the Chief of Protocol.
ST 299 Staff Assistant to the Secretary.
ST 301 Staff Assistant to the Deputy Assistant Secretary for Policy, Plans, and Program Evaluation, Bureau of International Narcotics Matters.
ST 302 Staff Assistant to the U.S. Negotiator for Defense and Space.
ST 303 Secretary (Typing) to the Coordinator, Bureau of International Communication and Information Policy.
ST 304 Special Assistant to the Assistant Secretary, Bureau of Consular Affairs.
ST 305 Director, Public Affairs Staff, to the Assistant Secretary, Bureau of Consular Affairs.
ST 308 Deputy Assistant Secretary for Emergency Plans and Counterterrorism to the Assistant Secretary, Bureau of Diplomatic Security.
ST 309 Special Assistant to the Under Secretary for Economic Affairs.
ST 310 Secretary (Typing) to the Assistant Secretary for Legislative Affairs.
ST 311 Staff Assistant to the Under Secretary for Political Affairs.
ST 313 Staff Assistant to the Under Secretary for Economic Affairs.
ST 315 Deputy Assistant Secretary to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 317 Program Analyst to the Deputy Assistant Secretary for Policy and Counterterrorism.
ST 318 Special Assistant to the Coordinator, Bureau of International Communications and Information Policy.
ST 319 Correspondence Officer to the Principal Deputy Assistant Secretary for Legislative Affairs.
ST 320 Program Assistant to the Assistant Secretary, Bureau of Diplomatic Security.
ST 322 Program Specialist to the Director, Office of Public Liaison, Bureau of Public Affairs.
ST 324 Special Assistant to the Ambassador-at-Large for Refugee Affairs.
ST 325 Correspondence Officer to the Principal Deputy Assistant Secretary for Legislative Affairs.
ST 326 Deputy U.S. Negotiator to the U.S. Negotiator for Defense and Space.
ST 328 Member, Policy Planning Staff, to the Director, Policy Planning Staff.
ST 329 Staff Assistant to the Deputy Secretary.
ST 330 Staff Assistant to the Assistant Secretary, Bureau of Intelligence and Research.
ST 331 Special Assistant to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 333 Secretary (Typing) to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 334 Foreign Affairs Officer (Protocol Visits) to the Chief of Protocol.
ST 335 Information Program Advisor to the Assistant Secretary, Bureau of Diplomatic Security.
ST 336 Protocol Officer (Visits) to the Assistant Chief of Protocol.
ST 338 Research Assistant to the Principal Deputy Assistant Secretary, Bureau of Legislative Affairs.
ST 339 Program Officer to the Principal Deputy Assistant Secretary, Bureau of Legislative Affairs.
ST 340 Staff Assistant to the Deputy Under Secretary, Bureau of Economic and Agricultural Affairs.
ST 341 Protocol Assistant (Visits) to the Assistant Chief of Protocol.
ST 342 Staff Assistant to the Deputy Assistant Secretary, Bureau of Legislative Affairs.
ST 348 Legislative Officer to the Director of Congressional Relations, Bureau of Management.
ST 400 Staff Assistant to the Special Assistant to the Assistant Secretary, Bureau of Public Affairs.
ST 402 Secretary (Typing) to the Senior Deputy Assistant Secretary, Bureau of Public Affairs.
ST 403 Program Specialist (Visits) to the Assistant Chief of Protocol.
ST 404 Staff Assistant to the Deputy Assistant Secretary for Policy Planning and Program Evaluation, Bureau of International Narcotics Matters.
ST 405 Special Assistant to the Chief of Protocol.
ST 407 Associate Coordinator to the Coordinator for Counterterrorism.

Section 213.3305 Department of the Treasury

TREA 27 Executive Assistant to the Secretary.
TREA 39 Special Assistant to the Assistant Secretary for Legislative Affairs.
TREA 44 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 128 Confidential Assistant to the Secretary.
TREA 145 Travel Assistant to the Deputy Assistant Secretary for Administration.
TREA 153 Legislative Specialist to the Assistant Secretary for Legislative Affairs.
TREA 170 Assistant Director for Travel and Special Event Services, to the Deputy Assistant Secretary for Administration.
TREA 186 Public Affairs Specialist to the Treasurer of the United States.
TREA 187 Deputy Assistant Secretary to the Assistant Secretary for Policy Management.
TREA 188 Special Assistant (Policy Analysis) to the Secretary.
TREA 192 Confidential Assistant to the Secretary.
TREA 193 Director, Office of Intergovernmental Affairs, to the Deputy Assistant Secretary for Public Liaison.
TREA 194 Confidential Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 196 Confidential Assistant to the Executive Secretary.
TREA 199 Executive Assistant to the Deputy Secretary.
TREA 200 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 202 Director, Office of Legislative Affairs, to the Assistant Secretary for Legislative Affairs.
TREA 203 Staff Assistant (Correspondence Review) to the Executive Secretary.
TREA 204 Staff Assistant to the Assistant Secretary for Policy Management.
TREA 213 Confidential Assistant to the Assistant Secretary for Legislative Affairs.
TREA 214 Special Assistant to the Deputy Assistant Secretary for Corporate Finance.
TREA 218 Special Assistant to the Deputy Assistant Secretary for Corporate Finance.
TREA 219 Special Assistant to the Assistant Secretary for Economic Policy.
TREA 226 Assistant to the Commissioner of Internal Revenue.
TREA 235 Special Assistant for Administrative Operations to the Deputy Assistant Secretary for Management.
TREA 239 Special Assistant to the Director, Office of Thrift Supervision.
TREA 240 Staff Assistant to the Assistant Secretary for Policy Management.
TREA 243 Special Assistant to the Assistant Secretary for International Affairs.
TREA 244 Administrative Assistant to the Director, Office of Thrift Supervision.
TREA 245 Confidential Assistant to the Deputy Assistant Secretary for

Departmental Finance and Management.
TREA 247 Special Assistant to the Assistant Secretary for Policy Management.
TREA 248 Associate Director for the Resolution Trust Corporation to the Director, Office of Thrift Supervision.
TREA 249 Staff Assistant to the Director, Office of Thrift Supervision.
TREA 252 Counselor to the Chief Counsel, Office of Thrift Supervision.
TREA 253 Confidential Assistant to the Treasurer of the United States.
TREA 255 Associate Director for Congressional Relations, to the Director, Office of Thrift Supervision.
TREA 256 Public Affairs Specialist to the Deputy Assistant Secretary for Public Liaison.
TREA 257 Special Assistant (Public Affairs) to the Executive Director, U.S. Savings Bonds Division.
TREA 258 Legislative Assistant to the Deputy Assistant Secretary for Legislative Affairs.
TREA 259 Deputy Director (Operations) to the Director, U.S. Savings Bonds Division.
TREA 261 Travel Assistant to the Deputy Assistant Secretary for Administration.
TREA 263 Special Assistant (Legislative Affairs) to the Executive Director, U.S. Savings Bonds Division.
TREA 264 Special Assistant to the Deputy Assistant Secretary for Corporate Finance.
TREA 265 Special Assistant to the General Counsel.
TREA 266 Associate Director for Communications to the Director, Office of Thrift Supervision.
TREA 270 Confidential Assistant to the Deputy Treasurer of the United States.
TREA 271 Speechwriter to the Associate Director for Communications, Office of Thrift Supervision.
TREA 276 Special Assistant to the Chief Counsel, Office of Thrift Supervision.
TREA 277 Public Affairs Specialist to the Deputy Assistant Secretary for Public Affairs.
TREA 279 Review Analyst to the Executive Secretary.
TREA 280 Review Officer to the Executive Secretary.
TREA 281 Staff Assistant to the Assistant Secretary for International Affairs.
TREA 282 Staff Assistant to the Deputy Assistant Secretary for Information Systems.
TREA 283 Supervisory Public Affairs Specialist to the Commissioner of Customs.
TREA 284 Director, Office of Business Liaison, to the Deputy Assistant Secretary for Public Liaison.
TREA 285 Public Affairs Specialist to the Commissioner of Customs.
TREA 286 Director, Public Affairs, to the Executive Director, U.S. Savings Bonds Division.
TREA 287 Director, Legislative Affairs, to the Executive Director, U.S. Savings Bonds Division.
TREA 288 Deputy Assistant Secretary for Administration to the Assistant Secretary for Management.
TREA 289 Special Assistant to the Deputy Assistant Secretary for Departmental Finance and Management.
TREA 290 Special Assistant to the Deputy Assistant Secretary for Administration.
TREA 291 Special Assistant to the Assistant Secretary for Management.
TREA 292 Public Affairs Specialist to the Deputy Assistant Secretary for Public Affairs.
TREA 293 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 295 Special Assistant to the Assistant Secretary for International Affairs.
TREA 296 Confidential Assistant to the Commissioner of Internal Revenue.
TREA 297 Special Assistant to the Deputy Assistant Secretary for Public Affairs.
TREA 298 Special Assistant (Project Coordination) to the Assistant Secretary for Management.
TREA 299 Staff Assistant to the Deputy Assistant Secretary for Public Affairs.
TREA 303 Chief Counsel, Office of Thrift Supervision.

Section 213.3306 Department of Defense

DOD 5 Private Secretary to the Deputy Secretary.
DOD 19 Personal and Confidential Assistant to the Assistant Secretary for Program Analysis and Evaluation.
DOD 22 Private Secretary to the Assistant Secretary (Atomic Energy).
DOD 23 Confidential Assistant to the Military Assistant to the Secretary.
DOD 24 Chauffeur to the Secretary.
DOD 33 Personal Secretary to the Deputy Secretary.
DOD 34 Private Secretary to the Principal Deputy Assistant Secretary for International Security Affairs.
DOD 35 Confidential Assistant to the Special Assistant to the Secretary and Deputy Secretary.
DOD 54 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 56 Personal and Confidential Assistant to the Chief Judge, U.S. Court of Military Appeals.
DOD 62 Management Officer to the Chairman, President's Intelligence Oversight Board.
DOD 66 Private Secretary to the Physician to the President.
DOD 75 Chauffeur to the Deputy Secretary.
DOD 84 Private Secretary to the Principal Deputy Assistant Secretary for Force Management and Personnel.
DOD 89 Secretary (Office Automation) to the Principal Deputy Assistant Secretary for Public Affairs.
DOD 101 Personal and Confidential Assistant to the Director of Net Assessment.
DOD 119 Private Secretary to the Principal Deputy Assistant Secretary for Program Analysis and Evaluation.
DOD 133 Public Affairs Specialist to the Assistant Secretary for Public Affairs.
DOD 174 Private Secretary to the Under Secretary for Policy.
DOD 175 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 194 Private Secretary to the Assistant Secretary for International Security Policy.
DOD 205 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 212 Private Secretary to the Deputy Under Secretary for International Programs.
DOD 214 Assistant to the Secretary.
DOD 216 Private Secretary to the Principal Deputy Assistant Secretary for International Security Policy.
DOD 217 Personal and Confidential Assistant to the Assistant Secretary for Command, Control, Communications, and Information.
DOD 236 Director for Programs to the Assistant Secretary for Public Affairs.
DOD 241 Personal and Confidential Assistant to the Assistant Secretary for International Security Policy.
DOD 250 Director for Editorial Services to the Assistant Secretary for Public Affairs.
DOD 255 Personal and Confidential Assistant to the Deputy Secretary.
DOD 256 Staff Assistant to the Assistant Secretary for Force Management and Personnel.
DOD 261 Special Assistant for European Security and Political Affairs to the Deputy Assistant Secretary for European and NATO Policy.
DOD 270 Private Secretary to the Director, Strategic Defense Initiative Organization.

DOD 271 Private Secretary to the Principal Deputy Assistant Secretary for Reserve Affairs.
DOD 283 Special Assistant to the Assistant Secretary for Public Affairs.
DOD 295 Special Assistant to the Assistant Secretary for Force Management and Personnel.
DOD 298 Confidential Assistant to the Under Secretary for Acquisition.
DOD 299 Special Assistant to the Deputy Assistant Secretary for Family Support, Education, and Safety.
DOD 301 Personal and Confidential Assistant to the Assistant Secretary for Production and Logistics.
DOD 314 Personal and Confidential Assistant to the Under Secretary for Acquisition.
DOD 316 Law Clerk to the Judge, U.S. Court of Military Appeals.
DOD 317 Personal and Confidential Assistant to the Director, Defense Research and Engineering.
DOD 318 Private Secretary to the Assistant Secretary for Special Operations/Low Intensity Conflict.
DOD 320 Executive Assistant to the Secretary.
DOD 322 Staff Assistant to the Assistant to the Vice President for National Security Affairs.
DOD 321 Personal and Confidential Assistant to the U.S. Ambassador to NATO.
DOD 324 Confidential Assistant to the Comptroller.
DOD 326 Special Assistant for International Security Affairs to the Assistant Secretary for Legislative Affairs.
DOD 327 Special Assistant for Special Operations and Drug Policy to the Assistant Secretary for Legislative Affairs.
DOD 328 Special Assistant to the Assistant to the Secretary.
DOD 329 Special Assistant to the Under Secretary for Policy.
DOD 332 Personal and Confidential Assistant to the Assistant Secretary for International Security Affairs.
DOD 333 South American Country Director to the Assistant Secretary for International Security Affairs.
DOD 334 Public Affairs Specialist to the Assistant Secretary for Public Affairs.
DOD 335 Public Affairs Specialist to the Assistant Secretary for Public Affairs.
DOD 336 Public Affairs Specialist to the Assistant Secretary for Public Affairs.
DOD 337 Special Assistant (Operations) to the Assistant Secretary for Public Affairs.
DOD 345 Program Analyst to the Deputy Under Secretary for Industrial and International Programs.
DOD 346 Program Analyst to the Deputy Under Secretary for Industrial and International Programs.
DOD 348 Special Assistant for Technology Transfer to the Deputy Under Secretary for Trade Security Policy.
DOD 351 Special Assistant to the Assistant Secretary for International Security Affairs.
DOD 355 Special Assistant for Strategic Modernization to the Assistant Secretary for Legislative Affairs.
DOD 356 Director, Humanitarian Assistance, to the Deputy Assistant Secretary for Global Affairs.
DOD 358 Assistant for Multi-Lateral Negotiations to the Assistant Secretary for International Security Affairs.
DOD 361 Special Assistant for Production and Logistics and Energy to the Assistant Secretary for Legislative Affairs.
DOD 362 Education Programs Officer to the Deputy Assistant Secretary for Drug Enforcement Policy.
DOD 363 Research Analyst to the Deputy Assistant Secretary for Drug Enforcement Policy.
DOD 365 Staff Assistant to the Deputy Director, Office of Presidential Personnel.
DOD 367 Special Assistant to the Principal Deputy Under Secretary for Strategy and Resources.
DOD 368 Personal and Confidential Assistant to the Assistant Secretary for Legislative Affairs.
DOD 369 Representative of the Secretary to the Conference on Disarmament, reporting to the Assistant Secretary for International Security Policy.
DOD 370 Personal and Confidential Assistant to the Principal Deputy Under Secretary for Acquisition.
DOD 372 Special Assistant to the Assistant Secretary for Production and Logistics.
DOD 373 Special Assistant to the Assistant Secretary for Special Operations/Low Intensity Conflict.
DOD 374 Attorney-Advisor (General) to the Assistant General Counsel/ Legal Counsel.
DOD 375 Special Assistant for Research to the Assistant Secretary for Legislative Affairs.
DOD 377 Law Clerk to the Judge, U.S. Court of Military Appeals.
DOD 379 Principal Director for Drug Enforcement Policy to the Deputy Assistant Secretary for Drug Enforcement Policy.
DOD 380 Director of Protocol to the Secretary.
DOD 381 Special Assistant for International Counternarcotics Matters to the Deputy Assistant Secretary for Inter-American Affairs.
DOD 382 Executive Assistant to the Deputy Assistant Secretary for Environment.
DOD 383 Special Assistant for International Security Programs to the Deputy Under Secretary for Security Policy.
DOD 384 Director of Competitive Strategies to the Principal Deputy Under Secretary for Policy.
DOD 386 Personal and Confidential Assistant to the Assistant Secretary for Reserve Affairs.
DOD 387 Assistant for Political-Military Analysis and Strategic Assessment to the Deputy Assistant Secretary for Policy and Requirements.
DOD 388 Staff Specialist for Policy and Planning to the Director, Strategic Defense Initiative Organization.
DOD 389 Drug Testing, Health, and Rehabilitation Programs Officer to the Deputy Assistant Secretary for Drug Enforcement Policy.
DOD 390 Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 392 Private Secretary to the Under Secretary for Acquisition.
DOD 393 Special Assistant to the Director of Defense Information.
DOD 398 Special Assistant for Trade Policy to the Director, Washington Headquarters Service.
DOD 399 Staff Assistant to the Director, Humanitarian Assistance.
DOD 400 Private Secretary to the Executive Secretary.
DOD 401 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 402 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 403 Special Assistant to the Assistant Secretary for International Security Policy.
DOD 404 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 405 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 406 Special Assistant to the Assistant Secretary for Command, Control, Communications, and Information.
DOD 408 Law Clerk to the Judge, U.S. Court of Military Appeals.
DOD 409 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 410 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 412 Law Clerk to the Judge, U.S. Court of Military Appeals.

DOD 413 Special Assistant to the Deputy Assistant Secretary for International Security Affairs.

Section 213.3307 Department of the Army

ARMY 3 Secretary (Steno) to the Assistant Secretary (Manpower and Reserve Affairs).
ARMY 5 Secretary (Steno) to the Assistant Secretary (Installations, Logistics and Environment).
ARMY 6 Secretary (Typing) to the Assistant Secretary (Research, Development and Acquisition).
ARMY 17 Secretary (Typing) to the Assistant Secretary (Civil Works).
ARMY 21 Secretary (Steno) to the General Counsel.
ARMY 55 Secretary (Office Automation) to the Assistant Secretary (Financial Management).
ARMY 57 Staff Assistant to the Assistant Secretary (Manpower and Reserve Affairs).
ARMY 58 Staff Assistant to the Secretary.
ARMY 59 Staff Assistant to the Secretary.
ARMY 61 Staff Assistant to the Assistant Secretary (Manpower and Reserve Affairs).
ARMY 64 Plans Coordinator to the Chief of Public Affairs.
ARMY 65 Confidential Assistant to the Under Secretary.
ARMY 67 Staff Assistant to the Under Secretary.

Section 213.3308 Department of the Navy

NAV 2 Staff Assistant to the Secretary.
NAV 5 Private Secretary to the Assistant Secretary for Financial Management.
NAV 23 Special Assistant to the Military Assistant to the President.
NAV 24 Private Secretary to the Assistant Secretary for Manpower and Reserve Affairs.
NAV 30 Staff Assistant to the Deputy Under Secretary for Policy.
NAV 31 Staff Assistant to the Under Secretary.
NAV 43 Staff Assistant to the Under Secretary.
NAV 46 Private Secretary to the Assistant Secretary for Research, Development and Acquisition.

Section 213.3309 Department of the Air Force

AF 1 Secretary (Steno) to the Secretary.
AF 2 Secretary (Steno) to the Under Secretary.
AF 5 Secretary (Steno) to the Assistant Secretary for Research, Development and Logistics.
AF 6 Secretary (Steno) to the Assistant Secretary for Manpower and Reserve Affairs, Installations and Environment.
AF 8 Secretary (Steno) to the General Counsel.
AF 22 Secretary (Steno/Office Automation) to the Assistant to the Vice President for National Security Affairs.
AF 28 Special Counsel to the General Counsel.
AF 29 Confidential Assistant to the Secretary.
AF 31 Staff Assistant to the Assistant to the Vice President for National Security Affairs.
AF 34 Secretary (Steno) to the Assistant Secretary for Space.
AF 35 Special and Confidential Assistant to the Secretary.
AF 36 Special Assistant to the Assistant to the Vice President for National Security Affairs.
AF 37 Confidential Assistant to the Under Secretary.
AF 38 Special and Confidential Assistant to the Assistant to the Vice President for Legislative Affairs.
AF 39 Secretary (Steno) to the Assistant Secretary for Financial Management and Comptroller.

Section 213.3310 Department of Justice

JUS 21 Confidential Assistant to the Assistant Attorney General, Antitrust Division.
JUS 25 Confidential Assistant (Private Secretary) to the Assistant Attorney General, Criminal Division.
JUS 27 Confidential Assistant to the Assistant Attorney General, Environment and Natural Resources Division.
JUS 35 Confidential Assistant to the Assistant Attorney General, Office of Legal Counsel.
JUS 83 Confidential Assistant to the Attorney General.
JUS 100 Confidential Assistant to the Director of Congressional and Public Affairs, Immigration and Naturalization Service.
JUS 132 Special Assistant for Policy Development to the Commissioner, Immigration and Naturalization Service.
JUS 137 Special Projects Director to the Deputy Commissioner, Immigration and Naturalization Service.
JUS 141 Attorney-Advisor to the Assistant Attorney General, Office of Legislative Affairs.
JUS 149 Counsel to the Assistant Attorney General, Environment and Natural Resources Division.
JUS 203 Special Assistant to the Assistant Commissioner, Refugee, Asylum, and Parole, Immigration and Naturalization Service.
JUS 205 Special Assistant to the Director of Congressional Affairs, Immigration and Naturalization Service.
JUS 225 Law Clerk (Special Assistant) to the Deputy Assistant Attorney General, Civil Division.
JUS 240 Special Assistant to the Deputy Assistant Attorney General for Legislation and Litigation, Civil Rights Division.
JUS 248 Director, Missing Children's Program, to the Administrator, Office of Juvenile Justice and Delinquency Prevention.
JUS 257 Attorney-Advisor to the Assistant Attorney General, Civil Division.
JUS 281 Director of Congressional and Public Affairs to the Assistant Attorney General, Office of Justice Programs.
JUS 297 Special Assistant to the Assistant Attorney General, Civil Division.
JUS 305 Deputy Director to the Director of Congressional Affairs, Immigration and Naturalization Service.
JUS 315 Confidential Assistant to the Director, National Obscenity Enforcement Unit, Criminal Division.
JUS 320 Special Assistant to the Assistant Attorney General, Antitrust Division.
JUS 323 Confidential Assistant to the Assistant Attorney General, Office of Justice Programs.
JUS 331 Special Assistant to the Director, National Institute of Justice
JUS 340 Chief of Staff to the Director, Community Relations Service.
JUS 342 Confidential Assistant to the Commissioner, Immigration and Naturalization Service.
JUS 345 Special Assistant to the Director, Community Relations Service.
JUS 353 Confidential Assistant to the Solicitor General.
JUS 354 Attorney-Advisor to the General Counsel.
JUS 355 Special Assistant to the Chairman, Foreign Claims Settlement Commission.
JUS 359 General Attorney to the Assistant Attorney General, Office of Justice Programs.
JUS 360 Assistant Director, Asylum Policy and Review Unit, Office of Policy Development.
JUS 364 Special Assistant to the Deputy Assistant Attorney General, Office of Justice Programs.
JUS 366 Counsel to the Director, United States Marshals Service.

JUS 369 Deputy Director to the Director, Office of Policy Development.
JUS 370 Special Counsel to the Director, Office of Liaison Services.
JUS 373 Deputy Director to the Director, Office of Liaison Services.
JUS 376 Confidential Assistant to the Director, Office of Liaison Services.
JUS 379 Staff Assistant to the Director, Office of Public Affairs.
JUS 381 Confidential Assistant to the Deputy Director, Office of Policy Development.
JUS 386 Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 388 Special Assistant/Special Affairs Officer to the Director, U.S. Marshals Service.
JUS 389 Research Assistant to the Assistant Attorney General, Office of Legal Counsel.
JUS 391 Attorney-Advisor to the Director, Office of Policy Development.
JUS 393 Deputy Director to the Director, Asylum Policy and Review Unit, Office of Policy Development.
JUS 394 Special Assistant to the Director, Office of Congressional and Public Affairs.
JUS 395 Staff Assistant to the Director, Office of the Americans With Disabilities Act, Civil Rights Division.
JUS 397 Assistant to the Attorney General.
JUS 398 Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 399 Staff Assistant to the Principal Associate Deputy Attorney General.
JUS 400 Staff Assistant to the Assistant to the Attorney General.
JUS 401 Program Analyst to the Director, Child Exploitation and Obscenity Section, Criminal Division.
JUS 402 Principal Staff Assistant to the Assistant to the Attorney General.
JUS 403 Staff Assistant to the Staff Assistant to the Attorney General.
JUS 405 Liaison Specialist to the Director, Office of Policy Development.
JUS 406 Public Affairs Specialist to the Deputy Director, Office of Public Affairs.
JUS 407 Assistant to the Attorney General.
JUS 408 Deputy Director to the Director, Office of Public Affairs.
JUS 409 Special Assistant to the Associate Attorney General.
JUS 410 Deputy Director to the Director, Office of Policy and Communications.

Section 213.3312 Department of the Interior

INT 21 Confidential Assistant to the Assistant Secretary for Fish and Wildlife and Parks.
INT 112 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 162 Special Assistant to the Assistant Secretary for Territorial and International Affairs.
INT 191 Special Assistant to the Director, Bureau of Land Management.
INT 192 Staff Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 198 Special Assistant to the Secretary and Executive Director of Correspondence, reporting to the Special Assistant for Policy and Programs (Chief of Staff).
INT 238 Director, External Affairs, to the Commissioner of Reclamation.
INT 242 Special Assistant to the Assistant Director for Legislative and Congressional Affairs, National Park Service.
INT 252 Legislative Assistant to the Associate Director for Offshore Minerals Management, Minerals Management Service.
INT 268 Special Assistant to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 274 Congressional Liaison Specialist to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 287 Assistant to the Director and Deputy Director, Office of External Affairs, Bureau of Land Management.
INT 288 Staff Assistant to the Director, Bureau of Land Management.
INT 300 Special Assistant to the Solicitor.
INT 311 Special Assistant to the Assistant Secretary for Policy, Budget, and Administration.
INT 317 Special Assistant to the Assistant Director of External Affairs, Fish and Wildlife Service.
INT 329 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 337 Special Assistant to the Solicitor.
INT 342 Assistant Director, Legislative and Congressional Affairs, to the Director, National Park Service.
INT 348 Special Assistant to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 355 Special Assistant to the Assistant Secretary for Territorial and International Affairs.
INT 358 Special Assistant to the Director, National Park Service.
INT 360 Special Assistant to the Director, Bureau of Mines.
INT 363 Special Assistant to the Director, National Park Service.
INT 365 Special Assistant to the Director, National Park Service.
INT 366 Deputy Assistant Secretary for Territorial and International Affairs.
INT 371 Special Assistant to the Director, Bureau of Mines.
INT 374 Special Assistant to the Director (External Affairs), Office of Surface Mining Reclamation and Enforcement.
INT 375 Special Assistant (External Affairs) to the Deputy Director, Minerals Management Service.
INT 377 Special Assistant to the Assistant Secretary for Land and Minerals Management.
INT 384 Confidential Assistant to the Director, Office of Surface Mining Reclamation and Enforcement.
INT 385 Special Assistant to the Assistant Secretary for Policy, Budget and Administration.
INT 387 Director, Congressional and Legislative Affairs, to the Deputy Commissioner of Indian Affairs.
INT 389 Special Assistant to the Deputy Commissioner, Bureau of Reclamation.
INT 392 External Affairs Officer (Intergovernmental Affairs) to the Director, Minerals Management Service.
INT 393 Special Assistant to the Assistant Director for External Affairs, Fish and Wildlife Service.
INT 397 Special Assistant to the Assistant to the Under Secretary (Take Pride in America Staff).
INT 399 Special Assistant to the Assistant Secretary for Policy, Management and Budget.
INT 406 Staff Assistant to the Director, Bureau of Land Management.
INT 408 Executive Assistant to the Director, Minerals Management Service.
INT 410 Staff Assistant to the Director, External Affairs Division, Bureau of Reclamation.
INT 411 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 412 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 414 Special Assistant to the Assistant Secretary for Policy, Management and Budget.
INT 415 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 416 Special Assistant to the Director, Minerals Management Service.
INT 417 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 418 Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks.

INT 419 Special Assistant (Communications and Outreach) to the Director, Minerals Management Service.
INT 420 Special Assistant to the Assistant Director for External Affairs, Fish and Wildlife Service.

Section 213.3313 Department of Agriculture

AGR 7 State Executive Director to the Northwest Area Director, Agricultural Stabilization and Conservation Service.
AGR 13 Private Secretary to the Assistant Secretary for Food and Consumer Services.
AGR 24 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 26 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 27 Private Secretary to the Administrator, Farmers Home Administration.
AGR 28 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 30 Private Secretary to the Manager, Federal Crop Insurance Corporation.
AGR 31 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 32 Special Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 56 Private Secretary to the Assistant Secretary for Congressional Relations.
AGR 76 Confidential Assistant to the Assistant Secretary for Marketing and Inspection Services.
AGR 77 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 79 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 81 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 103–Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 106 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 114 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 118 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 131 Private Secretary to the Deputy Assistant Secretary for Natural Resources and Environment.
AGR 139 Staff Assistant to the Secretary.
AGR 143 Confidential Assistant to the Administrator, Agricultural Marketing Service.
AGR 151 Executive Assistant to the Administrator, Agricultural Marketing Service.
AGR 154 Staff Assistant to the Administrator, Food and Nutrition Service.
AGR 158 Private Secretary to the Assistant Secretary for Science and Education.
AGR 164 Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 169 Private Secretary to the Deputy Assistant Secretary for Economics.
AGR 179 Staff Assistant to the Director, Publishing and Visual Communication, Office of Public Affairs.
AGR 183 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 188 Northeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 190 Midwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 191 Northwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 192 Southwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 194 Private Secretary to the Under Secretary for Small Community and Rural Development.
AGR 200 Confidential Assistant to the Assistant Secretary for Administration.
AGR 201 Confidential Assistant to the Executive Assistant to the Secretary.
AGR 203 Confidential Assistant to the Executive Assistant to the Secretary.
AGR 207 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 208 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 209 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 213 Director, Congressional Relations, to the Assistant Secretary for Congressional Relations.
AGR 218 Staff Assistant to the Assistant Secretary for Administration.
AGR 222 Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 226 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 232 Confidential Assistant (Director, Legislative Affairs and Public Information Staff) to the Administrator, Farmers Home Administration.
AGR 234 Confidential Assistant to the Administrator, Office of International Cooperation and Development.
AGR 235 Staff Assistant to the Administrator, Agricultural Marketing Service.
AGR 236 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service.
AGR 237 Staff Assistant to the Administrator, Agricultural Marketing Service.
AGR 238 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 242 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 243 Confidential Assistant to the Director, Office of Intergovernmental Affairs.
AGR 244 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 247 Private Secretary to the Inspector General.
AGR 257 Executive Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 258 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 263 Confidential Assistant to the Assistant Secretary for Natural Resources and Environment.
AGR 266 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 268 Director of Legislative and Public Affairs to the Deputy Administrator for Management and Policy Support, Rural Electrification Administration.
AGR 274 Confidential Assistant to the Chief, Soil Conservation Service.
ACR 275 Deputy Director to the Executive Assistant to the Secretary (Director, Office of Executive Secretariat).
AGR 276 Confidential Assistant to the Administrator, Agricultural Research Service.
AGR 281 Southeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 282 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 284 Confidential Assistant to the Administrator, Food Safety and Inspection Service.
AGR 286 Confidential Assistant to the Administrator, Foreign Agricultural Service.

AGR 287 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 290 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service.
AGR 291 Special Assistant to the General Counsel.
AGR 293 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 295 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 296 Confidential Assistant to the Assistant Secretary for Congressional Relations.
AGR 298 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 299 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 300 Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 301 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 302 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 303 Staff Assistant to the Chief, Soil Conservation Service.
AGR 307 Staff Assistant to the Director, Office of Press and Media Relations, Office of Public Affairs.
AGR 308 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 309 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 312 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 313 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 317 Executive Assistant to the Administrator, Farmers Home Administration.
AGR 318 Staff Assistant to the Administrator, Foreign Agricultural Service.
AGR 322 Director, "Ag in the Classroom" Program, to the Administrator, Cooperative State Research Service.
AGR 324 Private Secretary to the Deputy Under Secretary for Small Community and Rural Development.
AGR 330 Confidential Assistant to the Director, Intergovernmental Affairs, Office of Public Affairs.
AGR 332 Confidential Assistant to the Director, Legislative Affairs and Public Information Staff, Farmers Home Administration.
AGR 333 Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 334 Staff Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 336 Executive Assistant to the Secretary.
AGR 337 Special Assistant to the Deputy Administrator for Program Operations, Farmers Home Administration.
AGR 338 Confidential Assistant to the Assistant Secretary for Economics.
AGR 339 Confidential Assistant to the Deputy Administrator for Special Nutrition Programs, Food and Nutrition Service.
AGR 340 Director, Intergovernmental Affairs, to the Director, Office of Governmental Affairs and Public Information, Food and Nutrition Service.
AGR 342 Special Assistant to the Director, Office of Public Affairs, and Press Secretary.
AGR 334 Confidential Assistant to the Director, Office of Public Affairs, and Press Secretary.
AGR 346 Confidential Assistant to the State Director (Rural Development Specialist), Farmers Home Administration.
AGR 347 Confidential Assistant to the Deputy Director, Office of Public Affairs.
AGR 348 Director of Public Liaison to the Director, Office of Public Affairs, and Press Secretary.
AGR 349 Confidential Assistant to the Director, Office of Governmental 057Affairs and Public Information, Food and Nutrition Service.
AGR 350 Deputy Press Secretary to the Director, Office of Public Affairs, and Press Secretary.
AGR 351 Staff Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 352 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 353 Speech Writer to the Director, Office of Public Affairs, and Press Secretary.
AGR 354 Director, Intergovernmental Affairs, to the Director, Office of Public Affairs, and Press Secretary.
AGR 355 Executive Speech Writer to the Director, Office of Public Affairs, and Press Secretary.
AGR 356 Staff Assistant to the Secretary.
AGR 357 Director, Congressional Relations and Public Affairs Staff, to the Administrator, Human Nutrition Information Service.
AGR 358 Confidential Assistant to the Administrator, Human Nutrition Information Service.
AGR 359 Speech Writer to the Director, Office of Public Affairs, and Press Secretary.
AGR 360 Private Secretary to the Deputy Secretary.
AGR 361 Confidential Assistant to the Chief of Staff.
AGR 362 Assistant Deputy Administrator for Program Operations to the Deputy Administrator, Farmers Home Administration.
AGR 363 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 364 Executive Assistant to the Secretary.
AGR 365 Special Assistant to the Director, Office of Public Affairs, and Press Secretary.
AGR 366 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 367 Staff Assistant to the Manager, Federal Crop Insurance Corporation.

Section 213.3314 Department of Commerce

COM 2 Confidential Assistant to the Secretary.
COM 5 Special Assistant to the Director, Office of White House Liaison.
COM 19 Chauffeur to the Secretary.
COM 48 Confidential Assistant to the Under Secretary for Travel and Tourism.
COM 70 Director, Congressional Affairs, to the Assistant Secretary for Economic Development.
COM 136 Special Assistant to the Deputy Assistant Secretary for Export Enforcement.
COM 151 Confidential Assistant to the Chief of Staff.
COM 152 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs.
COM 158 Director of Public Affairs to the Under Secretary for Travel and Tourism.
COM 160 Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration.
COM 182 Private Secretary to the Assistant Secretary for Communications and Information.
COM 190 Director, Office of Congressional Affairs, to the Assistant Secretary for Communications and Information.
COM 193 Confidential Assistant to the Deputy Assistant Secretary for Trade Development, International Trade Administration.
COM 201 Congressional Liaison Assistant to the Deputy Assistant

Secretary for Legislative and Intergovernmental Affairs.
COM 207 Chief, Congressional Affairs Division, to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 217 Special Assistant to the Director, Office of Public Affairs.
COM 232 Special Assistant to the Assistant Secretary for Economic Development.
COM 236 Special Assistant to the Secretary.
COM 248 Special Assistant to the Deputy Secretary.
COM 252 Confidential Assistant to the Secretary.
COM 257 Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East, and South Asia, International Trade Administration.
COM 259 Director of Congressional Affairs to the Under Secretary for International Trade.
COM 265 Special Assistant to the Deputy Assistant Secretary for Export Administration.
COM 267 Confidential Assistant to the Assistant Secretary for Export Administration.
COM 274 Confidential Assistant to the Director, Office of Business Liaison.
COM 275 Confidential Assistant to the Director, Office of Business Liaison.
COM 289 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 290 Confidential Assistant to the Director, Office of Business Liaison.
COM 293 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 295 Confidential Assistant to the Director, Office of White House Liaison.
COM 296 Director of Operations to the Secretary.
COM 297 Confidential Assistant to the Chief Financial Officer.
COM 299 Confidential Assistant to the Chief Economist and Special Advisor.
COM 300 Confidential Assistant to the Deputy Under Secretary for International Trade.
COM 302 Special Assistant to the Director, Office of Public Affairs, National Oceanic and Atmospheric Administration.
COM 303 Confidential Assistant to the Assistant Secretary for Administration.
COM 306 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs.
COM 310 Confidential Assistant to the Deputy Under Secretary for Travel and Tourism.
COM 311 Confidential Assistant to the Director, Office of White House Liaison.
COM 314 Special Assistant to the Director, Office of White House Liaison.
COM 316 Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration.
COM 319 Confidential Assistant to the Deputy Assistant Secretary for Compliance, International Trade Administration.
COM 321 Director, Office of Public Affairs, to the Under Secretary for International Trade.
COM 325 Confidential Assistant to the Deputy Assistant Secretary for International Economic Policy, International Trade Administration.
COM 327 Special Assistant to the Deputy Secretary.
COM 328 Confidential Assistant to the Deputy Assistant Secretary for Automotive and Consumer Goods, International Trade Administration.
COM 338 Press Secretary to the Secretary, reporting to the Counsellor to the Secretary and Director, Office of Public Affairs.
COM 340 Special Assistant to the Under Secretary for Oceans and Atmosphere.
COM 344 Congressional Liaison Specialist to the Director, Congressional Affairs Staff, International Trade Administration.
COM 345 Confidential Assistant to the Under Secretary for International Trade.
COM 346 Confidential Assistant to the Director, Office of White House Liaison.
COM 347 Confidential Assistant to the Director, Office of Public Affairs.
COM 348 Special Assistant to the Director, Office of Public Affairs.
COM 350 Deputy Director to the Director, Office of Business Liaison.
COM 357 Deputy Director to the Director, Office of Export Trading Company Affairs, International Trade Administration.
COM 360 Director of Congressional Affairs to the Under Secretary for Economic Affairs.
COM 363 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 370 Chief Legislative and Intergovernmental Affairs to the Assistant Director for External Affairs, Minority Business Development Agency.
COM 380 Confidential Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration.
COM 389 Confidential Assistant to the Under Secretary for International Trade.
COM 391 Confidential Assistant to the Chief Economist.
COM 392 Special Assistant to the Deputy Assistant Secretary for Basic Industries, International Trade Administration.
COM 395 Confidential Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Service.
COM 397 Congressional Affairs Officer to the Director, Bureau of the Census.
COM 398 Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations, International Trade Administration.
COM 399 Special Assistant to the Deputy Assistant Secretary for Grant Programs, Economic Development Administration.
COM 403 Confidential Assistant to the Assistant Secretary for Oceans and Atmosphere.
COM 408 Confidential Assistant to the General Counsel.
COM 410 Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration.
COM 412 Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration.
COM 414 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 415 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 416 Director, Office of Consumer Affairs, to the Director, Office of Public Affairs.
COM 419 Confidential Assistant to the Under Secretary for International Trade.
COM 420 Special Assistant to the Assistant Secretary and Director General, U.S. and Foreign Commercial Service.
COM 423 Director of Congressional Affairs to the Assistant Secretary and Commissioner of Patents and Trademarks.
COM 430 Special Assistant to the Assistant Secretary for Export Administration.
COM 433 Senior Advisor to the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.
COM 439 Special Counsel to the General Counsel.
COM 440 Confidential Assistant to the Director, Office of Executive Programs.

COM 441 Special Assistant to the Deputy Under Secretary for Economic Affairs.
COM 442 Director of Public Affairs to the Assistant Secretary for Communications and Information.
COM 445 Director, Office of Public Affairs, to the Assistant Secretary for Economic Development.
COM 448 Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration.
COM 453 Congressional Liaison Assistant to the Deputy Assistant Secretary for Legislative Affairs.
COM 454 Special Assistant to the Assistant Secretary for Technology Policy.
COM 455 Congressional Liaison Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs.
COM 458 Special Assistant to the Deputy Assistant Secretary for Services, International Trade Administration.
COM 462 Deputy Director of Congressional Affairs to the Assistant Secretary and Commissioner of Patents and Trademarks.
COM 464 Special Assistant to the Deputy Assistant Secretary for Program Support, Economic Development Administration.
COM 465 Confidential Assistant to the Director, Office of White House Liaison.
COM 466 Director of Public Affairs to the Deputy Under Secretary for Technology.
COM 467 Confidential Assistant to the Chief of Staff and Assistant Secretary.
COM 470 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs.
COM 471 Confidential Assistant to the Director, Office of Policy Planning and Coordination.
COM 472 Confidential Assistant to the Deputy Assistant Secretary for Technology Policy.
COM 473 Confidential Assistant to the Chief Counsel for Technology.
COM 477 Director of Legislative and Intergovernmental Affairs to the Under Secretary for Travel and Tourism.
COM 479 Director, Office of International Technology Policy and Programs, to the Assistant Secretary for Technology Policy.
COM 480 Director of Congressional Affairs to the Under Secretary for Technology.
COM 481 Confidential Assistant to the Under Secretary for Technology.
COM 482 Director, Executive Secretariat, to the Chief of Staff and Assistant Secretary.
COM 483 Manager, Export Promotion Services, to the Deputy Assistant Secretary, U.S. and Foreign Commercial Service.
COM 485 Special Assistant to the Assistant Secretary and Counsellor to the Secretary.
COM 487 Special Assistant to the Director, Office of White House Liaison.
COM 489 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs.
COM 490 Director of Scheduling to the Chief of Staff and Assistant Secretary.
COM 491 Special Assistant to the Deputy Under Secretary for Technology.
COM 493 Congressional Liaison Officer to the Under Secretary for Economics and Statistics.
COM 496 Chief, Intergovernmental Affairs Division, to the Director, Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 498 Congressional Liaison Specialist to the Director, Congressional Affairs, International Trade Administration.
COM 500 Special Assistant to the Under Secretary for Travel and Tourism.
COM 503 Public Affairs Specialist to the Director, Office of Public Affairs, Bureau of Export Administration.
COM 504 Congressional Affairs Specialist to the Congressional Affairs Officer, Bureau of the Census.
COM 505 Special Assistant to the Deputy Assistant Secretary for Economic Development.
COM 506 Congressional Liaison Specialist to the Director of Congressional Affairs, International Trade Administration.
COM 507 Confidential Assistant to the Deputy Under Secretary for International Trade.
COM 508 Special Assistant to the Director, Office of Space Commerce.
COM 509 Director, Office of Space Commerce, to the Deputy Secretary.
COM 510 Executive Director to the Assistant Secretary for Economic Development.
COM 513 Attorney-Advisor to the General Counsel, National Oceanic and Atmospheric Administration.
COM 514 Special Assistant to the Assistant Secretary for Export Enforcement.
COM 515 Confidential Assistant to the Director, Office of Legislation, Education, Outreach, and Intergovernmental Affairs, National Oceanic and Atmospheric Administration.
COM 516 Congressional Affairs Specialist to the Chief of Legislative and Intergovernmental Affairs, Minority Business Development Agency.
COM 517 Congressional Liaison Specialist to the Director, Congressional Affairs Staff, Bureau of Export Administration.
COM 518 Special Assistant to the Under Secretary for Oceans and Atmosphere.
COM 519 Special Assistant to the General Counsel, National Oceanic and Atmospheric Administration.
COM 520 Special Assistant to the Assistant Secretary for Import Administration.
COM 521 Confidential Assistant to the Deputy Under Secretary for Travel and Tourism.
COM 522 Communications Officer to the Counsellor to the Secretary and Director, Office of Public Affairs.
COM 523 Special Assistant to the Director, Office of Public Affairs, International Trade Administration.
COM 524 Special Assistant for Legislative Issues to the Deputy Under Secretary for Oceans and Atmosphere.

Section 213.3315 Department of Labor

LAB 3 Special Assistant to the Secretary.
LAB 17 Senior Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 25 Senior Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 41 Deputy Legislative Officer to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 43 Special Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 44 Senior Liaison Officer to the Assistant Secretary for Congressional Affairs.
LAB 55 Deputy Legislative Officer to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 62 Special Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 64 Special Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 76 Special Assistant to the Director, Women's Bureau.
LAB 86 Staff Assistant to the Assistant Secretary for Employment Standards.
LAB 87 Staff Assistant to the Assistant Secretary for Employment Standards.
LAB 92 Executive Assistant to the Chief of Staff.

LAB 93 Special Assistant to the Chief of Staff.
LAB 100 Special Assistant to the Deputy Under Secretary for International Labor Affairs.
LAB 101 Special Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration.
LAB 103 Secretary's Representative.
LAB 104 Secretary's Representative.
LAB 105 Secretary's Representative.
LAB 106 Secretary's Representative.
LAB 107 Secretary's Representative.
LAB 108 Secretary's Representative.
LAB 109 Secretary's Representative.
LAB 110 Secretary's Representative.
LAB 111 Secretary's Representative.
LAB 112 Secretary's Representative.
LAB 115 Assistant to the Secretary's Representative.
LAB 116 Assistant to the Secretary's Representative.
LAB 122 Assistant to the Secretary's Representative.
LAB 125 Special Assistant to the Assistant Secretary for Employment Standards.
LAB 129 Special Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 132 Senior Legislative Officer to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 133 Special Assistant to the Director, Women's Bureau.
LAB 137 Speechwriter to the Deputy Assistant Secretary for Public Affairs/ Director, Office of Information and Public Affairs.
LAB 138 Special Assistant to the Assistant Secretary for Mine Safety and Health.
LAB 147 Attorney-Advisor (Labor) to the Solicitor.
LAB 153 Special Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 159 Special Assistant to the Deputy Under Secretary for International Affairs.
LAB 161 Staff Assistant to the Secretary.
LAB 163 Special Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 169 Special Assistant to the Deputy Assistant Secretary for Program Economics and Research and Technical Support.
LAB 172 Confidential Assistant to the Deputy Secretary.
LAB 177 Confidential Assistant to the Secretary.
LAB 179 Executive Assistant to the Assistant Secretary for Employment Standards.
LAB 183 Staff Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 191 Staff Assistant to the Assistant Secretary for Policy.
LAB 195 Special Assistant to the Assistant Secretary for Employment and Training.
LAB 196 Executive Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 197 Deputy Intergovernmental Officer to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 199 Deputy Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 200 Special Assistant (Speech Writer) to the Assistant Secretary for Employment and Training.
LAB 203 Special Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 205 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 208 Special Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 212 Staff Assistant to the Secretary.
LAB 215 Special Assistant to the Director, Women's Bureau.
LAB 217 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 219 Special Assistant to the Director, Office of Intergovernmental Affairs.
LAB 220 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 221 Special Assistant to the Assistant Secretary for Public Affairs.
LAB 226 Confidential Assistant to the Assistant Secretary for Pension and Welfare Benefits.
LAB 229 Deputy Legislative Officer to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 230 Special Assistant to the Chief of Staff, Office of Public Affairs.
LAB 231 Special Assistant to the Chief of Staff, Office of Public Affairs.
LAB 234 Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 235 Senior Legislative Officer to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 238 Assistant to the Secretary's Representative.
LAB 240 Assistant to the Secretary's Representative.
LAB 241 Special Assistant to the Director, Office of Information and Public Affairs.
LAB 242 Assistant to the Secretary's Representative.
LAB 243 Deputy Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 245 Assistant to the Secretary's Representative.
LAB 246 Assistant to the Secretary's Representative.
LAB 248 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 249 Assistant to the Secretary's Representative.
LAB 252 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 253 Staff Assistant to the Secretary.
LAB 254 Senior Legislative Officer to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 258 Deputy Secretary's Representative.
LAB 260 Special Assistant to the Chief of Staff, Office of Public Affairs.
LAB 263 Staff Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration.
LAB 267 Special Assistant to the Associate Assistant Secretary for Intergovernmental Affairs.
LAB 268 Staff Assistant to the Assistant Secretary for Occupational Safety and Health.
LAB 269 Deputy Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs.
LAB 270 Special Assistant to the Administrator, Office of Work-Based Learning, Employment and Training Administration.

Section 213.3316 Department of Health and Human Services

HHS 5 Writer to the Secretary.
HHS 17 Director, Scheduling, Security and Protection, to the Secretary.
HHS 26 Special Assistant to the Executive Secretary.
HHS 167 Executive Director, Federal Council on Aging, to the Assistant Secretary for Human Development Services.
HHS 213 Steward to the Secretary.
HHS 226 Confidential Assistant to the Director, Office of Civil Rights.
HHS 233 Confidential Assistant to the Director, Office of Consumer Affairs.
HHS 267 Special Initiatives Coordinator to the Secretary.
HHS 269 Special Assistant to the Chief of Staff.
HHS 290 Director, Office of Public Affairs, to the Assistant Secretary for

Administration for Children and Families.
HHS 305 Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Boards and Commissions.
HHS 306 Special Assistant to the Director, Office of Policy, Planning and Legislation, Administration for Children and Families.
HHS 330 Special Assistant to the Director, Office of Consumer Affairs.
HHS 331 Special Assistant to the Administrator, Health Care Financing Administration.
HHS 332 Executive Assistant to the Assistant Secretary for Human Development Services.
HHS 336 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services).
HHS 344 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison).
HHS 353 Confidential Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Boards and Commissions.
HHS 358 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison).
HHS 361 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison).
HHS 371 Confidential Assistant to the Executive Assistant to the Secretary.
HHS 372 Special Assistant to the Director, Office of Policy, Planning and Legislation, Office of Human Development Services.
HHS 374 Confidential Assistant to the Executive Secretary.
HHS 406 Special Assistant to the Assistant Secretary for Health.
HHS 415 Confidential Assistant to the Secretary.
HHS 436 Associate Commissioner for Family and Youth Services to the Commissioner, Administration for Children, Youth and Families.
HHS 439 Director, Office of Family Planning, to the Deputy Assistant Secretary for Population Affairs.
HHS 442 Director, Office of Adolescent Pregnancy Programs, to the Deputy Assistant Secretary for Population Affairs.
HHS 449 Deputy Director to the Director, Office of Refugee Resettlement, Administration for Children and Families.
HHS 457 Special Assistant to the Deputy Secretary.
HHS 462 Special Assistant for Liaison Activities to the Administrator, Alcohol, Drug Abuse and Mental Health Administration, Public Health Service.
HHS 468 Deputy Director, Office of Community Services, Administration for Children and Families.
HHS 469 Director, Office of Communications Technology, to the Associate Commissioner for Public Affairs, Social Security Administration.
HHS 495 Confidential Staff Assistant to the Associate Administrator, Office of Communications, Administration for Children and Families.
HHS 497 Special Assistant to the Director, Office of Community Services, Administration for Children and Families.
HHS 506 Congressional Relations Specialist to the Deputy Commissioner for Policy and External Affairs, Social Security Administration.
HHS 509 Director, Youth 2000 Program, to the Assistant Secretary for Administration for Children and Families.
HHS 510 Deputy Director, Office of Public Liaison, Health Care Financing Administration.
HHS 511 Special Assistant to the Associate Commissioner, Head Start Bureau, Administration for Children and Families.
HHS 518 Special Assistant to the Director, Office of Family Assistance, Administration for Children and Families.
HHS 522 Special Assistant to the Associate Administrator, Office of Communications, Administration for Children and Families.
HHS 528 Special Assistant to the Deputy Assistant Secretary for Human Development Services.
HHS 529 Confidential Assistant to the Executive Secretary.
HHS 531 Special Assistant to the Assistant Secretary for Management and Budget.
HHS 532 Special Assistant to the Commissioner, Social Security Administration.
HHS 533 Special Assistant to the Commissioner, Social Security Administration.
HHS 534 Confidential Assistant to the Executive Secretary.
HHS 535 Special Assistant to the Assistant Secretary for Health.
HHS 539 Special Assistant to the General Counsel.
HHS 540 Special Assistant to the Director, Office of Legislation and Policy, Health Care Financing Administration.
HHS 541 Director, Office of State and Project Assistance, to the Director, Office of Community Services, Administration for Children and Families.
HHS 544 Special Assistant to the Deputy Assistant Secretary for Population Affairs.
HHS 545 Special Assistant to the Associate Commissioner for Public Affairs, Food and Drug Administration.
HHS 548 Confidential Assistant to the Director, Office of State and Project Assistance, Administration for Children and Families.
HHS 549 Speechwriter to the Director of Speechwriting, Office of Public Affairs.
HHS 550 Speechwriter to the Secretary.
HHS 551 Special Assistant for Legislative Affairs to the Associate Commissioner for Legislative Affairs, Food and Drug Administration.
HHS 552 Director, Office of External Affairs, to the Associate Commissioner, Office of Public Affairs, Social Security Administration.
HHS 553 Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Communications).
HHS 555 Legislative Liaison to the Associate Commissioner, Office of Legislation and Congressional Affairs, Social Security Administration.
HHS 556 Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media).
HHS 558 Executive Assistant to the Assistant Secretary for Public Affairs.
HHS 559 Special Assistant to the Director of Communications.
HHS 560 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Media).
HHS 561 Special Assistant to the Director, Office of Refugee Resettlement, Administration for Children and Families.
HHS 562 Special Assistant for Media Affairs to the Surgeon General.
HHS 565 Special Assistant to the Associate Commissioner for Public Affairs, Social Security Administration.
HHS 568 Special Assistant to the Assistant Secretary for Family Support.
HHS 570 Special Assistant (Advance) to the Director of Advance.
HHS 571 Special Assistant to the Commissioner, Administration on Developmental Disabilities, Administration for Children and Families.
HHS 573 Deputy Director to the Director of Communications.

HHS 575 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Media).
HHS 576 Speechwriter to the Surgeon General.
HHS 578 Special Assistant to the Associate Commissioner for Public Affairs, Social Security Administration.
HHS 581 Special Assistant to the Deputy Commissioner for Programs, Social Security Administration.
HHS 582 Director of Advance to the Executive Secretary.
HHS 583 Special Assistant to the Director, Office of Policy, Planning and Legislation, Administration for Children and Families.
HHS 588 Director, Division of Intergovernmental Affairs, to the Director, Office of Public Affairs, Administration for Children and Families.
HHS 589 Speechwriter to the Deputy Assistant Secretary for Public Affairs (Media).
HHS 590 Confidential Assistant (Advance) to the Director of Advance.
HHS 591 Confidential Staff Assistant to the Commissioner, Administration on Developmental Disabilities, Administration for Children and Families.
HHS 592 Legislative Liaison to the Associate Commissioner for Legislation and Congressional Affairs, Social Security Administration.

Section 213.3317 Department of Education

EDU 8 Confidential Assistant to the Assistant Secretary for Civil Rights.
EDU 9 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 16 Confidential Assistant to the General Counsel.
EDU 20 Steward to the Chief of Staff.
EDU 26 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental and Interagency Affairs.
EDU 33 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 38 Special Assistant to the Assistant Secretary for Postsecondary Education.
EDU 53 Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 61 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 76 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs.
EDU 77 Executive Assistant to the Assistant Secretary for Civil Rights.
EDU 89 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 90 Special Assistant to the Assistant Secretary for Vocations and Adult Education.
EDU 94 Confidential Assistant to the Assistant Secretary for Postsecondary Education.
EDU 105 Secretary's Regional Representative.
EDU 106 Secretary's Regional Representative.
EDU 107 Secretary's Regional Representative.
EDU 108 Secretary's Regional Representative.
EDU 109 Secretary's Regional Representative.
EDU 111 Secretary's Regional Representative.
EDU 121 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 123 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs.
EDU 124 Secretary's Regional Representative.
EDU 125 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs.
EDU 129 Director, Center for International Education, to the Deputy Assistant Secretary for Higher Education Programs.
EDU 133 Special Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation.
EDU 135 Special Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 138 Special Assistant to the Deputy Under Secretary for Management.
EDU 140 Special Assistant to the Deputy Assistant Secretary for Operations, Office of Civil Rights.
EDU 147 Secretary's Regional Representative.
EDU 148 Executive Assistant to the Deputy Under Secretary for Management.
EDU 150 Special Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services.
EDU 155 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs.
EDU 156 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs.
EDU 159 Confidential Assistant to the Assistant Secretary for Postsecondary Education.
EDU 162 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 168 Special Assistant to the Deputy Secretary.
EDU 171 Director, Legislative Liaison, to the Deputy Assistant Secretary for Legislation.
EDU 173 Confidential Assistant to the Assistant Secretary for Civil Rights.
EDU 177 Special Assistant to the Assistant Secretary for Legislative and Public Affairs.
EDU 186 Staff Assistant to the Secretary's Regional Representative.
EDU 192 Deputy Director to the Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 196 Special Assistant to the Commissioner, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services.
EDU 198 Confidential Assistant to the Director, Issues Analysis Staff.
EDU 200 Director, Intergovernmental Affairs, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 201 Speical Assistant to the Chief of Staff.
EDU 202 Confidential Assistant to the Director, Intergovernmental Affairs.
EDU 209 Special Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 219 Congressional Liaison Specialist to the Director, Legislation and Congressional Affairs.
EDU 220 Confidential Assistant to the Director, Recognition Division, Office of Educational Research and Improvement.
EDU 226 Confidential Assistant to the Director, Public Affairs Service, Office of Planning, Budget and Evaluation.
EDU 230 Confidential Assistant to the Executive Secretary.
EDU 238 Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 241 Director, Division of Adult Education and Literacy, to the Assistant Secretary for Vocational and Adult Education.
EDU 245 Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 251 Special Assistant to the Director, Intergovernmental Affairs/Outreach Staff, Office of Intergovernmental and Interagency Affairs.

EDU 258 Special Assistant to the Director of Executive Programs.
EDU 262 Director, Interagency Operations Staff, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 263 Confidential Assistant to the Chief of Staff/Counsellor to the Secretary.
EDU 264 Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 266 Special Assistant to the Assistant Secretary for Postsecondary Education.
EDU 275 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 277 Confidential Assistant to the Director, Scheduling and Briefing Staff.
EDU 280 Executive Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 289 Confidential Assistant to the Director, Scheduling and Briefing Staff.
EDU 302 Confidential Assistant to the Chief of Staff.
EDU 306 Special Assistant to the Chief of Staff.
EDU 310 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 311 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 313 Special Assistant to the Deputy Under Secretary for Management.
EDU 314 Confidential Assistant to the Deputy Assistant Secretary for Legislation.
EDU 315 Congressional Liaison Specialist to the Director, Legislation and Congressional Affairs.
EDU 316 Director, Recognition Division, to the Assistant Secretary for Educational Research and Improvement.
EDU 318 Special Assistant to the Director, Interagency Operations Staff, Office of Intergovernmental and Interagency Affairs.
EDU 321 Confidential Assistant to the Director, Scheduling and Briefing Staff.
EDU 326 Special Assistant to the Deputy Assistant Secretary for Higher Education Programs, Office of Postsecondary Education.
EDU 330 Special Assistant to the Secretary's Regional Representative.
EDU 336 Staff Assistant to the Director, Regional Liaison Staff.
EDU 338 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 340 Deputy Secretary's Regional Representative.
EDU 343 Confidential Assistant to the Secretary's Regional Representative.
EDU 344 Special Assistant to the Deputy Under Secretary for Management.
EDU 345 Confidential Assistant to the Assistant Secretary for Civil Rights.
EDU 346 Deputy Secretary's Regional Representative.
EDU 347 Deputy Secretary's Regional Representative.
EDU 349 Special Assistant to the Director, Public Affairs Service, Office of Planning, Budget and Evaluation.
EDU 350 Deputy Secretary's Regional Representative.
EDU 352 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 356 Deputy Director to the Director, Office of Public Affairs.
EDU 360 Special Assistant to the Director, Office of Public Affairs.
EDU 365 Special Assistant to the Deputy Under Secretary for Management.
EDU 366 Special Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs, Office of Postsecondary Education.
EDU 367 Director, Presidential Academic Fitness Awards Staff, to the Director, Intergovernmental Affairs.
EDU 369 Special Assistant to the Chief of Staff.
EDU 370 Confidential Assistant to the Executive Assistant, Office of Elementary and Secondary Education.
EDU 373 Special Assistant to the Director of Communications/ Counsellor to the Secretary.
EDU 374 Confidential Assistant to the Director of Communications/ Counsellor to the Secretary.
EDU 375 Special Assistant to the Special Advisor to the Secretary for America 2000.
EDU 378 Confidential Assistant to the Deputy Secretary.
EDU 379 Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 380 Special Assistant to the Administrator for Management Services.
EDU 381 Special Assistant to the Director, Compensatory Education Programs, Office of Elementary and Secondary Education.
EDU 382 Special Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 383 Confidential Assistant to the Assistant Secretary for Human Resources and Administration.
EDU 384 Confidential Assistant to the Director, Corporate Liaison Staff.
EDU 387 Confidential Assistant to the Deputy Under Secretary for Management.
EDU 388 Special Assistant to the Special Advisor to the Secretary for America 2000.
EDU 389 Deputy Director to the Director, Scheduling and Briefing Staff.
EDU 390 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 391 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 392 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs.
EDU 393 Confidential Assistant to the Chief of Staff.
EDU 394 Confidential Assistant to the Director, Scheduling and Briefing Staff.
EDU 396 Special Assistant to the Assistant Secretary for Human Resources and Administration.
EDU 397 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs.
EDU 398 Special Assistant to the Director, Corporate Liaison Staff.
EDU 399 Special Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 401 Confidential Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 403 Confidential Assistant to the Acting Assistant Secretary for Management and Budget/Chief Financial Officer.
EDU 404 Deputy Secretary's Regional Representative.
EDU 406 Special Assistant to the Acting Assistant Secretary for Management and Budget/Chief Financial Officer.
EDU 407 Special Assistant to the Chief of Staff to the Deputy Secretary.
EDU 408 Confidential Assistant to the Assistant Secretary for Policy and Planning.
EDU 409 Special Assistant to the Acting Assistant Secretary for Management and Budget/Chief Financial Officer.
EDU 410 Special Assistant to the Director of Communications/ Counsellor to the Secretary.

Section 213.3318 Environmental Protection Agency

EPA 5 Confidential Assistant to the Deputy Administrator.
EPA 18 Special Assistant to the Deputy Administrator.

EPA 39 Confidential Assistant to the Associate Administrator for Congressional and Legislative Affairs.
EPA 44 Staff Assistant to the Director, Office of Congressional Liaison.
EPA 53 Special Assistant to the Deputy Administrator.
EPA 54 Congressional Liaison Specialist to the Director, Office of Congressional Liaison.
EPA 56 Special Assistant to the Associate Administrator for Congressional and Legislative Affairs.
EPA 58 Director, Congressional Liaison, Division, to the Associate Administrator for Congressional and Legislative Affairs.
EPA 64 Congressional Liaison Specialist to the Director, Congressional Liaison Division.
EPA 94 Special Assistant to the Regional Administrator.
EPA 97 Special Assistant to the Deputy Associate Administrator for Communications and Public Affairs.
EPA 100 Staff Assistant to the Director, Regional Operations Division.
EPA 102 Staff Assistant to the Special Assistant to the Administrator.
EPA 105 Special Assistant to the Assistant Administrator for Policy, Planning and Evaluation.
EPA 112 Staff Assistant to the Director, External Relations and Education Division, Office of Communications and Public Affairs.
EPA 126 Deputy Associate Administrator to the Associate Administrator for Communications and Public Affairs.
EPA 127 Special Assistant to the Assistant Administrator for Administration and Resources Management.
EPA 129 Program Advisor to the Assistant Administrator for International Activities.
EPA 130 Staff Assistant to the Assistant Administrator for Pesticides and Toxic Substances.
EPA 131 Special Assistant to the Assistant Administrator for Water.
EPA 132 Program Advisor to the Assistant Administrator for Administration and Resources Management.
EPA 134 Program Advisor to the Assistant Administrator for Solid Waste and Emergency Response.
EPA 135 Chief Scheduler to the Chief of Staff.
EPA 136 Program Advisor to the Assistant Administrator for Research and Development.
EPA 138 Director, Executive Secretariat, to the Chief of Staff.
EPA 139 Staff Assistant to the Assistant Administrator for Pesticides and Toxic Substances.
EPA 142 Staff Assistant to the Director, External Relations and Education Division, Office of Communications and Public Affairs.

Section 213.3319 Administrative Conference of the United States

ACUS 2 Confidential Assistant to the Chairman.
ACUS 4 Confidential Assistant to the Chairman.

Section 213.3320 Inter-American Foundation

IAF 16 President.
IAF 17 Executive Vice President for Operations.

Section 213.3322 Interstate Commerce Commission

ICC 2 Confidential Assistant to a Commissioner.
ICC 6 Confidential Assistant to a Commissioner.
ICC 27 Staff Advisor (Economics) to a Commissioner.
ICC 29 Staff Advisor (Management) to a Commissioner.
ICC 52 Deputy Director to the Director, Office of Congressional and Legislative Affairs.
ICC 53 Attorney-Advisor (Transportation) to a Commissioner.
ICC 54 Confidential Assistant to a Commissioner.
ICC 56 Congressional Liaison Representative to the Director, Office of Congressional and Legislative Affairs.
ICC 57 Special Assistant to the Director, Office of Congressional and Legislative Affairs.
ICC 58 Special Assistant to the Chairman.
ICC 59 Confidential Assistant to the Chairman.

Section 213.3325 Tax Court of the United States

TCOUS 40 Secretary and Confidential Assistant to the Judge.
TCOUS 41 Secretary and Confidential Assistant to the Judge.
TCOUS 42 Secretary and Confidential Assistant to the Judge.
TCOUS 43 Secretary and Confidential Assistant to the Judge.
TCOUS 44 Secretary and Confidential Assistant to the Judge.
TCOUS 45 Secretary and Confidential Assistant to the Judge.
TCOUS 46 Secretary and Confidential Assistant to the Judge.
TCOUS 47 Secretary and Confidential Assistant to the Judge.
TCOUS 48 Secretary and Confidential Assistant to the Judge.
TCOUS 49 Secretary and Confidential Assistant to the Judge.
TCOUS 50 Secretary and Confidential Assistant to the Judge.
TCOUS 51 Secretary and Confidential Assistant to the Judge.
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TCOUS 56 Secretary and Confidential Assistant to the Judge.
TCOUS 57 Secretary and Confidential Assistant to the Judge.
TCOUS 58 Secretary and Confidential Assistant to the Judge.
TCOUS 59 Secretary and Confidential Assistant to the Judge.
TCOUS 60 Secretary and Confidential Assistant to the Judge.
TCOUS 61 Secretary and Confidential Assistant to the Judge.
TCOUS 62 Secretary and Confidential Assistant to the Judge.
TCOUS 63 Secretary and Confidential Assistant to the Judge.
TCOUS 64 Secretary and Confidential Assistant to the Judge.
TCOUS 65 Secretary and Confidential Assistant to the Judge.
TCOUS 66 Trial Clerk to the Judge.
TCOUS 67 Trial Clerk to the Judge.
TCOUS 68 Trial Clerk to the Judge.
TCOUS 69 Trial Clerk to the Judge.
TCOUS 70 Trial Clerk to the Judge.
TCOUS 72 Trial Clerk to the Judge.
TCOUS 73 Trial Clerk to the Judge.
TCOUS 75 Trial Clerk to the Judge.
TCOUS 76 Trial Clerk to the Judge.
TCOUS 78 Trial Clerk to the Judge.
TCOUS 80 Secretary and Confidential Assistant to the Judge.

Section 213.3327 Department of Veterans Affairs.

VA 2 Special Assistant to the Secretary.
VA 16 Special Assistant to the Assistant Secretary for Human Resources and Information.
VA 50 Special Assistant to the Secretary.
VA 55 Special Assistant to the Deputy Assistant Secretary for Congressional Affairs.
VA 56 Special Assistant to the Assistant Secretary for Congressional and Public Affairs.
VA 57 Special Assistant to the Assistant Secretary for Acquisition and Facilities.
VA 58 Special Assistant to the Assistant Secretary for Acquisition and Facilities.

VA 59 Special Assistant to the Assistant Secretary for Acquisition and Facilities.
VA 60 Special Assistant to the Secretary.
VA 61 Special Assistant to the Deputy Assistant Secretary for Policy.
VA 62 Special Assistant to the Assistant Secretary for Finance and Information Resources Management.
VA 64 Special Assistant to the Assistant Secretary for Policy and Planning.
VA 65 Special Assistant to the Director, National Cemetery System.
VA 66 Special Assistant to the Assistant Secretary for Finance and Information Resources Management.
VA 67 Special Assistant to the Secretary.

Section 213.3328 United States Information Agency

USIA 12 Special Assistant to the Director, Office of Congressional Liaison.
USIA 14 Special Assistant to the Associate Director for Programs.
USIA 22 Director, New York Foreign Press Center, to the Associate Director for Programs.
USIA 26 Staff Assistant to the Associate Director for Programs.
USIA 33 Staff Assistant to the Director, Office of Public Liaison.
USIA 37 Staff Specialist to the Director, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs.
USIA 55 Special Assistant to the Associate Director for Programs.
USIA 57 Special Assistant to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs.
USIA 67 Chief, Voluntary Visitor Division, to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs.
USIA 73 Executive Assistant (Cultural Property) to the Director, Creative Arts Division, Bureau of Educational and Cultural Affairs.
USIA 77 White House Liaison Officer to the Director.
USIA 80 Special Assistant (Writer-Editor) to the Director, Office of Public Liaison.
USIA 87 Staff Assistant to the Director, Office of Public Liaison.
USIA 89 Executive Director to the Chairman, Advisory Board for Radio Broadcasting to Cuba, Voice of America.
USIA 93 Program Assistant to the Deputy Director.
USIA 103 Equal Employment Manager to the Associate Director for Management.
USIA 104 Special Assistant to the Director, Private Sector Committees.
USIA 107 Public Affairs Assistant to the Director, Voice of America.
USIA 111 Special Assistant to the Associate Director for Programs.
USIA 112 Special Assistant to the Director, Office of Program Coordination and Development.
USIA 116 Special Assistant to the Associate Director for Programs.
USIA 117 Special Assistant to the Associate Director for Broadcasting.
USIA 118 Senior Advisor to the Director.
USIA 119 Senior Advisor to the Associate Director for Policy and Programs.

Section 213.3330 Securities and Exchange Commission

SEC 3 Confidential Assistant to a Commissioner.
SEC 4 Confidential Assistant to a Commissioner.
SEC 5 Confidential Assistant to a Commissioner.
SEC 8 Secretary (Office Automation) to the Chief Accountant.
SEC 9 Secretary (Office Automation) to the General Counsel.
SEC 11 Confidential Assistant to the Chairman.
SEC 15 Secretary (Office Automation) to the Director, Division of Market Regulation.
SEC 16 Secretary to the Director, Division of Enforcement.
SEC 18 Secretary (Office Automation) to the Director, Division of Investment Management.
SEC 19 Secretary (Office Automation) to the Director, Division of Corporation Finance.
SEC 24 Secretary (Typing) to the Chief Economist.
SEC 25 Research Specialist to the Chairman.
SEC 27 Secretary (Typing) to the Director, Office of International Affairs.
SEC 28 Research Analyst to the Chairman.
SEC 29 Secretary (Typing) to the Director of Market Regulation.
SEC 31 Public Affairs Specialist to the Director of Public Affairs.
SEC 32 Confidential Assistant to the Director of Public Affairs.
SEC 33 Confidential Assistant to the Regional Administrator.

Section 213.3331 Department of Energy

DOE 40 Legal Advisor to a Member, Federal Energy Regulatory Commission
DOE 60 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 68 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 77 Staff Assistant to the Secretary.
DOE 105 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 106 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 186 Special Assistant to the Director, Public Affairs Division, Federal Energy Regulatory Commission.
DOE 197 Director, Congressional Affairs and State Liaison Division, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 248 Staff Assistant to the Chief of Staff, Federal Energy Regulatory Commission.
DOE 249 Special Assistant to the Administrator, Economic Regulatory Administration.
DOE 250 Director, Public and Intergovernmental Affairs Division, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 251 Special Assistant to the Director, Congressional Affairs and State Liaison Division, Federal Energy Regulatory Commission.
DOE 258 Staff Assistant to the Deputy Under Secretary for Policy, Planning and Analysis.
DOE 292 Chauffeur to the Secretary.
DOE 331 Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 373 Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 374 Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 376 Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 377 Staff Assistant to the Principal Deputy Assistant Secretary for Conservation and Renewable Energy.
DOE 381 Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 384 Staff Assistant to the Deputy Under Secretary for Policy, Planning and Analysis.
DOE 397 Staff Assistant to the Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.
DOE 405 Deputy Director to the Director, Congressional Affairs and State Liaison Division, Federal Energy Regulatory Commission.

DOE 406 Director, Office of Consumer and Public Liaison, to the Deputy Assistant Secretary for Intergovernmental and Public Liaison.
DOE 413 Legislative Affairs Specialist to the Deputy Assistant Secretary for House Liaison.
DOE 416 Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 423 Staff Assistant to the Assistant Secretary for Environment, Safety and Health.
DOE 435 Deputy Director to the Director, Office of Minority Economic Impact.
DOE 447 Special Assistant to the Assistant Secretary for Defense Programs.
DOE 452 Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 455 Staff Assistant to the Deputy Under Secretary for Policy, Planning and Analysis.
DOE 457 Staff Assistant to the Deputy Under Secretary for Policy, Planning and Analysis.
DOE 459 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison.
DOE 460 Staff Assistant to the General Counsel.
DOE 462 Public Affairs Specialist to the Press Secretary.
DOE 469 Staff Assistant to the Assistant Secretary for Nuclear Energy.
DOE 472 Special Assistant to the Chief of Staff.
DOE 474 Director of the Executive Secretariat to the Director of Administration and Human Resource Management.
DOE 476 Staff Assistant to the Chief of Staff.
DOE 479 Associate Deputy Assistant Secretary for Legislative Strategies to the Assistant Secretary for Congressional and Intergovernmental Affairs.
DOE 480 Special Assistant to the Associate Director for Human Resource Management.
DOE 484 Staff Assistant to the Director, Office of Nuclear Safety.
DOE 487 Staff Assistant to the Director, Office of Civilian Radioactive Waste Management.
DOE 488 Special Assistant to the Assistant Secretary for Defense Programs.
DOE 490 Director of Scheduling and Logistics to the Secretary.
DOE 491 Public Affairs Specialist to the Director, Office of Public Affairs.
DOE 494 Staff Assistant to the Senior Policy Specialist, Office of New Production Reactors.
DOE 497 Staff Assistant to the Director, Office of Civilian Radioactive Waste Management.
DOE 498 Staff Assistant to the Superconducting Super Collider Project Manager, Office of Engineering Research.
DOE 501 Staff Assistant to the Assistant Secretary for Environment, Safety and Health.
DOE 504 Staff Assistant to the Director, Office of Nuclear Safety.
DOE 505 Staff Assistant to the Director, Office of Management and Resources.
DOE 508 Deputy Director for Education Initiatives to the Director, Office of Special Projects.
DOE 509 Staff Assistant to the Director of Administration and Human Resource Management.
DOE 510 Staff Assistant to the Director of Administration and Human Resource Management.
DOE 514 Staff Assistant to the Director, Office of Special Projects.
DOE 519 Staff Assistant to the Special Assistant to the Secretary.
DOE 520 Staff Assistant to the Special Assistant and Director, Office of Community Services, Office of Administration and Human Resource Management.
DOE 521 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison.
DOE 523 Special Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 524 Congressional Liaison (Legislative Affairs Specialist) to the Deputy Assistant Secretary for Senate Liaison.
DOE 525 Special Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 526 Special Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 527 Intergovernmental Affairs Specialist to the Deputy Assistant Secretary for Intergovernmental and Public Liaison.
DOE 528 Director, Office of External Affairs, to the Deputy Assistant Secretary for Intergovernmental and Public Liaison.
DOE 530 Staff Assistant to the Director of the Executive Secretariat.
DOE 531 Staff Assistant to the Deputy Assistant Secretary for International Affairs.
DOE 532 Staff Assistant to the Deputy Secretary.
DOE 533 Staff Assistant to the Director, Office of Special Projects.
DOE 534 Special Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 535 Special Assistant to the Deputy Assistant Secretary for International Affairs.
DOE 536 Legislative Affairs Liaison Officer to the Deputy Assistant Secretary for Senate Liaison.
DOE 537 Legislative Affairs Specialist to the Deputy Assistant Secretary for House Liaison.
DOE 539 Legislative Affairs Liaison Officer to the Deputy Assistant Secretary for House Liaison.
DOE 540 Special Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 542 Deputy Assistant Secretary for House Liaison to the Assistant Secretary for Congressional and Intergovernmental Affairs.
DOE 543 Writer-Editor to the Director, Office of Public Affairs.
DOE 544 Legislative Affairs Specialist to the Deputy Assistant Secretary for House Liaison.
DOE 545 Special Projects Liaison Specialist to the Director, Office of Consumer and Public Liaison.
DOE 546 Legislative Affairs Specialist to the Director, Office of Congressional Operations.
DOE 549 Special Assistant to the Assistant Secretary for Fossil Energy.
DOE 550 Special Assistant to the Secretary, reporting to the Chief of Staff.
DOE 551 Special Projects Officer to the Director, Office of Planning and Resource Management.
DOE 552 Staff Assistant to the Deputy Assistant Secretary for Planning and Administration.
DOE 553 Staff Assistant to the Principal Associate Deputy Under Secretary for Policy, Planning and Analysis.
DOE 554 Staff Assistant to the Director, Office of Special Projects.
DOE 555 Special Assistant to the Assistant Secretary for Domestic and International Energy Policy.
DOE 556 Staff Assistant to the Principal Deputy Assistant Secretary for Domestic and International Energy Policy.
DOE 557 Public Affairs Coordinator to the Director, Office of Policy and Program Information.
DOE 558 Staff Assistant to the Director of Scheduling and Logistics.

Section 213.3332 Small Business Administration

SBA 12 Special Assistant to the Administrator.
SBA 41 Special Assistant to the Associate Deputy Administrator for Financial Assistance.
SBA 45 Special Assistant to the Associate Administrator for Procurement Assistance.

SBA 51 Special Assistant to the Chief of Staff.
SBA 59 Deputy Assistant Administrator for Public Communications.
SBA 66 Special Assistant to the Regional Administrator.
SBA 69 Special Assistant to the Regional Administrator.
SBA 71 Special Assistant to the Regional Administrator.
SBA 72 Special Assistant to the Regional Administrator.
SBA 73 Special Assistant to the Regional Administrator.
SBA 75 Special Assistant to the Associate Deputy Administrator for Finance, Investment, and Procurement.
SBA 90 Special Assistant to the Administrator.
SBA 134 Special Assistant to the Associate Administrator for Business Development.
SBA 141 Special Assistant to the Associate Deputy Administrator for Special Programs.
SBA 145 Director, Office of International Trade, to the Associate Deputy Administrator for Special Programs.
SBA 150 Special Assistant to the Administrator.
SBA 151 Special Assistant to the Chief of Staff.
SBA 154 Public Affairs Advisor to the Administrator.
SBA 160 Special Assistant to the Director, Office of International Trade.
SBA 162 Special Assistant to the Regional Administrator.
SBA 164 Special Assistant to the Associate Deputy Administrator for Management and Administration.

Section 213.3333 Federal Deposit Insurance Corporation

FDIC 2 Secretary to a Member.
FDIC 7 Special Assistant to the Director, Congressional Liaison Staff.
FDIC 9 Legislative Advisor to the Director, Office of Legislative Affairs.
FDIC 10 Legislative Advisor to the Director, Office of Legislative Affairs.
FDIC 11 Administrative Assistant to the President and Chief Executive Officer, Resolution Trust Corporation.
FDIC 12 General Counsel.
FDIC 13 Director, Office of Corporate Communication.
FDIC 14 Deputy Director, Office of Legislative Affairs.

Section 213.3334 Federal Trade Commission

FTC 2 Director, Office of Public Affairs to the Chairman.
FTC 6 Director, Office of Congressional Relations to the Chairman.
FTC 12 Special Assistant to the Chairman.
FTC 14 Congressional Liaison Specialist to the Chairman.
FTC 18 Executive Secretary to the Chairman.

Section 213.3337 General Services Administration.

GSA 11 Executive Assistant to the Administrator.082
GSA 44 Staff Assistant to the Chief of Staff.
GSA 51 Confidential Assistant to the Deputy Administrator.
GSA 64 Confidential Assistant to the Associate Administrator for Operations and Industry Relations.
GSA 65 Confidential Assistant to the Commissioner, Information Resources Management Service.
GSA 66 Special Assistant to the Commissioner, Public Buildings Service.
GSA 69 Confidential Assistant to the Associate Administrator for Congressional Affairs.
GSA 70 Special Assistant to the Associate Administrator for Public Affairs.
GSA 75 Intergovernmental Relations Officer to the Associate Administrator for Congressional Affairs.
GSA 79 Confidential Assistant to the Regional Administrator.
GSA 82 Confidential Assistant to the Regional Administrator.
GSA 86 Confidential Assistant to the Regional Administrator.
GSA 88 Confidential Assistant to the Regional Administrator.
GSA 89 Congressional Relations Officer to the Associate Administrator for Congressional Affairs.
GSA 90 Deputy Associate Administrator for Congressional and Intergovernmental Affairs to the Associate Administrator for Congressional Affairs.
GSA 93 Executive Assistant to the Associate Administrator for Operations.
GSA 94 Staff Assistant to the Associate Administrator for Congressional Affairs.
GSA 97 Special Assistant to the Commissioner, Federal Property Resources Service.
GSA 98 Special Assistant to the Director of Child Care and Development Programs.
GSA 99 Confidential Assistant to the Regional Administrator.
GSA 100 Director, Office of the Executive Secretariat, to the Administrator.
GSA 101 Staff Assistant for Special Projects to the Administrator.
GSA 103 Staff Assistant to the Director of Child Care and Development Programs.
GSA 106 Confidential Assistant to the Associate Administrator for Public Affairs.
GSA 109 Confidential Assistant to the Regional Administrator.
GSA 110 Special Assistant to the Comptroller.
GSA 113 Senior Advisor to the Regional Administrator.
GSA 114 Confidential Assistant to the Regional Administrator.
GSA 117 Director of Regional Operations to the Associate Administrator for Operations and Industry Relations.
GSA 119 Confidential Assistant to the Regional Administrator.
GSA 123 Confidential Assistant to the Regional Administrator.
GSA 124 Special Assistant to the Director of Child Care and Development Programs.
GSA 125 Deputy Associate Administrator for Policy Analysis.

Section 213.3338 Federal Communications Commission

FCC 11 Special Assistant to the Director, Office of Public Affairs.
FCC 19 Confidential Staff Assistant to the General Counsel.
FCC 21 Special Assistant to the Chief, Common Carrier Bureau.

Section 213.3339 U.S. International Trade Commission

ITC 1 Confidential Assistant to a Commissioner.
ITC 5 Confidential Assistant to a Commissioner.
ITC 6 Staff Assistant (Legal) to a Commissioner.
ITC 7 Staff Assistant (Economics) to a Commissioner.
ITC 9 Confidential Assistant to a Commissioner.
ITC 13 Staff Assistant (Economics) to a Commissioner.
ITC 14 Staff Assistant (Legal) to a Commissioner.
ITC 15 Confidential Assistant to a Commissioner.
ITC 17 Staff Assistant (Legal) to a Commissioner.
ITC 18 Confidential Assistant to a Commissioner.
ITC 19 Staff Assistant (Economics) to a Commissioner.
ITC 20 Staff Assistant (Economics) to a Commissioner.
ITC 22 Staff Assistant (Legal) to a Commissioner.
ITC 25 Staff Assistant to the Chairman.

ITC 27 Congressional Liaison to the Chairman.
ITC 29 Staff Assistant to a Commissioner.
ITC 30 Confidential Assistant to a Commissioner.
ITC 31 Executive Assistant to a Commissioner.
ITC 32 Special Assistant to a Commissioner.
ITC 33 Special Assistant to a Commissioner.
ITC 34 Staff Assistant (Legal) to a Commissioner.

Section 213.3340 National Archives and Records Administration

NARA 3 Presidential Diarist to the Archivist of the United States.
NARA 4 Assistant to the Presidential Diarist.

Section 213.3341 National Labor Relations Board

NLRB 3 Confidential Assistant to a Board Member.
NLRB 6 Confidential Assistant to a Board Member.

Section 213.3342 Export-Import Bank of the United States

EXIM 1 Executive Assistant to the President and Chairman.
EXIM 2 Personal and Confidential Assistant to the First Vice President and Vice Chairman
EXIM 3 Administrative Assistant to a Director.
EXIM 12 Personal and Confidential Assistant to the First Vice President and Vice Chairman.
EXIM 15 Secretary (Typing) to the President and Chairman.
EXIM 30 Administrative Assistant to a Director.
EXIM 32 Special Assistant to the First Vice President and Vice Chairman.
EXIM 33 Secretary (Typing) to the Vice President for Congressional and External Affairs.
EXIM 35 Vice President for Congressional and External Affairs.
EXIM 36 General Counsel.

Section 213.3343 Farm Credit Administration

FCA 1 Special Assistant to the Chairman.
FCA 6 Executive Assistant to a Member.
FCA 8 Secretary to the Board.
FCA 10 Public Affairs Specialist to the Director, Office of Congressional and Public Affairs.
FCA 11 Special Assistant to a Member.
FCA 12 Public Affairs Specialist to the Director, Office of Congressional Public Affairs.
FCA 13 Special Assistant to a Member
FCA 14 Director, Congressional and Public Affairs.

Section 213.3344 Occupational Safety and Health Review Commission

OSHRC 2 Special Assistant to the Chairman.
OSHRC 3 Confidential Assistant to a Commissioner.
OSHRC 6 Confidential Assistant to a Commissioner.
OSHRC 8 Counsel to a Commissioner.
OSHRC 11 Counsel to a Commissioner.

Section 213.3346 Selective Service System

SSS 9 Assistant Director of Congressional and Intergovernmental Affairs.
SSS 14 Deputy Assistant Director of Congressional and Intergovernmental Affairs.

Section 213.3351 Federal Mine Safety and Health Review Commission

FM 1 Secretary (Steno) to a Commissioner.
FM 3 Confidential Secretary to a Commissioner.
FM 7 Attorney-Advisor (General) to a Commissioner.
FM 8 Attorney-Advisor (General) to a Commissioner.
FM 9 Attorney-Advisor (General) to a Commissioner.
FM 15 Confidential Assistant to a Commissioner.
FM 16 Confidential Assistant to the Vice Chairman.

Section 213.3352 Government Printing Office

GPO 18 Chief of Staff to the Public Printer.
GPO 19 Special Assistant to the Chief of Staff.

Section 213.3356 Commission on Civil Rights

CCR 1 Special Assistant to the Staff Director.
CCR 9 Executive Assistant to the Staff Director.
CCR 12 Special Assistant to a Commissioner.
CCR 13 Special Assistant to a Commissioner.
CCR 15 Special Assistant to a Commissioner.
CCR 23 Special Assistant to a Commissioner.
CCR 28 Special Assistant to a Commissioner.
CCR 29 Special Assistant to a Commissioner.
CCR 30 Special Assistant to a Commissioner.
CCR 32 Special Assistant to a Commissioner.

Section 213.3357 National Credit Union Administration

NCUA 9 Staff Assistant to the Chairman.
NCUA 12 Executive Assistant to the Vice Chairman.
NCUA 18 Special Assistant to the Chairman.
NCUA 20 Executive Assistant to a Board Member.
NCUA 21 Secretary (Typing) to a Board Member.
NCUA 22 Executive Director.

Section 213.3359 ACTION

ACT 29 Special Assistant to the Director.
ACT 45 Director of Public Affairs to the Director.
ACT 72 Assistant Director for Older Americans Volunteer Programs to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 79 Assistant Director for VISTA/Student Community Service Programs to the Associate Director for Domestic and Anti-Poverty Operations.

Section 213.3360 Consumer Product Safety Commission

CPSC 7 Special Assistant (Legal) to a Commissioner.
CPSC 12 Special Assistant (Legal) to the Chairman.
CPSC 16 Director, Office of Congressional Relations, to the Chairman.
CPSC 23 Special Assistant to a Commissioner.
CPSC 25 Staff Assistant to a Commissioner.
CPSC 27 Supervisory Public Affairs Specialist to the Executive Director
CPSC 38 Staff Assistant to the Chairman.
CPSC 48 Secretary (Office Automation) to the Chairman.
CPSC 49 Special Assistant to a Commissioner.
CPSC 50 Staff Assistant to a Commissioner.

Section 213.3364 U.S. Arms Control and Disarmament Agency

ACDA 2 Secretary (Steno) to the Deputy Director.
ACDA 4 Secretary (Steno) to the Assistant Director for Verification and Intelligence.
ACDA 5 Secretary (Steno) to the Assistant Director for Nuclear and Weapons Control.
ACDA 10 Deputy Director, Office of Congressional Affairs.
ACDA 11 Congressional Affairs Specialist to the Director, Office of Congressional Affairs.

ACDA 15 Secretary (Typing) to the Chairman, General Advisory Committee.
ACDA 17 Secretary (OA/Steno) to the Director.
ACDA 20 Special Assistant to the Director of Public Affairs.
ACDA 22 Secretary (Typing) to the Assistant Director for Multilateral Affairs.
ACDA 23 Staff Assistant to the Assistant Director for Multilateral Affairs.
ACDA 27 Special Assistant to the Director.
ACDA 29 Congressional Affairs Specialist to the Director of Congressional Affairs.

Section 213.3367 Federal Maritime Commission

FMC 2 Counsel to a Commissioner.
FMC 4 Counsel to a Commissioner.
FMC 5 Confidential Assistant to the Counsel to a Commissioner.
FMC 7 Secretary (Typing) to a Commissioner.
FMC 8 Special Assistant to a Commissioner.
FMC 10 Special Assistant to a Commissioner.
FMC 22 Special Assistant to the Chairman.
FMC 26 Executive Assistant to the Chairman.
FMC 27 Assistant to the Chairman for International Affairs and Policy
FMC 28 Secretary (Typing) to the Chairman.

Section 213.3368 Agency for International Development

AID 4 Executive Assistant to the Administrator.
AID 20 Special Assistant to the Deputy Assistant Administrator, Bureau for Asia, the Near East and Europe
AID 68 Special Assistant to the Assistant Administrator for Private Enterprise.
AID 76 Public Affairs Specialist to the Director, Office of Public Liaison.
AID 82 Chief, Congressional Liaison Division, to the Deputy Assistant Administrator, Bureau of Legislative Affairs.
AID 89 Special Assistant to the Assistant Administrator, Bureau for Private Enterprise.
AID 92 Deputy Director (Program Manager), Office of Private and Voluntary Cooperation, to the Deputy Assistant Administrator, Bureau for Food and Peace and Voluntary Assistance.
AID 93 Special Assistant to the Administrator.
AID 94 Public Affairs Specialist (Deputy Director, Office of Public Liaison) to the Deputy Assistant Administrator, Bureau for External Affairs.
AID 96 Special Assistant to the Assistant Administrator, Bureau for External Affairs.
AID 97 Special Assistant to the Assistant Administrator, Bureau for Latin America and the Caribbean.
AID 98 Supervisory Public Affairs Specialist to the Deputy Assistant Administrator, Bureau for External Affairs.
AID 100 Public Affairs Specialist to the Special Assistant to the Assistant Administrator, Bureau for External Affairs.
AID 102 Congressional Liaison Officer to the Chief, Congressional Liaison Division, Bureau for Legislative Affairs.
AID 104 Special Assistant to the Director, Office of Trade and Investment.
AID 105 Special Assistant to the Administrator.
AID 106 Director, White House Liaison, to the Administrator.
AID 107 Public Affairs Specialist to the Chief, Public Liaison Division, Office of External Affairs.
AID 108 Director, Office of Women in Development, to the Assistant Administrator, Bureau of Research and Development.
AID 109 Special Assistant to the Director, White House Liaison.
AID 111 Director, Office of Foreign Disaster Assistance, to the Assistant Administrator, Bureau for Food and Humanitarian Assistance.
AID 112 Confidential Assistant to the Assistant Administrator, Bureau for Legislative Affairs.
AID 113 Public Affairs Specialist to the Deputy Director, Office of External Affairs.
AID 115 Confidential Assistant to the Executive Secretary.

Section 213.3371 Office of Government Ethics

OGE 2 Executive Secretary to the Director.

Section 213.3373 U.S. Trade and Development Program

TDP 1 Congressional Liaison Officer to the Director.
TDP 2 Special Assistant to the Director.
TDP 3 International Trade Specialist to the Director

Section 213.3377 Equal Employment Opportunity Commission

EEOC 2 Special Assistant to the Chairman.
EEOC 5 Confidential Assistant to a Member
EEOC 9 Special Assistant to the Chairman.
EEOC 17 Special Assistant to a Member.
EEOC 18 Media Contact Specialist to the Director, Office of Communications and Legislative Affairs.
EEOC 22 Director, Legislative Affairs Staff, to the Director, Office of Communications and Legislative Affairs.
EEOC 23 Special Assistant to a Member.
EEOC 25 Media Contact Specialist (Bilingual) to the Director, Office of Communications and Legislative Affairs.
EEOC 40 Legislative Affairs Specialist to the Director, Office of Communications and Legislative Affairs.

Section 213.3379 Commodity Futures Trading Commission

CFTC 1 Administrative Assistant to the Chairman.
CFTC 3 Administrative Assistant to a Commissioner.
CFTC 4 Administrative Assistant to a Commissioner.
CFTC 5 Administrative Assistant to a Commissioner
CFTC 12 Special Assistant to a Commissioner.
CFTC 21 Government Affairs Officer to the Chairman.
CFTC 24 Special Assistant to the General Counsel.

Section 213.3382 National Foundation on the Arts and the Humanities National Endowment for the Arts

NEA 9 Congressional Liaison Officer to the Chairman.
NEA 23 Director of Policy, Planning and Research to the Chairman
NEA 50 Special Projects Coordinator (Development) to the Senior Deputy Chairman.
NEA 62 Director of Public Affairs to Chairman.
NEA 67 Special Assistant to the Director of Policy, Planning and Research.
NEA 69 Executive Director, President's Committee on the Arts and Humanities.

National Endowment for the Humanities.

NEH 46 Special Assistant to the Deputy Chairman.
NEH 63 Special Assistant to the Chairman, reporting to the Deputy Chairman.
NEH 64 Special Assistant to the Director of Communications Policy.

Section 213.3384 Department of Housing and Urban Development

HUD 33 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 35 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 36 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 37 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 39 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 41 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 42 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 45 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 60 Director of Executive Scheduling to the Deputy Assistant Secretary for Executive Services.
HUD 120 Special Assistant (Speech Writer) to the Deputy Assistant Secretary for Public Affairs.
HUD 143 Special Assistant to the Director, Executive Secretariat.
HUD 163 Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs.
HUD 164 Intergovernmental Relations Officer to the Deputy Assistant Secretary for Legislation.
HUD 172 Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 174 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 175 Assistant for Congressional Relations to the Assistant Secretary for Congressional and Intergovernmental Relations.
HUD 177 Special Assistant to the Secretary.
HUD 182 Special Assistant to the Assistant Secretary for Housing.
HUD 187 Special Assistant to the Deputy Assistant Secretary for Single Family Housing Programs.
HUD 190 Special Assistant to the Assistant Secretary for Housing.
HUD 195 Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 200 Staff Assistant to the Director, Executive Secretariat.
HUD 202 Executive Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations.
HUD 203 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 205 Deputy Assistant Secretary for Intergovernmental Relations to the Assistant Secretary for Congressional and Intergovernmental Relations.
HUD 208 Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 211 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 215 Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs.
HUD 216 Special Assistant to the Assistant Secretary for Administration.
HUD 217 Special Assistant to the Deputy Assistant Secretary for Policy Development.
HUD 224 Special Assistant to the Regional Administrator.
HUD 228 Executive Assistant to the Regional Administrator.
HUD 238 Special Assistant to the Secretary.
HUD 240 Executive Assistant to the Assistant Secretary for Public Affairs.
HUD 247 Executive Assistant to the Assistant Secretary for Housing.
HUD 249 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations.
HUD 260 Executive Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 263 Special Assistant to the Assistant Secretary for Public Affairs.
HUD 268 Special Assistant to the General Deputy Assistant Secretary for Housing.
HUD 274 Special Assistant to the Secretary.
HUD 275 Special Assistant to the Deputy Secretary.
HUD 281 Special Assistant to the Regional Administrator.
HUD 286 Staff Assistant to the Deputy Assistant Secretary for Finance and Management.
HUD 288 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 292 Special Assistant to the Deputy Assistant Secretary for Economic Development.
HUD 293 Special Assistant to the President, Government National Mortgage Association.
HUD 320 Deputy Assistant Secretary for Finance and Management to the Assistant Secretary for Administration.
HUD 322 Special Assistant to the Regional Administrator.
HUD 323 Executive Assistant to the Assistant Secretary for Housing.
HUD 324 Special Assistant to the Regional Administrator.
HUD 328 Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs.
HUD 331 Staff Assistant to the Secretary.
HUD 335 Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 336 Special Assistant to the Director, Executive Secretariat.
HUD 338 Special Assistant to the Deputy Assistant Secretary for Single Family Housing Programs.
HUD 339 Special Assistant to the Regional Administrator.
HUD 351 Special Assistant to the Regional Administrator.
HUD 366 Special Assistant to the Deputy Assistant Secretary for Operations, Office of Housing.
HUD 368 Special Assistant to the Regional Administrator.
HUD 369 Special Assistant to the Assistant Secretary for Housing.
HUD 370 Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 372 Special Assistant to the Deputy Assistant Secretary for Executive Services.
HUD 373 Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs.
HUD 374 Executive Assistant to the Assistant to the Secretary for Field Management.
HUD 377 Special Assistant to the Regional Administrator.
HUD 379 Assistant Director, Office of Executive Secretariat, to the Special Assistant to the Secretary/Director, Executive Secretariat.
HUD 381 Special Assistant to the Secretary.
HUD 384 Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 385 Special Assistant to the Assistant Secretary for Public Affairs.
HUD 392 Special Assistant to the Regional Administrator.
HUD 394 Staff Assistant to the Deputy Assistant Secretary for Grant Programs.
HUD 400 Deputy Assistant Secretary for Legislation to the Assistant Secretary for Congressional and Intergovernmental Relations.
HUD 401 Special Assistant to the Assistant Secretary for Housing.
HUD 402 Special Assistant to the Assistant Secretary for Housing.
HUD 407 Executive Assistant to the Regional Administrator.
HUD 408 Special Projects Coordinator to the Deputy Assistant Secretary for Policy, Financial Management and Administration.

HUD 409 Special Assistant to the Deputy Assistant Secretary for Policy, Financial Management and Administration.
HUD 412 Special Assistant to the Secretary.
HUD 415 Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 417 Special Assistant to the Assistant Secretary for Administration.
HUD 419 Special Assistant to the Assistant Secretary for Public Affairs.
HUD 420 Staff Assistant to the Director, Executive Secretariat.
HUD 421 Assistant Director for Records Management to the Director, Executive Secretariat.
HUD 424 Special Assistant-Multifamily Housing for Resident Initiatives to the Deputy Assistant Secretary for Multifamily Housing Programs.
HUD 425 Deputy Assistant Secretary for Resident Initiatives to the Assistant Secretary for Public and Indian Housing.
HUD 426 Special Assistant to the Assistant Secretary for Housing.
HUD 428 Special Assistant to the Deputy Assistant Secretary for Resident Initiatives, Office of Public and Indian Housing.
HUD 429 Staff Assistant to the Deputy Assistant Secretary for Public Affairs.
HUD 431 Regional Administrator to the Secretary.
HUD 432 Regional Administrator to the Secretary.
HUD 433 Regional Administrator to the Secretary.
HUD 434 Assistant to the Secretary for Field Management.
HUD 436 Staff Assistant to the Deputy Assistant Secretary for Executive Services.
HUD 438 Director, Health Care Staff, to the Associate General Deputy Assistant Secretary for Housing.
HUD 439 Program Policy Advisor to the Deputy Assistant Secretary for Policy Development.

Section 213.3388 President's Commission on White House Fellows

PCWHF 3 Assistant Director for Educational Programs to the Director.
PCWHF 4 Confidential Assistant to the Director.

Section 213.3389 National Mediation Board

NMB 52 Confidential Assistant to a Board Member.
NMB 53 Confidential Assistant to the Chairman.
NMB 54 Confidential Assistant to a Board Member.

Section 213.3391 Office of Personnel Management

OPM 7 Deputy Director for Congressional Relations to the Director, Office of Congressional Relations.
OPM 19 Special Assistant to the Associate Director for Administration.
OPM 30 Special Assistant to the Director, Office of Communications.
OPM 36 Staff Assistant to the Chief of Staff.
OPM 43 Executive Assistant to the Director.
OPM 48 Staff Assistant to the Director.
OPM 49 Confidential Assistant to the Director.
OPM 52 Special Assistant to the Chief of Staff.
OPM 53 Confidential Assistant to the Director, Office of Congressional Relations.
OPM 55 Director of Intergovernmental Affairs and Volunteer Activities to the Director, Human Resources Development Group.
OPM 56 Special Assistant to the Director, Office of Communications.
OPM 57 Policy Analyst to the Director of Policy.

Section 213.3392 Federal Labor Relations Authority

FLRA 5 Executive Assistant to a Member.
FLRA 7 Congressional Affairs and Public Information Officer to the Chairman.
FLRA 13 Special Assistant to the General Counsel.
FLRA 14 Executive Assistant to the General Counsel.

Section 213.3393 Pension Benefit Guaranty Corporation

PBGC 6 Confidential Assistant to the Executive Director
PBGC 8 Staff Assistant to the Deputy Executive Director.
PBGC 9 Congressional Liaison Specialist to the Assistant Executive Director for Legislative Affairs.
PBGC 10 Assistant Executive Director for Legislative Affairs to the Executive Director.
PBGC 11 Staff Assistant to the Deputy Executive Director and Chief Financial Officer.
PBGC 12 Staff Assistant to the Deputy Executive Director and Chief Negotiator.
PBGC ?? Executive Director.
PBGC ?? Deputy Executive Director and Chief Negotiator.
PBGC ?? Deputy Executive Director and Chief Financial Officer

Section 213.3394 Department of Transportation

DOT 38 Special Assistant to the Administrator, National Highway Traffic Safety Administration.
DOT 55 Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 56 Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 70 Staff Assistant to the Assistant Secretary for Governmental Affairs.
DOT 77 Staff Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
DOT 100 Chief, Consumer Affairs Division, to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration.
DOT 105 Staff Assistant to the Administrator, Federal Highway Administration
DOT 127 Special Assistant to the Assistant Secretary for Budget and Programs.
DOT 128 Special Assistant to the Administrator, Federal Highway Administration.
DOT 147 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 148 Director, Office of Media Relations and Special Projects, to the Assistant Secretary for Public Affairs.
DOT 172 Staff Assistant to the Deputy Secretary.
DOT 185 Special Assistant to the Deputy Assistant Secretary for Policy and International Affairs.
DOT 192 Staff Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
DOT 197 Staff Assistant to the Secretary.
DOT 240 Special Assistant to the Assistant Administrator for Public Affairs, Federal Aviation Administration.
DOT 249 Deputy Executive Secretary for Policy to the Director, Executive Secretariat.
DOT 250 Staff Assistant to the Assistant Secretary for Governmental Affairs.
DOT 257 Staff Assistant to the Assistant Secretary for Public Affairs.
DOT 265 Special Assistant to the Director, Office of Public Affairs, Federal Highway Administration.
DOT 274 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 278 Staff Assistant to the Deputy Secretary.

DOT 285 Special Assistant to the Administrator, National Highway Traffic Safety Administration.
DOT 288 Deputy Director of Industry Affairs to the Director, Office of Intergovernmental and Industry Affairs.
DOT 296 Special Assistant to the Director of External Affairs, Maritime Administration.
DOT 302 Staff Assistant to the Secretary.
DOT 309 Special Assistant to the Administrator, Federal Aviation Administration.
DOT 313 Director, Office of Public and Consumer Affairs, to the Administrator, National Highway Traffic Safety Administration.
DOT 314 Staff Assistant to the Associate Administrator for Policy, Planning and International Aviation, Federal Aviation Administration.
DOT 316 Special Assistant to the Deputy Assistant Secretary for Policy and International Affairs.
DOT 318 Staff Assistant to the Secretary.
DOT 319 Congressional Liaison Officer to the Assistant Administrator for Government and Industry Affairs, Federal Aviation Administration.
DOT 320 Special Assistant to the Secretary.
DOT 322 Special Assistant to the Special Assistant and Director for Drug Enforcement and Program Compliance.
DOT 324 Scheduling Assistant to the Special Assistant to the Secretary for Scheduling and Director of Advance Operations and Travel Coordination.
DOT 326 Staff Assistant to the Administrator, Federal Railroad Administration.
DOT 329 Staff Assistant to the Secretary.
DOT 330 Staff Assistant to the Deputy Administrator, Federal Highway Administration.
DOT 332 Staff Assistant to the Administrator, Maritime Administration.
DOT 335 Staff Assistant to the Director, Office of the Executive Secretariat.
DOT 336 Staff Assistant to the Secretary.
DOT 339 Director of Program and Policy Support to the Deputy Administrator, Research and Special Programs Administration.
DOT 340 Congressional Liaison Officer to the Assistant Administrator for Government and Industrial Affairs, Federal Aviation Administration.
DOT 341 Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 342 Staff Assistant to the Special Assistant to the Secretary for Scheduling and Director of Advance Operations and Travel Coordination.
DOT 343 Staff Assistant to the Special Assistant to the Secretary.
DOT 344 Staff Assistant to the Assistant Secretary for Policy and International Affairs.
DOT 346 Public Affairs Specialist to the Director, Office of Public Affairs, Federal Railroad Administration.

Section 213.3395 Federal Emergency Management Agency

FEMA 3 Director of Congressional Affairs to the Director of External Affairs.
FEMA 28 Executive Assistant to the Director.
FEMA 34 Executive Assistant to the Deputy Director.
FEMA 40 Secretary (Typing) to the Deputy Director.
FEMA 41 Secretary (Typing) to the Director.
FEMA 42 Deputy General Counsel.
FEMA 43 Assistant Associate Director for Public Affairs to the Associate Director for External Affairs.
FEMA 44 Confidential Assistant to the Director of Congressional Affairs.
FEMA 45 Special Assistant to the Associate Director, National Preparedness Directorate.
FEMA 46 Special Assistant to the Associate Director, State and Local Programs and Support Directorate.
FEMA 47 Special Assistant to the Administrator, Federal Insurance Administration.
FEMA 48 Special Assistant to the Associate Director of External Affairs.
FEMA 49 Confidential Assistant to the Director of Congressional Affairs.

Section 213.3396 National Transportation Safety Board

NTSB 1 Special Assistant to a Board Member.
NTSB 2 Secretary (Typing) to the Chairman.
NTSB 30 Confidential Assistant to the Chairman.
NTSB 31 Confidential Assistant to a Board Member.
NTSB 32 Confidential Assistant to a Board Member.
NTSB 34 Confidential Assistant to a Board Member.
NTSB 102 Special Assistant to a Board Member
NTSB 106 Director of Public Affairs to the Chairman.

Section 213.3397 African Development Foundation

ADF 3 Vice President.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

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Monday
November 30, 1992

Part III

National Credit Union Administration

12 CFR Parts 701 et al.
Truth in Savings; Proposed Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 707 and 740

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Proposed rule; withdrawal of earlier proposed rule.

SUMMARY: The National Credit Union Administration Board ("Board") is publishing for comment a new regulation, to implement the Truth in Savings Act ("TISA"). TISA requires all credit unions (federal credit unions (FCUs), federally insured state-chartered credit unions (FISCUs), and nonfederally insured credit unions (NICUs)) to disclose fees, dividend (or interest, if applicable) rates and other terms concerning accounts to members or potential members before they open accounts. TISA requires credit unions that provide periodic statements to members to include information about fees imposed, dividends (or interest, where applicable) earned and the annual percentage yield earned on those statements. TISA imposes substantive limitations on the methods used by credit unions to determine the balance on which dividends are calculated. Rules dealing with advertisements for accounts are also included in the law.

In addition, NCUA is withdrawing the proposed rule on Share, Share Draft, and Share Certificate Accounts published in May, 1990. In that proposal, NCUA had proposed amendments to its regulation clarifying that dividends on member share accounts are based on available earnings and are not guaranteed, and requiring notice of this fact when accounts are opened and in any advertisements, solicitations or similar statements that set forth a dividend rate. NCUA believes that the requirements of TISA eliminate the need of the 1990 proposed rulemaking.

DATES: Comments must be received by March 1, 1993.

ADDRESSES: Comments should be mailed to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Margaret R. Suuberg, Staff Attorney, or Martin E. Conrey, Staff Attorney, at the above address, or telephone (202) 682–9630. For information about the Board's action concerning the Regulatory Flexibility Act only, contact Lindsay Neunlist, Program Analyst, Office of Examination and Insurance, at the above address or telephone (202) 682–9640.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Truth in Savings Act (contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102–242, 12 U.S.C. 4301 *et seq.*) was enacted in December 1991. The statute directed the Federal Reserve Board ("FRB") to issue final regulations, governing depository institutions other than credit unions, by September 19, 1992. The FRB has promulgated a final TISA rule, 12 CFR part 230, to be known as Regulation DD. 57 FR 43337 (September 21, 1992). Regulation DD became effective on September 21, 1992, but, under TISA, compliance is not mandatory until March 21, 1993. However, pursuant to the recently enacted Housing and Community Development Act of 1992, the effective date of Regulation DD has been extended by three months. TISA also directs the Board to promulgate regulations governing credit unions within 90 days of the mandatory effective date of the FRB's final rule. NCUA proposes to issue these regulations as part 707 of the NCUA Rules and Regulations, 12 CFR part 707.

II. Scope of NCUA Authority

Section 272(b) of TISA (12 U.S.C. 4311(b)) mandates that the Board's regulations must be "substantially similar" to those issued by the FRB, but the Board may take into account the unique nature of credit unions and the limitations under which they may pay dividends. It is the opinion of the NCUA that this authority also encompasses and incorporates the authority granted to the FRB in section 269(a)(3) of TISA, 12 U.S.C. 4308(a)(3). Section 269(a)(3) of TISA permits the agency to contain such classifications, differentiations, or other provisions, and to provide for such adjustments and exceptions for any class of accounts as, in the judgment of the agency, are necessary or proper to carry out the purposes of TISA, to prevent circumvention or evasion of the requirements of TISA, or to facilitate compliance with the requirements of TISA. NCUA also is of the opinion that it has the authority to issue model forms and clauses for common disclosures to facilitate credit unions' compliance with TISA; authority granted to the FRB under section 269(b) of TISA. Such proposed model forms are included as appendix B to this proposed part 707.

A. Uniqueness of Credit Unions

A credit union is a not-for-profit, cooperative financial institution formed to permit those in the field of membership specified in its charter to save, borrow and obtain related financial services. A credit union is a financial institution owned by its members. These members, who are united through a common bond, democratically manage and control a pool of capital for their mutual benefit. Member ownership and control makes all credit unions unique. The uniqueness of credit unions developed historically and independently from other financial institutions.

In 1934, Congress passed the Federal Credit Union Act to establish a Federal Credit Union System, to establish a further market for securities of the United States and to make more available to people of small means credit for provident purposes through a national system of cooperative credit, thereby helping to stabilize the credit structure of the United States. That Act set the basic structure which governs FCUs today, and also mirrors the structure governing FISCUs and NICUs:

1. Cooperative Ownership

Credit unions are owned by their members cooperatively. Each credit union is funded by shares purchased by its members; credit unions do not have capital stock and their capital consists of accumulated reserves. The purchase of a share allows the member to become an owner with the right to vote.

2. Limited Membership

Membership is limited to groups, each defined in the credit union's charter, who share a common bond of occupation, association or community. Generally, credit unions do not compete with one another, nor do they accept accounts from, or provide services to, nonmembers or the general public.

3. Democratic Operation

Member control is democratically exercised regardless of the number of shares held. No member has more than one vote. Proxy voting is prohibited for FCUs (comment is requested on whether this is also true for state-chartered credit unions); boards and management must participate in an annual meeting with members and account for their performance.

4. Volunteer Management

Management is placed in the hands of volunteer members. In FCUs, only one board officer may be compensated. No other member of the board of directors or any other committee member shall, as such, be compensated. Almost all directors and committee members serve

without pay in all credit unions. Within the movement, there is a free sharing of ideas and resources that is rarely found among profit-oriented depository institutions.

5. Limited Lending

Loans are made exclusively to members, not to the public at large.

6. Dividends Earned, Not Interest Paid

Generally, members earn dividends on their accounts, not interest. Net earnings are returned to members in the form of dividends on savings, lowered interest rates and/or rebates of interest charged on loans.

NCUA has attempted to reflect these unique features, and others (such as the practice of some small credit unions to be open a limited time each week in the alternatives to the definition of "business day"), in the drafting of this proposed rule. However, the agency also requests comment on other practices or laws unique to credit unions, not discussed in this Supplementary Information, which have an effect upon proposed part 707. Similarly, as recently discussed in the NCUA proposed rule soliciting comment on how regulatory burden can be reduced (Regulatory Review Request for Comment, 57 FR 34090 (August 3, 1992)), comments are solicited on how the regulatory burden on credit unions can be limited under this truth in savings regulation while still meeting the requirements and spirit of TISA.

B. Limitations on Payment of Dividends

Member savings are placed in credit unions in the form of share accounts. Shares are equity investments, and the returns earned on these accounts are dividends. Section 117 of the FCU Act provides that, at such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare a dividend to be paid at different rates on different types of shares, at different rates and maturity dates in the case of certificates, and at different rates on different types of share draft accounts. Dividends credited may be accrued on various types of shares, certificates, and share draft accounts as authorized by the board of directors. 12 USC 1763.

Dividends may be viewed as a portion of the available current and undivided earnings of the credit union which is set apart, after required transfers to reserves, by valid act of the board of directors, for distribution among the members. As a matter of legal procedure, members are not entitled to dividends until the following steps are completed: (1) The board of the credit union must develop a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates, dividend distribution dates, any associated penalties (if applicable), and the method of dividend computation for each type of share account; (2) the provision for required reserves must be made; (3) sufficient and available prior and/or current earnings must be available at the close of a dividend period; (4) the board of the credit union must formally make a dividend declaration on different classes of accounts, in accord with the credit union's dividend policy; and (5) the dividends must be paid to the members by a credit to the appropriate share account, payment by check or by a combination of the two methods.

Legally, it is the declaration of the dividend which creates the dividend itself and the member has no right to receive a dividend until it is so declared. The decision of when to declare dividends lies within the official discretion of each credit union's board of directors. This duty cannot be abrogated by contract. However, a guaranty of dividends on a share account is interpreted not as an obligation to pay the stipulated dividends absolutely and unconditionally, but as an undertaking to pay them out of the earnings when sufficiently accumulated from which dividends in general are properly payable. Thus, it is acceptable to discuss the disclosures required by TISA as anticipated dividends with this distinction in mind. Note that the proposed definitions of "dividend" and "dividend rate" apply to both anticipated and declared dividends. Otherwise, credit unions would not be permitted to disclose any rates except old, past rates already declared. This would be counter to the purposes of TISA.

III. Withdrawal of Proposed Rule Change to 12 CFR 701.35

In May of 1990, NCUA issued a proposed revision to § 701.35 of its Rules and Regulations "to clarify that dividends on member share accounts are based on available earnings and are not guaranteed, and to require notice of this fact when accounts are opened and in any advertisements, solicitations or similar statements that set forth a dividend rate." 55 FR 21618 (May 25, 1990). In the preamble to the proposed rule, NCUA stressed that because dividends are statutorily based on earnings, they cannot be guaranteed. NCUA noted that the 1982 removal of a regulatory requirement in § 701.35 to disclose that "[d]ividends are based on the credit union's earnings at the end of a dividend period and cannot be guaranteed" did not change the law.

The comment period ended on July 24, 1990. NCUA received 225 responses: 164 from FCUs, 40 from state-chartered credit unions; 13 from state credit union leagues; 2 from state regulatory authorities; 3 from national credit union trade associations; and 3 others. Of these comments, only 11 were in total agreement with the proposal. These commenters noted that the proposal set credit unions apart from other financial institutions, promoted safety and soundness, and reinforced the fact that shares represent equity rather than liability. Two areas of misunderstanding were noted by NCUA in the opposing comments: (1) Many commenters erroneously believed that FCUs could guarantee dividends on either all share accounts, or on certificate accounts; and (2) many commenters mistakenly believed that the regulation would limit dividends to current earnings, rather than available current and undivided earnings. Other negative commenters believed that the disclosure requirement would confuse members, give the appearance that credit unions were risky investments, impair marketing and give a competitive edge to banks and thrifts. With the knowledge that the anticipated TISA would impact upon this proposal, the Board decided to table the proposed rule until TISA was enacted. Now that this has occurred, the Board withdraws this proposal, because TISA and proposed part 707 eliminate its necessity.

IV. Timetable

TISA will not apply to credit unions until the effective date of the Board's regulation. The Board is proposing regulations for comment, and expects to adopt final implementing regulations by June 19, 1993. The Board anticipates that its regulations will be final, and compliance with the law will be mandatory, by the end of 1993 or early 1994. Comments are sought regarding the timing of the effective date of part 707.

V. Purpose of TISA

The purpose of the statute and proposed regulation is to assist consumers, including credit union members and potential members, in comparing accounts offered by credit unions and other depository institutions, principally through the disclosure of fees, the dividend rate or interest rate, the annual percentage yield, and other account terms whenever a consumer

requests the information and before an account is opened. The statute and proposal also require that fees and other information be provided on any periodic statement the credit union sends to the member. Proposed rules are set forth for the information contained in advertisements of accounts and advance notice to accountholders of adverse changes in terms. The statute and proposed regulation place one substantive restriction on credit unions' practices: How credit unions determine the account balance on which dividends or interest are calculated.

VI. Proposed Regulatory Provisions

The Truth in Savings Act is quite detailed and, for the most part, the proposed regulation mirrors the statutory requirements. As previously discussed, the rule promulgated by NCUA must be "substantially similar" to the TISA rule promulgated by the FRB, except NCUA may take into account the unique nature of credit unions and the limitations under which they pay dividends. Therefore, most of proposed Part 707 parallels the FRB's Regulation DD, except for changes referencing and discussing business day, credit unions, dividends, dividend period, dividend rate, members, the nature of dividends, par value calculations, potential members, rollback accounts, rollback dates and variable-rate accounts. These changes are discussed herein. To aid in the comprehension of proposed part 707, the NCUA has incorporated much of the FRB's preamble language of proposed and final Regulation DD. Although comment is solicited on proposed part 707 in its entirety, the following is noted. Since TISA requires that NCUA's regulation be substantially similar to Regulation DD, we believe that the TISA statutory mandate only grants us the discretion to rewrite those portions of Regulation DD where credit unions are unique or where the limitations on which dividends are paid apply.

The section-by-section description which follows points out those provisions that differ in any significant way from the FRB's regulation—for example, creating an exception, adding a disclosure, or departing significantly from the language of the FRB's rule or the statute—and explains why the differences exist. In addition, the section-by-section description in many cases indicates possible alternatives to the position reflected in the proposed regulation and solicits comment on those alternatives.

Section 707.1—Authority, Purpose, Coverage and Effect on State Laws

Paragraph (b)—Purpose

This section mirrors the corresponding Regulation DD provision, except for the substitution of "members and potential members" for "consumer." NCUA believes that the term "consumer" is too broad to apply to credit union share accounts, which generally may only be offered to members and potential members within the credit union's limited field of membership.

Paragraph (c)—Coverage

The paragraph on coverage reflects the fact that TISA and the proposed regulation cover all credit unions, whether federal or state-chartered and whether or not insured by the National Credit Union Share Insurance Fund. TISA provides that the NCUA shall prescribe regulations for credit unions that are substantially similar to those promulgated by the FRB. Similar to both TISA and the FRB's rule, proposed part 707 provides that if advertisements for share and deposit accounts are placed by brokers and dealers who are share or deposit brokers, they are subject to the advertising rules set forth in § 707.8. NCUA solicits comment regarding whether deposit brokers are involved with placing funds into member accounts and on the necessity or desirability of including them in the NCUA's rule. NCUA has opted not to define share and deposit brokers until these comments are reviewed. A generic description based on 12 U.S.C. 1831f(f) (the definition of deposit brokers found in the Federal Deposit Insurance Act) is provided here to engender discussion. NCUA also solicits comment on whether a company publishing a dividend rate sheet in newspapers, trade journals or periodicals, or an agent on an agented account could be considered a broker under the proposed rule. An example of an agented account that might be subject to the rule would be a member with a jumbo certificate account who subdivides interests in the member account for sale to other parties or among members who formed a certificate account investment club. Perhaps this could also happen with low-income designated credit unions which may accept consumer accounts from nonmembers. At any rate, since TISA applies to share and deposit brokers, this language might well remain in the rule even if it is determined to have no present application to credit union accounts. Comment is also requested on whether the rule should apply to natural person accounts at corporate credit unions. The proposed rule is drafted to include such accounts.

Paragraph (d)—Effect on State Laws

Section 273 of TISA provides a narrow standard for preemption of state laws. To be preempted, a state law must be inconsistent with the "disclosure of yields payable or terms for accounts" provisions of TISA and the implementing provisions of the regulation. Based on numerous comments, the FRB expanded the scope of the preemption of Regulation DD to anything inconsistent with the requirements of TISA and Regulation DD. NCUA also proposes this approach. NCUA requests comment on whether the TISA standard or the Regulation DD standard should apply. NCUA notes that the part 707 preemption is not as extensive as the preemption offered to FCUs through § 701.35(c) of the NCUA Rules and Regulations, discussed *infra*. NCUA proposes no special preemption request procedures. Preemption requests will continue to be processed as they always have been, by the requestor writing a detailed letter to the NCUA Office of General Counsel, citing the allegedly inconsistent state law, demonstrating the inconsistency and burden on credit unions, and requesting preemption. The General Counsel has delegated authority to opine on the preemption of the inconsistent state laws. 12 CFR 790.2(a)(5).

Section 707.2—Definitions

Paragraph (a)—Account

Section 274(1) of the statute defines an account as any account offered to 1 or more individuals or an unincorporated nonbusiness association of individuals by a depository institution into which a customer deposits funds, including demand accounts, savings accounts, time accounts, and negotiable order of withdrawal accounts. The Board is proposing to define account as any account available to, or held by, a member or potential member which mirrors the definition of "member account" in the Federal Credit Union Act. 12 U.S.C. 1752(5). This definition includes share, share draft and share certificate accounts, and equivalent accounts offered by FISCUs and NICUs. The regulation would cover dividend-bearing as well as nondividend-bearing accounts. It would include all share and deposit accounts offered to members by credit unions, whether those accounts are federally or nonfederally insured or uninsured. Like the FRB, NCUA proposes to exempt any existing accounts held by unincorporated

associations of natural persons established by the effective date of part 707. The FRB adopted this position after a showing by commenters that to incorporate all such accounts into the coverage of the rule would mandate a manual review of all such accounts to determine their composition and purpose.

NCUA believes that certificate of indebtedness accounts offered by some credit unions are more akin to a debt offering than a share account, and are, therefore, not covered by this proposal. FCUs that borrow funds from natural persons, such as through a certificate of indebtedness account, must evidence the borrowing by a signed promissory note setting forth the terms and conditions regarding maturity, prepayment, interest rate, method of computation, and method of payment. 12 CFR 701.38(a)(1). Furthermore, the promissory note and any advertisement for such funds must contain conspicuous language indicating that the note represents money borrowed by the credit union, and that the note does not represent shares and, therefore, is *not* insured by the National Credit Union Share Insurance Fund. 12 CFR 701.38(a)(2).

Paragraph (b)—Advertisement

Under TISA, each "advertisement, announcement, or solicitation" relating to an account at a depository institution must comply with specified rules. TISA does not define "advertisement", but Regulation DD does. The FRB defines "advertisement" in the same manner it is defined in the FRB's Regulation Z. 12 CFR 226.2(a)(2). Thus, an advertisement would be any commercial message appearing in any medium (for example, newspaper, television, radio, statement insert, or brochure) if it directly or indirectly promotes the availability of an account. Comments are solicited regarding whether any advertising practices unique to credit unions, such as newsletters to members or election mailings, or to limitations on dividend payments, such as lobby rate boards, would engender any changes to this definition. It should be noted that the FRB excluded rate sheets published in newspapers, periodicals or trade journals from the coverage of advertisement as long as the depository institution does not pay a fee to have the information included and does not have control over whether the information will be published. It should also be noted that the FRB provided a limited exception from some of the advertising provisions of Regulation DD for advertisements such as lobby boards, telephone response machines, broadcast and electronic media, and outdoor advertising. These exceptions are proposed in § 707.8(e).

Paragraph (c)—Annual Percentage Yield

The Board proposes that part 707 incorporate a definition of the annual percentage yield ("APY") that is substantially the same as stated in TISA and Regulation DD. TISA defines annual percentage yield as the total amount of interest that would be received on a $100 deposit, based on the annual rate of interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method which shall be prescribed by the (FRB) in regulations. The proposal does not incorporate the reference to a $100 deposit, since the APY calculation prescribed by Appendix A to this Part can be performed with any amount of principal, and the NCUA believes, as does the FRB, reference to $100 might be confusing, especially for accounts that have a higher minimum balance requirement to earn dividends or that have a tiered-rate structure. The Board proposes that the term "annual percentage yield" be used in both advertisements and disclosures to ensure uniformity and facilitate easy comparisons. The only difference from the definition in Regulation DD is that the word "dividends" is substituted for the word "interest."

Paragraph (d)—Average Daily Balance Method

This definition is adopted from the FRB's rule. Under the average daily balance method, dividends are computed by applying a periodic rate to the average daily balance in the account for the dividend period, or applicable portion of a dividend period, with the average daily balance calculated by adding the balance in the account for each day of the period, or applicable portion of a dividend period, and then dividing that sum by the number of days in the dividend period, or applicable portion of a dividend period. It should be noted that the FRB treats negative account balances as a $0 balance for calculation purposes.

Paragraph (f)—Bonus

TISA does not use or define the term "bonus." However, the definition of a "bonus" has significance under the proposal because a bonus is excluded from dividends and interest, must be disclosed under proposed § 707.4(b)(7), and because mention of a bonus in an advertisement requires other disclosures to be made under proposed § 707.8(e).

The Board proposes to define the term "bonus" to encompass any premium, gift, award, or other consideration worth more than $10 regardless of the form the payment takes. Thus, it is intended that anything of over $10 in value that is given or offered to a member, aside from dividends, would be a bonus for the purposes of part 707. The Board follows the FRB in setting $10 as the line of demarcation for bonuses, following Internal Revenue Code section 6049 which excludes amounts under $10 from being reported as interest for tax purposes. Under the proposal an item could not be a bonus if a credit union gave or offered such a premium to a third party, rather than to the member. Comments are requested on this approach. Comments are also requested regarding whether life savings benefits should be treated as a bonus for part 707 purposes.

Paragraph (g)—Business Day

The Board is proposing four alternative definitions of the term business day. Alternative one, defining a business day as one other than a Saturday, Sunday or legal holiday, is taken from the FRB's Regulation CC. Alternative two, defining a business day as one during which the offices of the credit union are open for carrying on substantially all business functions, is the one adopted by the FRB in Regulation Z and Regulation E. Alternative three, defining a business day as any day in which the credit union is open which is not a Saturday, Sunday or federal or state holiday for credit unions is a combination of the other two definitions. Alternative four, defining a business day as one other than a Saturday, Sunday or a public holiday as noted in the U.S. Code, is the one adopted by the FRB for the final Regulation DD. The term "business day" comes into play in the delivery of account opening disclosures (10 business days when the member is not physically present at the time the account is opened). In all other circumstances, timing rules use calendar days.

NCUA is concerned that many credit unions have no or minimal computer capabilities. Furthermore, a number of credit unions, particularly parish and church credit unions, may only be open one day each week (generally Sunday) for the transaction of routine business. NCUA is attempting to arrive at a definition of business day that will take these unique conditions into account, and arrive at a balanced definition that will not be onerously burdensome to these credit unions and will be fair to members and achieve the purposes of TISA. Comments are solicited on the

advantages and disadvantages of each of the four alternatives, as well as any other alternatives which would achieve agency goals.

Paragraph (h)—Certificate Account

This term has been added to provide a convenient reference term that includes both share certificates offered by credit unions accepting shares and time deposits offered by credit unions authorized to accept deposits. It is equivalent to the term "time deposits" as used by the FRB in Regulation DD.

Paragraph (i)—Credit Union

Section 272 of TISA directs the Board to issue regulations governing credit unions, for which it uses the definition in the Federal Reserve Act, 12 U.S.C. 448(b)(1)(A), specifically, all federal or state-chartered credit unions that are insured or are eligible to apply for insurance on their accounts from the National Credit Union Share Insurance Fund. Based on that definition, the Board believes the statute's coverage is very broad, and encompasses both state and federally chartered credit unions, regardless of whether the credit union is insured (by federal, state, or private insurance) or uninsured. The proposal therefore adopts a very broad definition covering FCUs, FISCUs and NICUs.

Paragraph (j)—Daily Balance Method

This definition is adopted from the FRB's Regulation DD. Under the daily balance method, also commonly known as "day in/day out", dividends are computed by applying a periodic rate to the balance in the account for each day of the dividend period, or applicable portion of a dividend period.

Paragraph (k)—Dividend and Dividends

Dividends are explained more fully earlier in section II, B of this **SUPPLEMENTARY INFORMATION.** The proposed definition states that bonuses and similar offers do not constitute dividends for purposes of the regulation. This is consistent with the FRB's definition of interest in Regulation DD. Also, a credit union's absorption of expenses incident to providing a normal member financial service function or its forbearance from charging a fee in connection with a service is not considered to be a payment of a dividend.

Paragraph (l)—Dividend Period

This definition is adopted from the discussion of dividend periods in § 5160.1.1 of the *NCUA Accounting Manual for FCUs.* Comment is requested on whether the definition conforms to dividend periods for all credit unions.

Paragraph (m)—Dividend Rate

Section 274(3) of the statute defines the "annual rate of interest" as the annualized rate of interest paid with respect to each compounding period, expressed as a percentage. The Board, following the FRB's lead, is proposing to simplify the phrase and reword the definition to clarify that the "dividend rate" is the rate of dividends paid without regard to compounding, shown as an annual figure and expressed as a percentage.

Section 274(3) of TISA also provides that the interest rate may be referred to as the "annual percentage rate." Again following the FRB's lead, the Board is proposing to require that credit unions refer to this figure using the term "dividend rate" and to permit institutions to use the term "annual percentage rate" only in addition to the term "dividend rate" and only for account disclosures (not in advertisements).

The Board believes it is essential to assist members in comparing accounts to require the use of standardized terminology in this area. The Board believes it may be confusing for prospective accountholders to see the same figure labeled as the "dividend rate" in some advertisements and disclosures and as the "annual percentage rate" in others. Also, the term "annual percentage rate," as required to be disclosed under Regulation Z, is commonly understood by members to encompass the total cost of credit—including both interest and other finance charges. The Board is concerned that member confusion may result if the term "annual percentage rate" is used to designate a dividend rate for the member's share account at a credit union, if the same terminology is used to designate a rate that includes both interest and, for example, points, for the member's mortgage loan with the same credit union. Since the potential for confusion is greatest in advertisements, the Board proposes to permit use of the term "annual percentage rate" only in the account disclosures and then only in addition to the term "dividend rate." In no cases would a credit union be required to refer to the dividend rate as the annual percentage rate. The Board follows the FRB final Regulation DD in this matter.

Paragraph (n)—Fixed-Rate Acccount

This term was added by the FRB in the final Regulation DD. The proposed rule uses it in § 707.4(b)(1)(i). The term includes all of those accounts not meeting the definition of a variable-rate account.

Paragraph (o)—Grace Period

This definition does not refer to "in by the 10th" type accounts. The FRB uses grace period in a different context and the Board adopts the same term. "In by the 10th" accounts are discussed later. See proposed §§ 707.2(u), rollback account, and (v), rollback date.

A grace period, if provided, must be disclosed under § 707.4(b)(6)(iv). In addition, a grace period may be important for purposes of § 707.5(b), dealing with the timing of disclosures for rollover certificate accounts. A grace period is defined as a period after maturity of an automatically renewing certificate account during which the member may withdraw funds without being assessed a penalty. A credit union is free to use a grace period, but it is not required.

Paragraph (p)—Interest

The proposed definition is adopted from the FRB's Regulation DD and the term "interest" is to be used only by those state-chartered credit unions that pay interest pursuant to state law. Like "dividend" and "dividends," "interest" is defined to exclude bonuses, reductions in fees, or absorption of expenses. Use of the term "interest" in the regulation is not meant to suggest that all credit unions may pay interest on their accounts. Federal credit unions and some state-chartered credit unions are prohibited from paying interest. Initial research indicates that at least twenty-nine jurisdictions permit their state-chartered credit unions to accept deposit accounts—Alabama, Colorado Florida, Georgia, Hawaii, Idaho, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Puerto Rico, Rhode Island, Texas, Utah, Vermont, Washington and Wisconsin. Comment is requested from credit unions in those states, and any other states permitting credit union deposit accounts, regarding the application of this rule to such accounts.

Paragraph (q)—Member

A "member" is any individual or natural person within the field of membership of a credit union who is either elected to membership or meets applicable initiation criteria and who subscribes to the required shares of stock in the credit union. "Member" is a concept parallel, but not identical to or interchangeable with, "consumer" in Regulation DD.

It is clear from TISA and its legislative history that the protections of

TISA were intended to apply only to natural-person-member-purpose—and not business-purpose—accounts. For instance, in section 262 of TISA, strengthening the ability of the consumer to make informed decisions regarding deposit accounts is among TISA's goals. Moreover, the statutory definition of an "account" in section 274(1) of TISA is expressly limited to those offered to 1 or more individuals or an unincorporated nonbusiness association of individuals.

The Board proposes to use the term "natural person" rather than "individual" and to add the term "primarily for personal, family, or household purposes" to the definition. A similar definition has worked well in the FRB's Regulation Z in determining whether credit is for a consumer purpose, and the Board believes it would be equally helpful in determining coverage for deposit products.

The Board also requests comment on whether sole proprietorship, custodial, retirement, escrow and Uniform Gift to Minors Act ("UGMA") accounts are consumer accounts subject to proposed part 707. The FRB concluded that (1) sole proprietorship and custodial accounts were business purpose accounts not subject to Regulation DD; (2) retirement and UGMA accounts were consumer accounts subject to Regulation DD; and (3) escrow accounts could be either business purpose or consumer purpose and had to be investigated to determine the applicability of Regulation DD to them. For example, an account established by an individual for lease payments pending resolution of a dispute with a landlord would be a consumer account, but an account established for the payment of taxes and property insurance in connection with a real estate transaction would not be a consumer account. The Board is inclined to follow the lead of the FRB unless these accounts have characteristics unique to credit unions that would support another approach.

Paragraph (r)—Passbook Account

This term is added because passbook accounts are excluded from the definition of the term "periodic statement." These accounts are defined as an account in which the member retains a book or other document in which the credit union records transactions on the account.

Paragraph (s)—Periodic Statement

This definition is adopted from the FRB's regulation. TISA does not define "periodic statement," although the term, or similar term "account statement," is used in two provisions (sections 266 and 268). Section 266(e) of TISA (which requires a notice to be given to existing accountholders) refers to account statements provided on a quarterly basis. The FRB looked to that provision and to requirements in other regulations in defining "periodic statement." For example, FRB's Regulation E requires a periodic statement to be provided monthly if electronic transfers have taken place, but at least quarterly if no transfer has occurred. In addition, FRB's Regulation Z generally provides that periodic statements must be provided at the end of any billing cycle—which must be at least quarterly—for open-end credit accounts. The Board believes this approach has worked well and proposes to use the FRB's definition of periodic statement as one sent on a quarterly or more frequent basis.

An example of a periodic statement is a monthly statement for a share draft account which sets forth account information, such as a listing of transactions. On the other hand, regularly providing general service information to members which does not discuss specific transaction activity or other aspects of a particular member's account (for example, a quarterly newsletter describing services and other deposit accounts) would not be considered a periodic statement.

If a credit union sends a periodic statement due to other legal requirements (for example, if the account can be accessed by electronic fund transfers and is covered by Regulation E), then such a statement would be a periodic statement for purposes of this regulation. Also, if a credit union provides a combined statement containing both credit and account activity, such a statement would be covered by the periodic statement rules.

The FRB excluded passbook accounts and certificate accounts from the definition of periodic statement. The FRB explained that commenters noted that consumers did not expect institutions to provide information on these types of accounts. In addition, bank and thrift commenters said if they were required to provide such information that they would stop providing information on combined statements (statements combining information on more than one account), due to the burden of calculating the rates, civil liability issues, and space and printing limitations. NCUA also finds these reasons sensible and is inclined to follow the FRB in this regard.

Paragraph (t)—Potential Member

A potential member is a natural person eligible for membership in a credit union, who has not yet taken the steps necessary to make himself or herself a member. Some disclosures, such as rate inquiry disclosures, must also be made to those within the field of membership. NCUA does not believe that credit unions need to be burdened with providing account disclosures to the public not eligible for credit union membership, as these people cannot take advantage of any accounts or services offered by the credit union. Therefore, disclosures to ineligible nonmembers wastes the credit union's time and efforts, and does not promote TISA's purpose of comparison shopping.

Paragraph (u)—Rollback Account

Rollback accounts are commonly known as "in by the 10th" accounts. In these accounts, funds deposited by the rollback date will earn dividends as of the first day of the dividend period, or the portion of the dividend period for which the credit union provides provisional dividend credit, as long as the funds remain in the account until the end of the applicable dividend calculation period. Funds that are either deposited after the rollback date or withdrawn prior to the end of the calculation period earn no dividends for the period. This must be disclosed in proposed § 707.4(b)(2)(ii) and in the two alternatives of proposed § 707.8(d).

The proposed definition attempts to cover three versions of such accounts: (1) Where funds must be left in from the rollback date until the end of the entire dividend period in order to earn dividends; (2) where the funds must be left in from the rollback date at the beginning of any month in a multi-month dividend period until the end of the remaining dividend period in order to earn dividends; and (3) where the funds must be left in from the rollback date at the beginning of any month to the end of that month of a multi-month dividend period in order to earn that month's proportion of the dividend period's dividend. Comments are requested concerning whether the proposed definition is broad enough to encompass these three versions, as well as any other rollback account versions that might exist. The 1992 survey conducted by NCUA, previously mentioned, showed that 62% of surveyed credit unions offer rollback regular share accounts; 31% offer rollback share draft accounts; and 11% offer rollback money market share accounts. Congress has specifically empowered the NCUA to continue rollback accounts.

Section 267(c) of TISA provides that interest on accounts that are subject to TISA shall begin to accrue not later than

the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act ("EFAA"), subject to subsections (b) and (c) of such section. Section 606(a) of the EFAA, 12 U.S.C. 4005(a), sets forth a general rule that interest must begin accruing on deposits made to interest-bearing accounts not later than the business day that the financial institution receives provisional credit for the deposit. However, section 606(b) contains a special exemption for credit unions, which states that a credit union may begin the accrual of dividends at a later date than that described in subsection (a) if it does so with respect to all funds, including cash, deposited in the accounts, and gives notice of its interest (dividend) payment policy as required by section 606(e), 12 U.S.C. 4005(e).

The legislative history of EFAA indicates that the purpose of the exemption was to allow credit unions to continue the use of rollback accounts. The House Conference Report states that the "special rule for credit unions" was intended:

> To accommodate the unique operating procedures of credit unions whose traditional accounting practices have often included partial dividends on funds not on deposit for an entire dividend period. Any such practices regarding check deposits may be continued by credit unions under this title provided that cash deposits continue to receive identical treatment. However, it is not intended that individual credit unions change existing practices in order to avoid compliance. H.R. Rep. No. 261, 100th Cong., 1st Sess. 181–182 (1987).

The Senate Report contains similar language:

> This provision is intended to accommodate small institutions that credit all deposits on only the first day of each month. If deposits are received by the 10th or 15th of the month, they are credited as if received on the first of the month, and interest accrues accordingly. If deposits are received in the later portion of the month, crediting and accrual of interest begin on the first day of the following month.
>
> This subsection is intended to include only such accounts, most of which are credit union accounts * * *. S. Rep. No. 19, 100th Cong., 1st Sess. 65 (1987).

In light of the legislative history, it is clear that Congress, when it passed the EFAA, intended to allow credit unions to continue their use of rollback accounts. Similarly, the reference to the credit union exemption in section 276 of TISA shows an intent to allow that practice to continue. The Board also wishes to clarify that rollback accounts may also simultaneously be stepped-rate, tiered-rate, or variable-rate accounts, and that these definitions are not mutually exclusive.

Paragraph (v)—Rollback Date

For purposes of clarity, it seemed convenient to separate the rollback date concept from the definition of rollback account. Essentially, the rollback date is the date (or dates for those accounts with multi-month multiple rollback cycles) by which funds must be deposited in a rollback account in order to earn dividends for the dividend period or the portion thereof used for crediting purposes. The requirement that the rollback date may not be a date earlier than the 10th day of a month is derived from the legislative history of the EFAA. Comment is desired on this limitation. It is the Board's intent to strike a compromise between permissible credit union practices on rollback accounts and the TISA statutory requirement that interest on an interest-bearing account at any depository institution shall be calculated by such institution on the full amount of principal in the account for each day of the stated calculation period at the rate or rates of interest (dividend) disclosed pursuant to TISA. NCUA believes that a minimum rollback of 10 days will allow for most credit unions to continue current practices without negating TISA's consumer oriented approach.

Paragraph (x)—Stepped-Rate Account

This definition is adopted from the FRB's Regulation DD; TISA defines "multiple rate" accounts, and authorizes the Board to adjust its general annual percentage yield disclosure rules to ensure that meaningful disclosures are provided for such accounts. The proposal defines "stepped-rate" and "tiered-rate" accounts, both of which would be "multiple rate" accounts under the statute. While both accounts involve multiple rates, the characteristics of each have different implications for calculating and disclosing the annual percentage yield.

The Board proposes to define stepped-rate accounts as those in which two or more dividend rates (known at the time the account is opened) will take effect in succeeding periods. An example of a stepped-rate account is a one-year certificate in which a 5.00% dividend rate is paid for the first six months, and 5.50% for the second six months.

Paragraph (y)—Tiered-Rate Account

This definition is adopted from Regulation DD; the Board proposes to define tiered-rate accounts as those in which two or more dividend rates paid on the account are determined by reference to a specified balance level. An example of a tiered-rate account is one in which an instruction pays 5.00% dividend rate on balances below $1,000, and 5.50% on balances $1,000 and above. Included in this definition are two types of tiered accounts (sometimes referred to as "pure" or "split-rate" tiered-rate accounts and "hybrid" or "plateau" tiered-rate accounts) which are described more completely in appendix A, part I, (D). The FRB stated that accounts with minimum balance requirements are not tiered-rate accounts, but a single rate account with a minimum balance requirement. NCUA finds this opinion well reasoned, but requests comment on its application to credit unions.

Paragraph (z)—Variable-rate Account

TISA does not define variable-rate accounts, but section 265 of TISA authorizes the Board to adjust its annual percentage yield disclosure rules for such accounts. The legislative history accompanying the law also indicates that modifications to TISA's advance notice requirement for changes in terms were contemplated for variable-rate accounts (see discussion of proposed § 707.5 below). The Board requests comment on how variable-rate accounts may best be defined to further the purposes of TISA. Three alternative definitions are included in the proposed regulation.

Classifying an account as a "variable-rate" has three implications: (1) The Board is proposing certain additional account disclosures for those accounts in § 707.4(b)(1)(ii); and (2) the Board is proposing to exempt rate decreases on a variable-rate account from the change in terms rule (see the discussion of changes in terms in § 707.5(a)(2)(i)); and (3) a notice is required in advertisements under § 707.8(c)(1).

A variable-rate account clearly would include one with rates based on either an external or an internal index—for example, if a credit union tied rate changes to the 1-year Treasury bill. The majority of credit unions, however, currently set rates based on a variety of factors and do not tie changes to an identifiable index.

The first alternative in the proposed regulation would define a variable-rate account narrowly, as one tied to an index (either an external or an internal index). The Board solicits comment on whether the definition of a variable-rate account should be broader, so as to encompass all accounts which, pursuant to an account agreement, permit the credit union to change the rate at the election of the credit union. The Board is aware that many credit unions routinely include a contractual right to change rates in their account agreements (other

than time deposits), although in some cases the right is seldom exercised and holders of such accounts likely consider the account to be fixed rate. The Board is concerned that, if the definition of a variable-rate account encompasses all such situations, members who view their accounts as essentially fixed rate accounts would not receive advance notice of rate changes.

One way to deal with this is reflected in the second alternative in the proposed regulation, which was adopted by the FRB in Regulation DD. It would treat as fixed-rate those share and share draft accounts where the credit union contracts to provide at least a 30-day advance written notice of rate changes. (Share certificate accounts would, reflecting industry practice, always be considered "fixed-rate accounts"). This definition would provide a way for credit unions that prefer to offer—and members who prefer to hold—"fixed-rate" accounts to do so, while providing the advance notice the Congress intended. In other cases, where the credit union does not commit itself to a 30-day notice, the accounts would be variable-rate accounts, and would not require advance notice when rates changed. For those accounts in which the credit union does not commit to advance notice of at least 30 days, it would be required to give full disclosure of the variable-rate feature when the accounts are opened (under proposed § 707.4(b)(1)(ii)).

The third alternative applies only to dividend-bearing share and share draft accounts, and would deem all such accounts to be variable-rate by nature of the dividend-setting process. The Board is interested in soliciting comment regarding this alternative as reflecting the actual process of setting and declaring dividends, which is always within the discretion of each credit union's board of directors and subject to change depending upon available current and undivided earnings and required reserve transfers at the end of a dividend period. NCUA is in favor of a definition that would best reflect this practice and the fact that credit union share and share draft accounts are always by their very nature variable-rate accounts. Of course, an alternative would still need to be found for interest-bearing credit union accounts.

The Board considered a variety of other approaches to defining a variable-rate account. For example, it could be viewed as one in which the credit union expressly provides for the option to change the rate at a specified frequency, such as every week or every month. Adoption of such an approach may not be effective in distinguishing between fixed and variable rates, however, since credit unions could add such a "variable-rate feature" by simply modifying their agreements to reflect such a right without changing their pricing practices in any way. Another alternative considered was to define as variable-rate accounts those in which the rate had in fact changed a specified number of times during a specified prior period. Although such an approach has the appeal of being based on actual experience, the Board is concerned that compliance would be complicated and cumbersome.

The Board expressly solicits comments on the alternatives discussed in this section, the advantages and disadvantages of each, and any other alternatives.

Section 707.3—General Disclosure Requirements

Paragraph (a)—Form

Section 264 of TISA requires credit unions to maintain a written schedule of fees, dividend rates and other terms applicable to each class of accounts offered by the credit union. The statute requires the disclosures to be written in "clear and plain language." The proposed regulation requires information to be disclosed "clearly and conspicuously," the standard required by the FRB's Regulation DD and other consumer regulations, such as Regulation Z. The Board believes that use of a commonly used and understood standard facilitates compliance with the law and carries out TISA's requirement that disclosures be written in clear and plain language. For uniformity, the format requirement of "clear and conspicuous" would apply to all disclosures provided to members or potential members, including the change in terms notice and information given on periodic statements, and not just the account opening disclosures. The proposal would require that disclosures be provided in a form the member or potential member can retain, since that seems to be clearly what the Congress intended in order to facilitate comparison shopping. Disclosures need be made only as applicable. Therefore, disclosures for nondividend-bearing accounts would not include disclosure of an annual percentage yield, dividend rate, or any other disclosures that pertain to dividend calculations.

The proposed regulation provides credit unions with flexibility in designing the order of the disclosures, so long as the information is presented in a format that allows members and potential members to readily understand the terms of their own accounts. The disclosures required by the regulation may be made on more than one page and may use both the front and reverse sides, as long as the pages are part of one document. Credit unions could use inserts to a document or fill in blanks to show current rates. Since rates may change on a frequent basis and rate information needs to be current, the Board believes requiring such information to be preprinted in a document could impose substantial costs and burdens on credit unions, with no particular benefit to members or potential members.

In designing the account disclosures, credit unions have several alternatives. Credit unions could prepare a single document that contains disclosures for all accounts offered, or prepare different documents for different types of accounts. For example, credit unions may provide a single document for all covered accounts offered, such as share, share draft and share certificate accounts. Credit unions may provide disclosures for each type of account, such as a document that describes all certificate accounts offered. The regulation also would permit credit unions to provide disclosures describing a single account product; for example, a credit union offering three different share draft accounts may provide a separate document for each account. In all of these situations, the Board proposes to permit credit unions to include in the document containing the account disclosures contract terms and other disclosures that relate to the account, such as disclosures required by Regulation E on electronic funds transfers or by Regulation CC (12 CFR part 229), which implements the EFAA.

Credit unions could comply with the regulation by providing members with disclosures contained in documents such as the signature card, rate sheets, fee schedules, and brochures that describe other terms of the account. However, if the disclosures consist of more than one document, all relevant documents must be provided at the same time, and it must be clear to which account each document relates. Disclosures must be in a form the member may retain. Thus, for example, disclosures could not be made on a signature card if the member is not given a copy to keep.

The regulation does not require any particular type size or typeface, nor does it require any term to be stated more conspicuously than any other term in the account disclosures. Proposed §§ 707.4(b), 707.6(a) and 707.8 would require the "annual percentage yield"

(and, in some cases, the "dividend rate") to be so labeled in account disclosures, periodic statements and advertisements. Apart from this, there is no required terminology. Credit unions should be consistent in the use of a term whenever the term is required to be disclosed. For example, if a credit union identifies a monthly fee imposed regardless of a member's balance or activity in the account disclosures as a "service" fee, a "maintenance" fee, or a "monthly" fee, it must use the same term in its periodic statements and change-in-term notices.

Paragraph (b)—General

The Board also proposes to include a provision requiring disclosures to reflect the legal obligation between the parties in order to provide guidance about the basis for disclosures; this parallels the standard used in Regulation Z. This provision does not impose any contract terms or supplant state or other laws that define how the legal obligation between a member and a credit union is determined (for example, whether a written contract is required or whether disclosures may act as the basis for the obligation). The proposal requires the disclosures to reflect the terms of the legal obligation that exists once the member opens the account. The FRB concluded in the final Regulation DD that disclosures must be based upon initial account terms. Furthermore, the FRB in the final Regulation DD concluded that estimates complicate the disclosure scheme without providing attendant benefits to members, and therefore, prohibited the use of estimates. The proposal contains no special requirements regarding the making of disclosures in a foreign language as well as in English. This is the decision reached in Regulation DD; comment is sought regarding whether foreign language disclosures need be required for credit unions.

Paragraph (c)—Relation to Regulation E (12 CFR Part 205)

The proposal would permit credit unions to fulfill their part 707 requirements with disclosures that also satisfy the requirements of the FRB's Regulation E. If a credit union is required to provide information pursuant to Regulation E, such as a fee related to an electronic fund transfer, disclosures given pursuant to Regulation E will be deemed to comply with part 707 as long as given at the same time as other part 707 disclosures. Similarly, if a credit union changes a term that triggers a change in a term notice under Regulation E (as well as under part 707), the credit union may use the timing rules set forth in Regulation E for sending the notice to affected members.

Paragraph (d)—Multiple Members

The Board proposes that, in the case of an account held by more than one member, credit unions could provide the account disclosures to any consumer who holds the account. In the case of a joint account in an FCU, this could be a non-credit union member since the FCU Act allows for members to have joint accounts with nonmembers. Similarly, if the account is held by a group or organization, the credit union may provide the disclosures to any one individual who represents or acts on behalf of the group.

Paragraph (e)—Oral Responses to Inquiries

This section has no counterpart in TISA. However, the FRB included it in Regulation DD, and the Board proposes to include it in part 707 for the same reasons cited by the FRB. Since members may call credit unions to obtain rate information, the Board believes it is important for uniformity and comparison shopping that any rates quoted be stated as an annual percentage yield. The regulation would also permit credit unions to state the dividend rate, but would prohibit any other rate. An approach similar to this is used in Regulation Z. Furthermore, the Board believes that minimal oral disclosures should be made of the fact that dividends are based on credit earnings at the end of a dividend period, and the mechanics of rollback accounts and par value calculations. These disclosures work to educate members and enable them to make informed decisions regarding their share accounts. Comment is sought on the efficacy of such oral disclosures, or alternatives to their use which would achieve the same objectives.

This provision is not intended to impose a duty upon credit unions to provide responses to oral inquiries, nor would a response trigger the advertising disclosures of part 707.

Paragraph (f)—Rounding and Accuracy Rules for Rates and Yields

Paragraph (f)(1)—Rounding

The Board proposes that annual percentage yields are to be shown to two decimal places and rounded to the nearest one-hundredth of one percent (.01%). If a credit union calculated an annual percentage yield to be 5.644%, it would be rounded down and shown as 5.64%; 5.645% would be rounded up and disclosed as 5.65%. The Board believes that rounding all yields to two decimal places will assist members in comparing rates. The same rule applies to the annual percentage yield and the annual percentage yield earned. The same rule is provided for rounding dividend rates. The Board believes that this will enhance members' ability to compare accounts. At the credit union's option, the dividend rate may be shown with greater specificity (more than two decimal places) in account disclosures, in order to allow the use of the exact contract rate.

Paragraph (f)(2)—Accuracy

The Board proposes a tolerance ½₀ of one percentage point (.05%) for the accuracy of the annual percentage yield. If the annual percentage yield disclosed is not more than one-twentieth of one percentage point (.05%) above or below the actual annual percentage yield as determined in accordance with appendix A, no violation of TISA or part 707 has occurred. The same rule applies to the annual percentage yield and the annual percentage yield earned. The tolerance is designed to take account of inadvertent errors. By adopting the tolerance, the Board does not intend to sanction intentional misstatements of the annual percentage yield. Credit unions may not purposefully incorporate the tolerance as part of their calculations. Thus, the amount of the tolerance could not be routinely added in when calculating the annual percentage yield to be disclosed. No corresponding tolerance is provided for the dividend rate.

Section 707.4—Account Disclosures

The statute requires credit unions to maintain an "account schedule" that is provided to members or potential members before an account is opened, and under certain other circumstances. Following the FRB lead, the Board proposes to use the more general and commonly understood terminology of "disclosures" (rather than schedule) in connection with the information required to be provided to members. The Board would like to note that many of the TISA disclosure requirements were already recommended for FCUs by NCUA in § 5150.7 of the NCUA Accounting Manual for FCUs. NCUA has long been at the forefront of voluntary account disclosures for credit unions, and has noted widespread compliance with these suggested voluntary account disclosures by FCUs. The Board also acknowledges the efforts of the state credit union regulators in this field, and the efforts of national trade associations and state leagues with voluntary truth in savings

programs. Comment is requested regarding how NCUA could best access existing voluntary truth in savings programs to boost compliance with part 707.

Paragraph (a)—Delivery of Account Disclosures.

Paragraph (a)(1)—Account Opening

Section 266 of TISA requires account disclosures to be provided before an account is opened or a service is rendered. TISA also allows the disclosures to be sent within 10 days of "the initial (deposit)" if the member is not physically present when the (deposit) is accepted and the disclosures have not been provided previously. To simplify the timing rules, the proposed regulation applies the 10-day rule to the provision of services, as well as to opening accounts, and defines the period as 10 business days rather than calendar days.

TISA suggests credit unions are required both to "maintain" a schedule and to provide it to members in designated circumstances. The Board believes that by providing disclosures as required by TISA and the regulation, credit unions satisfy the statutory requirement to "maintain" a schedule. Thus, the regulation would not place a duty on credit unions to "maintain" schedules or disclosures, but does impose a duty to deliver the disclosures in the necessary circumstances.

If an account is opened or a service is requested by means such as telephone, wire transfer, or mail, the account disclosures must be mailed or delivered within 10 business days of the time the account is opened or service is provided. This timing rule would apply, for example, if a member opens a certificate account by mailing in the funds. Credit unions would comply with the provision if the account disclosures are mailed or delivered to the member at the address shown on the records of the credit union. Comment is requested on whether this provision should use business or calendar days in computing the 10-day time period. The FRB uses the business day method in the final Regulation DD. As stated in proposed section 707.2(g), the definition of "business day," the Board is particularly interested in comments on how this timing rule would affect small, handposting, nonautomated credit unions.

TISA states that disclosures need not be provided to the absent member if the disclosures were previously provided. The FRB did not impose any staleness time period, believing such a provision to be of limited utility to financial institutions due to the burden of confirming receipt of prior disclosures by the consumer and a lack of any changes in such previously sent disclosures. The FRB also concluded that rollover certificate accounts were not new accounts requiring new account disclosures. In addition, the FRB holds that acquiring accounts from other financial institutions through either acquisition or merger does not trigger the disclosure rules of Regulation DD, unless such accounts have changed terms. The Board has followed the FRB on these issues.

Paragraph (a)(2)—Requests

TISA requires that the account disclosures be made available to "any person" upon request. The proposal differs from TISA and from the Federal Reserve Board's Regulation DD in that it requires credit unions to make such disclosures available only to members or potential members. The Board believes that this difference is warranted by the unique nature of credit unions, in that credit unions may only provide accounts to their members (and, in some cases, to other, limited classes of persons or entities). As noted earlier, nonmembers may be joint accountholders. Nonmembers may also deposit funds in low-income designated FCUs, and some state-chartered credit unions are authorized to offer various accounts to nonmembers. For TISA disclosure purposes, these persons will be included as members.

The Board solicits comment on whether the regulation should be expanded to require credit unions to make disclosures available to persons other than credit union members or potential members.

With the exception of the difference just discussed, this section is adopted from Regulation DD. The regulation requires credit unions to mail or deliver the disclosures within a reasonable time following receipt of a member's or potential member's oral or written request. The FRB concluded that these disclosures must be either mailed or delivered, and that merely making the disclosures available in offices or branches would not further the purposes of TISA.

Requests are likely to come from members or potential members who are comparison shopping for accounts. The FRB suggested that ten business days would be considered a reasonable response time.

The Board agrees with the FRB that a credit union would *not* have a duty to provide account disclosures if a member or potential member merely asks about current rates for an account. For example, the common practice of telephone inquiries about rates and yields on certificates would not trigger a duty to send disclosures to the caller—so long as the member or potential member does not ask for such information to be sent. However, the duty is triggered, if, in the course of inquiring about an account, a consumer asks for written information to be provided. This provision would also govern requests for account disclosures by existing consumer accountholders.

The FRB carved an exception for repeat callers who make numerous requests for disclosures for the same account. If the disclosures have already been sent, and those disclosures remain accurate, no further disclosures need be sent. The FRB also made an exception if the consumer requests disclosures on a particular account type (such as checking accounts), as opposed to a particular account product (such as the institution's "Premium Checking Account"). In this event, the institution may provide disclosures for any one or all of its checking account products. In any event, the FRB does not require account disclosures for accounts no longer actively offered by an institution, such as if passbook accounts have been discontinued, or special accounts acquired from a predecessor institution in a merger are limited only to those consumers holding them at the time of the merger. The Board follows the FRB on these issues.

Disclosures must be accurate when sent to the member or potential member. The FRB requires that institutions specify an interest rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and give a telephone number consumers may call to obtain current rate information. The Board requests comments on whether credit unions should, instead of stating the interest rate and annual percentage yield available within the most recent seven calendar days, state the dividend rate paid on the particular type of account in question as of the last dividend declaration date. The FRB also allows institutions to describe a certificate account's maturity as a term such as "1 year" or "6 months," rather than a specific date, such as "November 1, 1995," since the actual date will not be known. Given the limitations of the setting of dividends, comment is requested on whether this approach will also work in a dividend context for credit unions.

Paragraph (b)—Content of Account Disclosures

Paragraph (b)(1)—Rate Information

Paragraph (b)(1)(i)—Annual Percentage Yield and Dividend Rate

Credit unions would be required to disclose the "annual percentage yield," using that term, computed in accordance with appendix A, part I. Credit unions also would be required to disclose the "dividend rate," using that term, and would be permitted to use the term "annual percentage rate" in addition to the dividend rate. (See the discussion in the supplementary information accompanying § 707.2(c) and (m) regarding the proposal to use standardized terminology for these figures.) Credit unions must also disclose the period of time the anticipated dividend rate will be in effect. As discussed previously, this statement acts as a projection of dividends only, and as a good faith estimate of the dividend rate to be declared at the end of a dividend period. The disclosure required by subsection (b)(8) of this section reinforces this fact, and protects credit unions in the event that the credit union is not in a position of properly paying the anticipated dividend rate. This fluidity in rate is peculiar to credit unions, and is not changed by TISA. This section requires credit unions to state the length of time, if any, the credit union anticipates that this rate will continue to be paid after the account is opened.

If a credit union sets a minimum balance to earn dividends, for example $400, the credit union would *not* have to state that the annual percentage yield is 0% for those days the balance in the account drops below $400. Similarly, a disclosure of 0% is not required for credit unions that use the average daily balance method, if the member fails to meet the minimum balance required for the period. The Board believes that, in light of the disclosures about minimum balance requirements, members will readily understand that dividends are not earned if a minimum balance is not maintained, and the proposal simplifies disclosures for both credit unions and their members.

In the case of stepped-rate accounts, each dividend rate and the period of time each will be in effect should be provided. For example, if a credit union offered a 1-year certificate with a dividend rate of 5.00% for the first six months and 5.50% for the second six months, it would disclose both dividend rates, the corresponding annual percentage yield (5.39%, assuming dividends are compounded daily), and the fact that each dividend rate would be in effect for successive six-month periods. A credit union offering tiered-rate accounts would disclose each dividend rate along with the corresponding annual percentage yield (or range of annual percentage yields, if appropriate) for that specified balance level. For example, if a credit union pays a 5.00% dividend rate for balances below $1,000 and 5.50% dividend rate for balances $1,000 or above, both rates would have to be provided, as well as the annual percentage yields that would apply to the account. (See Appendix A for the calculation of the annual percentage yields for stepped-rate and tiered-rate accounts.) In the event the initial rate offered on a variable-rate account is higher than the rate that would be otherwise paid on the account, such as a premium rate paid for the first 90 days, such accounts would be considered stepped-rate accounts and the annual percentage yield would be figured according to the rules in appendix A.

Paragraph (b)(1)(ii)—Variable Rates

TISA does not expressly require specific additional disclosures for variable-rate accounts. (See the supplemental information to § 707.2(z), where a variable-rate account is defined.) Sections 264(d) and 265(2) of TISA, however, recognize that specific disclosures may be needed for variable-rate accounts. The Board proposes to require certain basic information about a variable-rate feature in the account disclosures. These disclosures are similar to the abbreviated variable-rate requirements for open-end credit found in Regulation Z.

Credit unions offering variable-rate accounts would be required to state that the dividend rate and annual percentage yield may change. They would also have to explain how the dividend rate is determined. For example, if the dividend rate is tied to the 1-year Treasury bill plus or minus a specified margin, the index must be clearly identified and the specific margin stated. If "variable-rate account" is defined broadly (see the discussion of § 707.2(z) above), a credit union that contractually reserves the right to change rates and does not tie changes to an index would disclose that rate changes are solely within the credit union's discretion. Credit unions would also be required to explain the frequency with which the dividend rate may change. For example, if the credit union retains the right to change the rate on a weekly or monthly basis to reflect the dividend period, that would be stated. Credit unions that reserve the right to change rates at any time would state that fact.

If the share contract places any limits on the amount the dividend rate will change at any one time or for any period, that would be stated. For example, if the credit union places a floor or ceiling on rates or provides that a rate may not decrease or increase more than a specified amount during any time period, that would be disclosed.

The proposed regulation refers to the dividend rate rather than the annual percentage yield in discussing the variable-rate disclosures. The Board believes this is more accurate since changes in the annual percentage yield derive from changes in the dividend rate.

Paragraph (b)(1)(iii)—Rollback Accounts

For rollback accounts, the fact that the APY assumes all funds in the account are deposited by the rollback date and remain in the account through the end of the dividend period or portion of a dividend period for which the credit union provides provisional dividend credit must be stated, as well as the fact that the actual APY will vary depending upon account activity. These statements must be of equal prominence with the stated APY. The Board believes that these disclosures are necessary in the account-opening disclosures to notify members of the mechanics of their account and to educate members of how best to use rollback accounts to encourage savings. The Board would urge credit unions to use these requirements as a skeleton upon which to flesh out more details of rollback accounts, which have many variations and can be quite complex. Comments are requested on these disclosures and alternative disclosures to meet agency objectives.

Paragraph (b)(2)—Compounding and Crediting

Paragraph (b)(2)(i)—Frequency

The proposed regulation requires credit unions to disclose the frequency with which dividends are compounded and credited, and any changes in either frequency if a time requirement is not met. If the frequency of either would change if the member does not meet a minimum time requirement, or under any other circumstance, such frequency would also have to be disclosed. (See the supplemental information accompanying § 707.7(c) for a discussion of crediting practices.

Paragraph (b)(2)(ii)—Effect of Closing an Account

Section 264(c)(9) of TISA requires credit unions to provide a statement, if applicable, that interest that has accrued, but not been credited to the account at the time of a withdrawal, will not be paid (or credited) due to the withdrawal. Section 267 of TISA requires credit unions to calculate dividends and interest on the full amount of principal in the account each day and prohibits calculation methods such as the "low balance" method. For the reasons set forth in § 707.7, the Board believes that credit unions may provide that if an account is closed before dividends or interest is credited, the credit union need not pay dividends or interest that has accrued, but not been credited, on the account. Thus, this policy should be disclosed, if it is relevant. This position is in accord with the FRB in Regulation DD. Similarly, the Board is inclined to follow the FRB position in accepting a disclosure of an early withdrawal penalty for a certificate account that encompasses that amount of accrued, but uncredited, dividends or interest when all funds are withdrawn before maturity as satisfying the requirements of this provision.

Paragraph (b)(3)—Balance Information

Paragraph (b)(3)(i)—Minimum Balance Requirements

This provision requires credit unions to disclose any minimum balance required to open the account, to avoid the imposition of a fee, or to obtain the annual percentage yield. For example, if a credit union provides that a $3 fee will be assessed if the average daily balance drops below $500, that provision would have to be disclosed. Credit unions would also have to describe the method they use to determine any minimum balance. The explanation of the balance computation methods can be combined with the disclosure under paragraph (b)(3)(ii) if the methods are the same. If a credit union uses different cycles for determining minimum balance requirements for purposes of assessing fees and for paying dividends or interest, the credit union must disclose the specific cycle or time period used for each purpose. For example, an account's statement cycle may begin on the 15th of the month and that period is used for dividend calculations. However, the credit union may assess fees based on the balance in the account for the preceding calendar month. Credit unions may assess fees by using any method they choose.

If fees on one account are tied to the balance in another account, such provision must be explained. For example, if a credit union ties fees payable on a share draft account to a minimum balance maintained in a regular share account (or a combination of the share draft and regular share accounts), the share draft account disclosures must explain that fact and how the balance in the regular share account (or in both accounts) is determined. The fee need not be disclosed in the regular share account disclosures if the fee is not imposed on that account.

Paragraph (b)(3)(ii)—Balance Computation Method

Credit unions would be required to describe the method used to determine the balance on which dividends are paid. (See discussion of § 707.7 regarding permissible balance computation methods.) For accounts other than rollback accounts, a description of the method will suffice. Thus, if the credit union uses the daily balance method, it would state that it uses the daily balance method and could describe it as one in which dividends are computed by applying a periodic rate to the principal balance in the account each day. If it uses the average daily balance method, the credit union would state that and describe the method as one in which dividends are computed by applying a periodic rate to the average balance in the account for the period or cycle, with the average balance calculated by adding the balance in the account for each day of the period or cycle, and dividing that sum by the number of days in the period or cycle. For rollback accounts, a standard disclosure concerning the nature and mechanics of rollback accounts is required. The Board believes that uniformity of this disclosure will aid members in better understanding rollback accounts. The mandated disclosure is provided with options to cover any variety of rollback accounts. Comment is solicited on whether this language accomplishes its purpose of providing a short, simplified language to educate members, or whether alternative language would better inform members. The Board feels strongly that a prescribed rollback disclosure is necessary in the opening account disclosures.

Paragraph (b)(3)(iii)—When Dividends Begin to Accrue

Proposed § 707.7(d)(1) requires credit unions to begin accruing dividends on accounts no later than the business day specified in section 606 of the EFAA and its implementing Regulation CC. However, credit unions may begin to accrue dividends earlier, such as the day a noncash deposit (typically a share draft or check) is received by the credit union. The FRB believes, as does the Board, that comparison shopping is enhanced if account disclosures reveal basic differences regarding when dividends begin to accrue for noncash deposits. Therefore, this provision would require a brief statement on this issue. For example, credit unions that begin to accrue dividends pursuant to EFAA could explain that dividends begin to accrue no later than the business day when the credit union receives credit for the deposit. Credit unions that begin to accrue dividends the day a noncash deposit is received by the credit union could state that fact.

Paragraph (b)(4)—Fees

TISA requires disclosure of fees that may be assessed against the "accountholder" as well as against the account. The Board believes the wording of the proposal, which requires disclosure of all fees that may be assessed in connection with the account, captures the same information required by TISA.

TISA requires the Board to specify, in the regulation, which fees must be disclosed. Since the proposal requires all fees assessed in connection with the account to be disclosed, the Board is not proposing to list in the regulation every fee that might be imposed. The proposed regulation does not mandate terminology for fees, and the Board does not believe that all fees could be identified by name in the regulation in any event. Credit unions use different names to describe the same type of fee. For example, a monthly fee imposed regardless of the member's balance or activity might be identified as a "monthly service" fee, a "monthly maintenance" fee, or simply "monthly" fee. However, types of fees that may be assessed in connection with an account would include maintenance fees (such as service fees and dormant account fees); fees related to deposits or withdrawals, whether by share draft or electronic transfer (such as per share draft fees, fees for use of the credit union's automated teller machines (ATMs), fees to stop payment on a share draft previously issued, and fees associated with share drafts returned due to insufficient funds); fees for special account services (such as fees for balance inquiries and fees to certify share drafts); and fees to open or to close accounts (other than early withdrawal penalties for certificate accounts, which are addressed in paragraph (b)(6)(iii) of this section). This

list is not meant to be exhaustive or all-inclusive, but as instructional and illustrative only.

The FRB permits share draft printing fees to be disclosed in a variety of ways: by disclosing the lowest price at which share drafts could be purchased and indicating that higher prices may apply for the initial order and for reorders; by giving a range of prices; or by stating that prices vary. The Board proposes to follow the FRB in this. Furthermore, the Board has provided an exception in § 707.5(a)(2) from the requirement to send an advance notice of change in terms for check printing fees assessed by third parties.

The proposed regulation requires credit unions to state the "conditions" under which the fee may be imposed. The Board believes that typically the name and description of the fee will satisfy this requirement. For example, if a credit union charges a $.25 fee for each ATM withdrawal from an account, and describes it in that manner, no further information need be provided.

Fees that may be charged to a member for services unrelated to the account—and that would be assessed against nonaccountholders—such as fees to purchase a cashier's or traveler's check, to lease a safe deposit box, to handle bond coupon redemption, to wire transfers, to photocopy a statement of interest earned for tax purposes (IRS Form 1099), to change names on an account, to generate a midcycle periodic statement, or to wrap loose coins are not required to be disclosed. Such fees need not be disclosed even if the amount of the fees differs for account and nonaccountholders.

Paragraph (b)(5)—Transaction Limitations

TISA requires credit unions to disclose the "terms and conditions * * * and account restrictions" applicable to accounts. The Board believes that this requires credit unions to state any limitations on the number or amount of deposits or withdrawals, or share drafts that may be written on an account for any time period. If a credit union does not permit withdrawals or deposits (for example, for a certificate), that fact would also have to be stated.

Paragraph (b)(6)—Features of Certificate Accounts

Paragraph (b)(6)(i)—Time Requirements

This provision requires credit unions to state any time requirement for certificates that must be met to obtain the annual percentage yield. Thus, a credit union would state the actual maturity date for certificates. A term, for example "six months" or "182 days," could be stated when providing disclosures in response to generic requests.

Paragraph (b)(6)(ii)—Early Withdrawal Penalties

Proposed § 707.4(b)(7) implements section 264(c)(10) of TISA. TISA requires credit unions to disclose any requirement relating to the nonpayment of dividends, including any early withdrawal penalty. The statute places no limitation on how early withdrawal penalties are calculated. The Board proposes to limit this requirement to certificate accounts, although the statute does not explicitly do so, since an early withdrawal contemplates a maturity date, which exists only in certificate accounts.

Section 264(c)(9) of the statute requires credit unions to provide a statement, if applicable, that dividends that have accrued but not been credited to the account at the time of a withdrawal will not be paid (or credited) due to the withdrawal. The regulation does not contain a parallel provision because, to the extent this is read to refer to a practice other than the imposition of early withdrawal penalties, it appears to conflict with section 267 of the statute. As discussed below in connection with § 707.7(a), section 267 of the statute requires credit unions to calculate dividends on the full amount of principal in the account each day and prohibits calculating dividends using methods such as the "low balance" method. However, it is noted that comment is requested upon the uniqueness of low balance methods used by credit unions in the discussion of § 707.7(d). Congress did clearly provide for one exception in the form of rollback accounts, discussed below in connection with § 707.7(d)(2). The Board believes the Congress did not intend the disclosure provisions of section 264 to be interpreted as overriding the general rule regarding payment of dividends. Thus, the Board believes that credit unions may not fail to pay dividends on amounts withdrawn, and so this disclosure is inapplicable. As stated above, however, credit unions may impose early withdrawal penalties on certificates and may use any method they choose to calculate the amount of the penalty. Commenters should distinguish the practices of noncrediting when an account is closed discussed in the supplementary information regarding paragraph (b)(2)(ii) of this section.

Paragraph (b)(6)(iii)—Withdrawal of Dividends Prior to Maturity

This proposed disclosure alerts members to the effect of withdrawing accrued dividends before additional dividends begin to accrue on the account, since the annual percentage yield for certificate accounts generally is based on the assumption that dividends remain in the account until maturity. Credit unions commonly offer certificate accounts that compound dividends monthly (or quarterly) and may permit members to withdraw or transfer accrued dividends periodically or to leave the dividends in the account until maturity. If, on a certificate account that compounds dividends during the term, a member elects to withdraw accrued dividends, the credit union must disclose that the stated annual percentage yield assumes that dividends remain on deposit until maturity and that a withdrawal reduces the earnings on the account. To ease compliance, this disclosure may be provided any time this option to withdraw dividends is given, regardless of whether the member actually exercises the option or indicates any preference about withdrawals.

Paragraph (b)(6)(iv)—Renewal Policies

For certificate accounts, the Board proposes to require credit unions to include a statement of whether or not the account will automatically renew at maturity. TISA does not expressly mandate disclosures of a credit union's policies about renewal, but does require credit unions to disclose the "terms and conditions" applicable to accounts generally. In addition, section 264(d) of TISA recognizes that the Board may wish to require information to be given regarding renewal policies for certificate accounts.

The Board believes it is important for members to be informed whether a certificate account will automatically renew or whether the member must contact the credit union at a later time to renew an account, since certificates limit the member's access to his or her funds in a way that other accounts do not. The Board also proposes to require credit unions to disclose what will happen to funds after maturity if the member does not renew the account, in the case of "non-rollover" accounts. For example, a credit union might disclose that the funds will be placed in a regular share account.

The proposal also requires credit unions to inform members with automatically renewable certificate accounts whether or not a grace period

exists and the length of such a period. "Grace period" is defined in § 707.2(o) as the period following the maturity of an automatically renewing certificate account during which the member may withdraw funds without being assessed a penalty. For example, a credit union might disclose: "You may withdraw the deposited shares without penalty for 10 calendar days after the maturity date of this account." This disclosure does not require credit unions to state whether or not dividends will be paid for the grace period if funds are withdrawn.

Paragraph (b)(7)—Bonuses

The Board believes that the language in section 262(a) of TISA regarding disclosures about the terms and conditions of accounts encompasses bonuses, and that TISA's purposes are furthered when members receive essential information about bonuses offered on an account. Thus, the proposal would require that credit unions offering bonuses state the amount and type of bonus, and disclose any minimum balance or time requirement to obtain the bonus and when the bonus will be provided. If the minimum balance or time requirement is otherwise required to be disclosed, credit unions need not duplicate the disclosure for purposes of this paragraph. The Board believes this disclosure will provide members with important information without significantly increasing compliance burdens.

Paragraph (b)(8)—Nature of Dividends

This language was added to reflect the limitations upon which dividends are paid. As discussed elsewhere in this preamble, dividends are not payable until declared. Dividends are not declarable unless sufficient current and undivided earnings are available after required transfers to reserves at the close of a dividend period. A disclosure explaining this legality of dividends protects credit unions in the event that an anticipated dividend rate cannot be paid, or is not properly payable. This disclosure is similar to one required by § 701.35 prior to its elimination in 1982 and reproposed in 1990. The Board believes that an account-opening disclosure on this issue is necessary in part 707, but solicits comments on alternative wording to achieve the same purpose.

Potential Loss of Principal

A section was initially proposed to Regulation DD to cover the situation of foreign currency denominated accounts in banks; however, it was deleted in the final rule. Although the Board is inclined to follow the FRB, comment is requested upon whether any FISCUs or NICUs have such accounts, or whether any other credit union accounts exist which would benefit from a disclosure concerning loss of principal. We note that this type of disclosure is not meant to provide for funds in accounts in excess of the insured amount or funds in credit unions that do not require federal or other insurance.

Paragraph (c)—Notice to Existing Accountholders

Paragraph (c)(1)—Notice of Availability of Disclosures

Section 266(e) of TISA requires depository institutions other than credit unions to include a notice on or with any regularly scheduled periodic statement sent to existing accountholders "within" 180 days of issuance of the FRB's Regulation DD. However, under section 269(a)(4) of TISA, the law does not apply to any depository institution until the effective date of the FRB's regulation, or to any credit union before the effective date of regulations prescribed by the NCUA Board. The FRB has construed these provisions to mean that compliance duties, including the duty to send notice to existing accountholders, do not begin until six months after the FRB has adopted a final regulation. Likewise, the NCUA Board believes that credit unions are not required to send the notice until the effective date of part 707. Otherwise, credit unions would be required to include a notice to existing account holders *prior to* the effective date of the regulation. The Board believes that requiring credit unions to provide this notice before disclosures are required to be available could be confusing to members who might request the disclosures. Furthermore, members who open accounts before the effective date of the regulation but after the mailing date of the periodic statement in which the notice was sent would not receive disclosures or be alerted to their availability. The Board therefore proposes to require credit unions to give the notice on or with the first periodic statement sent to existing accountholders *after* the effective date of the final regulation.

The notice required by this section need only be provided once and informs current accountholders that they may wish to request terms and conditions about the account. If the credit union receives a request, it would provide the account disclosures described in § 707.4, including the current dividend rate and annual percentage yield for the member's account. As an alternative to including this notice on a periodic statement, the Board proposes to permit credit unions to send the account disclosures themselves, as long as they are sent with the periodic statement.

The statute requires that the notice state both that the accountholder has a right to request disclosures and that he or she may make such a request. The proposal merely requires a statement that the accountholder may wish to request the disclosures. The Board believes that this adequately alerts members to the availability of disclosures for their account.

Paragraph (c)(2)—Alternative to Notice

As an alternative to providing the notice of availability, the Board proposes to allow credit unions to send the account disclosures themselves, either with the periodic statement or in a separate mailing. However, they would need to be sent out no later than when the notice of availability is required to be sent after the mandatory compliance date.

Section 707.5—Subsequent Disclosures

Paragraph (a)—Change in Terms

Paragraph (a)(1)—Advance Notice Required

Section 266(c) of TISA requires credit unions to send a 30-day advance notice to the member of any change in the items required to be disclosed in the account disclosures if the change might reduce the annual percentage yield or adversely affect the member. The proposed regulation requires a written notice describing the change and its effective date to be sent 30 days before the effective date of the change. For example, if a credit union increases the minimum balance required to earn dividends or avoid imposition of a fee or increases the fee it charges for stop-payment orders, an advance notice must be provided. The notice must be given whenever a change occurs after the account disclosures are given. The rule would apply to all accounts, not solely to accounts opened after the effective date of the regulation.

The notice requirement applies only to items required to be included with the account disclosures. If a combined disclosure statement for two types of accounts was initially provided (and indicated which terms applied to each account), and the credit union later changed a term for one of the accounts, the change-in-terms notice would need only be given to those members holding that type of account, and not to the holders of the second type of account.

Paragraph (a)(2)—No Notice Required

Paragraph (a)(2)(i)—Variable-Rate Changes

Sections 265 and 269(a)(3) of TISA authorize the Board to make exceptions to TISA's requirements for variable-rate accounts, and the Committee report accompanying H.R. 2654 of the House Committee on Banking, Finance and Urban Affairs, September 12, 1991, indicates the change-in-terms requirement was not intended to apply to changes in the dividend rate (and corresponding changes in the annual percentage yield) for variable-rate accounts. In addition, the Board believes that such a requirement would be overly burdensome to credit unions, result in lowered rates to avoid the cost of sending frequent notices, cause safety and soundness concerns, and be duplicative of information received in the account disclosures and periodic statement. In addition, the Board believes that change-in-terms notices are not necessary for variable-rate accounts for which no periodic statements are sent, such as for passbook accounts.

Paragraph (a)(2)(ii)—Share Draft and Check Printing Fees

Utilizing its exemption authority of section 269(a)(3) of TISA, the Board also proposes to exempt changes of share draft and check printing fees from the change in terms requirements. The exception is narrowly drawn and is created to facilitate compliance with part 707. Unlike other fees strictly within the control of credit unions, the amount of printing fees is in the control of vendors, who determine the effective date of price changes, and members, who decide whether or not to purchase share drafts or checks from the vendor associated with the credit union and, if so, what style will be chosen, and when same will be ordered.

Paragraph (a)(2)(iii)—Short-Term Certificate Accounts

With its exemption authority, the Board also proposes to exempt short-term certificate accounts, defined as those with maturities of one month (a period up to 31 days) or less, from the change-in-term requirements. Requiring credit unions to send a 30-day advance change-in-terms notice for such time accounts would be impossible. It would be burdensome for credit unions without providing meaningful benefits to members holding certificate accounts. (As discussed in paragraph (c) of this section, however, credit unions are required to send, after a maturity, a disclosure of any difference in the terms of the new account as compared to the terms for the existing account.)

Paragraph (b)—Notice Before Maturity for Certificate Accounts Longer Than One Month That Renew Automatically

The renewal of a certificate account is the equivalent of opening another account, and requires a set of disclosures about the new account. TISA requires account disclosures to be provided to members at least 30 days prior to the maturity of a certificate account that is renewable without notice from the member. Following the FRB, the Board finds that creating three exceptions to this requirement for automatically renewable certificate accounts 30 days in advance of maturity is necessary to facilitate compliance, benefit members and carry out the purposes of TISA. The proposal provides that: (1) Disclosures may be given closer to maturity rather than a full 30 days in advance as long as at least a five-day grace period is provided; (2) maturity notices for certificate accounts with maturities of one year or less need not provide all the information contained in an account disclosure, but only the key information and any changed terms; and (3) no advance notice is required for certificate accounts with maturities of one month or less.

For automatically renewable certificate accounts with maturities of more than one year, credit unions would provide full account disclosures as TISA requires. If the scheduled maturity date is one year or less but more than one month, credit unions must provide key information and any terms (other than rates) that may be different on the renewing account compared to those on the existing account. If the maturity date is one month or less (a period up to 31 days), advance disclosures are impracticable to deliver, but institutions must provide a notice of any changed terms (other than rates) applicable to a renewed account within a reasonable time after renewal.

The proposed alternative rule provides a "sliding scale" of 20 calendar days' advance notice, provided at least a five-calendar-day grace period is given. If a credit union provides a grace period of at least five days on rollover time accounts, the provision would permit credit unions to provide the required disclosures 20 days before the end of the grace period. Thus, if a five-day grace period were offered, a credit union must send the required disclosures at least 15 days before the maturity date. If a credit union offers a 10-day grace period, the advance disclosures must be sent at least 10 days before the scheduled maturity date. This alternative provides credit unions with great flexibility in sending notices closer to maturity, and provides benefits to members, who may contact the credit union to learn the annual percentage yield and dividend rate projected for the renewing certificate account. Credit unions that do not provide at least a five-day grace period must provide the 30-calendar-day advance notice.

Paragraph (b)(1)—Maturities of Longer Than One Year

If an automatically renewable certificate account has a maturity longer than one year (more than 365 days, or more than 366 days in a leap year), the proposal tracks the statutory requirement that credit unions provide members with all applicable account disclosures required for new accounts, and adds a disclosure of the date the existing account matures. The proposal requires credit unions, on dividend-bearing accounts and on interest-bearing accounts without guaranteed renewal rates, to state that the dividend (or interest) rate and the annual percentage yield for the account have not yet been determined, the date when they will be determined, and a telephone number the member can call to obtain the dividend (or interest) rate and the annual percentage yield that will apply to the renewed certificate account, even if they must contact the credit union to do so.

Paragraph (b)(2)—Maturities of One Year or Less But Longer Than One Month

For rollover certificate accounts bearing maturities of one year (365 days, or 366 days in a leap year) or less but longer than one month (31 days), credit unions may either give full account disclosures as they do for automatically renewable certificate accounts of longer than one year or may provide an abbreviated notice. The abbreviated notice tells the member the date the existing account matures and the maturity date if the account is renewed, the dividend (or interest) rate and the annual percentage yield if they are known (or, if they are not known, the fact that they have not yet been determined, the date when they will be determined, and a telephone number the member can call to obtain that information), and any change to the terms required to be disclosed under § 707.4(b) when the account was opened. Whether full or abbreviated disclosures are provided, the information may be sent either 30 calendar days before maturity, or 20

calendar days before the end of a grace period (of at least five days).

Paragraph (c)—Notice for Certificate Accounts One Month or Less That Renew Automatically

The legislative history accompanying TISA recognizes that special rules may be needed for short-term certificates. (See the Committee Report accompanying H.R. 2654, of the Committee on Banking, Finance and Urban Affairs, September 12, 1991.) Two policy reasons for providing advance notice to members with automatically renewable certificate accounts are: (1) To remind the member that the account is nearing maturity and that funds will be reinvested for a set period of time (thus limiting access to funds) if the member does not act; and (2) to give the member an opportunity to comparison shop before reinvestment occurs. The Board believes that members with short-term accounts do not have the same need of a reminder of impending maturity as do those with longer-term instruments. Furthermore, a member may derive little or no benefit from receiving a second virtually identical set of disclosures, for example, 15 days after purchasing a 45-day certificate. In addition, compliance with a 30-day advance notice requirement would literally be impossible for very short-term instruments (such as 7-day certificates.)

The proposal would require credit unions to provide limited information to members with rollover certificate accounts with maturities of one month (31 days) or less. Credit unions are not required to send notices in advance of maturity. However, if a term disclosed when the account was opened (other than the dividend (or interest) rate and annual percentage yield) changes at renewal, credit unions must send a brief notice describing the change within a reasonable time after the renewal of the new account.

Paragraph (d)—Notice Before Maturity for Certificate Accounts Longer Than One Year That Do No Renew Automatically

For non-automatically renewable certificates (that is, those that are renewed only if the member affirmatively requests the credit union prior to or at maturity to renew the account) with maturities of longer than one year (more than 365 days, or more than 366 in a leap year), credit unions would provide a notice that states the maturity date of the certificate account and whether interest will be paid on the funds after maturity. The notice must be mailed at least 10 calendar days before maturity. This subsection was not required by TISA, and the Board includes it only because of its inclusion in Regulation DD. However, even the FRB realized that consumers are informed at the time the account is opened of the maturity date and whether dividends (or interest) will continue to accrue after maturity, funds are not "locked in" for another term automatically if the member does not promptly act, and this requirement is an operational burden. Comments on the inclusion of this section, or reasons for its deletion, are requested.

Section 707.6—Periodic Statement Disclosures

Section 268 of TISA requires credit unions to include specific information on or with each periodic statement provided to members. The Board agrees with the FRB that the law does not require periodic statements to be sent by a credit union, but does require that if a credit union sends a periodic statement certain information must be included. (The statute does not define a periodic statement. See the definition in § 707.2(s) above.) This requirement applies to existing accounts as of the effective date of part 707, as well as to new accounts opened after the effective date.

The information listed in this section would be given only to the extent applicable; for example, a periodic statement for a nondividend-bearing account would not include dividends or an annual percentage yield.

Paragraph (a)(1)—Annual Percentage Yield Earned

The annual percentage yield calculation as used for both advertising and account disclosures is an annualized rate that reflects the frequency of compounding, but it is not based on an actual account balance. TISA requires that "the annual percentage yield earned" be included on the periodic statement. Several options were considered by the FRB in determining what would be the most appropriate way of calculating this figure for the periodic statement. The FRB ultimately adopted, and the Board proposes, an annual percentage yield earned that shows the relationship between the dividends earned and the balance in the account for the cycle. It would show the relation between the actual dividends earned and the balance because that information is known at that time. This approach would show in a single figure how well the member's account performed during the period, reflecting the true rate earned on tiered accounts, the impact of rate changes, and the effect of minimum balance requirements, while avoiding the difficulties that could be produced if fees and bonuses were factored in. It also calls for similar computations to those for other annual percentage yields, which will ease the ability of members to understand and compare accounts among credit unions and depository institutions. However, neither TISA nor this proposal prohibits including additional information on or with the periodic statement. For example, the dividend rates and periodic dividend rates applied during the period may be stated. The Board solicits comments on other methodologies that could be employed based on either the uniqueness of credit unions or the limitations on which dividends are paid.

Paragraph (a)(2)—Amount of Dividends Paid

The proposed regulation requires the periodic statement to include a dollar figure for the amount of dividends that have been paid during the statement period. Credit unions would be required to show dividends earned during the statement period, without regard to whether such dividends have been credited to the account. Bonuses are to be excluded from this figure. The value of any bonuses could be shown separately on the statement as additional information.

Paragraph (a)(3)—Fees Imposed

The periodic statement would include all fees of the type required to be disclosed under proposed § 707.4(b)(5) that were imposed during the statement period. For example, a monthly maintenance fee, NSF charge, or stop-payment fee would have to be disclosed. Fees not imposed in connection with the account, such as those for a cashier's check or lease of safe deposit box, could be included in the periodic statement as additional information, at the credit union's option. The regulation would *not* require fees imposed in connection with a *credit* account to be disclosed—for example, a fee imposed for accessing an overdraft feature on a share draft account—since they are related to a credit feature and are currently required to be disclosed under Regulation Z.

Section 268(3) of TISA requires disclosure of the "amount of any fees or charges imposed," without specifying whether the fees should be totaled or itemized. The FRB considered the following different methods for disclosing fees: (1) A single figure showing the total amount of fees; (2) an itemization of fees (perhaps also requiring the date the fee was imposed); (3) both an itemization and a total of

fees, or (4) at the institution's option, an itemization, a total, or a combination of these approaches.

The FRB decided, and the Board agrees, that requiring an itemization of fees by type is the most desirable approach, and that is reflected in the proposal. A listing of all fees would enable members to see the types and amount of fees imposed during the cycle. The Board proposes to permit fees of the same type to be grouped together. For example, all ATM charges imposed during the cycle or all per-share draft fees could be stated as a single figure, or shown separately. No particular format is mandated for this disclosure; credit unions may group fees together of the same type, or indicate them individually. There is no requirement to segregate the itemization of fees from the statement of account activity. Thus, credit unions may integrate the fee disclosure with other account activity information reflected on the statement. The statement must provide sufficient detail to enable the member to identify the fee. Credit unions may use a code to identify a particular fee on the periodic statement, if codes are explained either on the periodic statement or in documents accompanying the statement. At its option, a credit union may include the date the fee was debited from the account. The proposal does not require either a total fees figure or a net earnings figure.

Paragraph (a)(4)—Length of Period

The proposal, adopted from the FRB's regulation, tracks the statutory language in requiring that the total number of days in the statement period be given on the periodic statement. The FRB also allows the provision of the beginning and ending dates for the statement period. The Board supports granting this flexibility to credit unions as well. The proposal permits credit unions to provide either the total number of days in the period, or the beginning and ending dates of the cycle, as long as it is clear whether or not both of these days are included in the period. For example, stating "April 1 through April 30" would clearly indicate that both April 1 and April 30 are included in the period.

Paragraph (b)—Special Rule for Average Daily Balance Method

This section (and Appendix A, part II) addresses how the disclosures should be made on periodic statements if dividends are determined by using the average daily balance method and are calculated on a period other than the statement period. For example, dividends may be calculated for a calendar month dividend period, whereas the statement may cover a period from the 16th of one month to the 15th of the next month. A similar case exists where the statement is provided covering a calendar month, but the dividend period is quarterly. In these and similar cases, the Board intends to follow the FRB in disclosing the amount of dividends earned for the dividend period and the annual percentage yield earned based on the average daily balance for that period on the statement for the period in which the dividend period ends. For example, assume a credit union uses the average daily balance method based on a calendar month period, and that dividends of $5.25 were earned during April and that dividends of $6.00 were earned during May, and the credit union sends a statement for the period April 16 through May 15. That statement would disclose $5.25 as the dividends earned and an annual percentage yield earned based on that dividend and the average daily balance in the account during the month of April. If a credit union uses this alternate rule, the length of the dividend period must be disclosed in addition to the length of the statement period. For example, a statement could disclose the statement period of April 16 through May 15 and further state that "the dividends earned and the annual percentage yield earned are based on your average daily balance for the period April 1 through April 30."

This provision would apply only if the average daily balance on which the dividends are calculated is known by the end of the statement cycle. For example, a credit union that sends a statement each calendar month for an account and calculates dividends based on the average daily balance method for a calendar month, but credits dividends quarterly, would use the rule in this paragraph. In such a case, dividends earned in each of the three months would be shown on three succeeding monthly statements (since an average daily balance figure is used to calculate dividends each monthly statement period); the statement for the third month of the quarter may, but is not required to, indicate the dividends credited for the quarter, in addition to the dividends earned during the third month. If a credit union calculates dividends on an average daily balance for the quarter, however, a dividend figure cannot be stated on the monthly statements for either of the first two months of the period since no average daily balance is used to calculate dividends for those times. Consequently, no annual-percent-age-yield earned and no dividends-earned figures would be disclosed on the statements for the first two months of the quarter. In such a case, the dividends earned and the annual percentage yield earned provided on the third monthly statement would be based on the entire quarterly period.

Comments are sought on whether this provision should be enlarged to encompass rollback accounts.

Section 707.7—Payment of Dividends

Paragraph (a)—Permissible Methods

Paragraph (a)(1)—Balance on Which Dividends are Calculated

Section 707.7(a) implements section 267(a) of the statute. This section of the statute provides that dividends on dividend-bearing accounts shall be calculated on the full amount of principal in the account for each day of the stated calculation period at the rate disclosed (emphasis added). Rollback accounts, however, will result in dividends being paid in less than the full amount in the account in circumstances where funds are withdrawn before the end of the dividend period. Although a literal reading of section 267(a) might appear to require credit unions to calculate dividends by using a daily balance calculation method (also known as the day-in-day-out method or day-of-deposit-to-day-of-withdrawal method), the legislative history confirms that the Congress considered the average daily balance method an acceptable alternative to the daily balance method. The Board proposes to allow both methods.

The Board believes permitting credit unions to use either the daily balance method or the average daily balance method is consistent with the purpose of the legislation which requires that members be paid dividends on the full amount of principal in the account each day. In addition, the statute requires disclosure of the balance computation method, which would be unnecessary if only one method were allowed.

Both methods require credit unions to compute dividends by applying a periodic rate to the full amount of principal in the account each day. In the daily balance method the credit union applies a periodic rate to the exact daily balance. In the average daily balance method the credit union adds the full amount of principal in the account each day of the period or cycle, divides that figure by the number of days in the period or cycle, and applies a periodic rate to the result. Assuming the same compounding and crediting frequency, the dividends calculated under either method would be identical in an account

with little or no account activity in the period. In most cases, even where there is significant account activity, both methods will produce the same or substantially the same amount of dividends. In some instances, the daily balance method produces a slightly higher return, and in other situations, the average daily balance method produces a slightly higher return. In all cases, under the proposed annual-percentage-yield calculation for the periodic statement, any differences in these methods would be captured by that figure.

Tiered Rate Accounts

There is one circumstance in which the daily balance and average daily balance methods can produce more significant differences in dividends: tiered-rate accounts. To illustrate this point, assume daily compounding occurs for the following account:

Simple interest rate (percent)	Deposit balance to earn rate (with the rate paid on the full balance)
5.00	$0.01-<$5,000.
6.00	5,000 and higher.

The two methods can produce differences in dividends, depending on account activity—in particular, depending on whether the average daily balance falls above or below the break point, in this case, $5,000.

For purposes of illustration, assume the principal balance in the account for January and February is $5,000 for the first 20 days of each month and $4,000 for the remaining days of the month. (Dividends remain on deposit until the end of each month.) The daily balance method produces $22.52 in January and $20.86 in February. The average daily balance method produces $19.77 in January and $18.12 in February. In this example the daily balance method generates greater dividends ($2.75 and $2.74 per month) because the average daily balance falls below the break point of $5,000.

As a second illustration, assume the balance in the account for each month is $4,500 for the first 20 days of the month and $6,500 for the remaining days of the month. In this example, the average daily balance method generates greater dividends ($2.49 and $2.48 per month) because the average daily balance falls above the break point.

As these examples illustrate, in some instances for tiered-rate accounts, the daily balance method produces a higher return, and in other situations the average daily balance method produces a higher return.

In spite of these differences, the Board believes that credit unions should be permitted to use either the daily balance or the average daily balance method. First, in many cases, the two methods produce the same or a substantially similar return. Second, where the results differ, neither one consistently produces a higher return. Third, under the proposed annual-percentage-yield calculation for the periodic statement, any differences in these methods would be captured by that figure. Fourth, credit unions will disclose the method they use under section 707.4(b) so that members who prefer one method over the other have the necessary information on which to base their choices. Fifth, the legislative history accompanying the legislation contemplates the use of either method. Finally, requiring credit unions to use a daily balance method could impose significant costs on some credit unions that would have to change from the average daily balance method without any real benefit to members.

It should be noted that the FRB ultimately decided to permit dividends to be computed only on a 365 or 366 (in a leap year) day year, as opposed to a 360 day year. Based on Congressional intent, NCUA also proposes this method. Credit unions would not be required to pay dividends on accounts during a grace period, nor for the period after maturity of a nonrollover certificate account. Nor would credit unions be required to pay dividends on any principal or dividends remaining in an account after an account is closed, such as when an account is closed by the member writing a final check that does not match exactly the account balance. Commenters are invited to address these issues.

Paragraph (a)(2)—Determination of Minimum Balance to Earn Dividends

In addition to prohibiting use of the straight low balance method of balance calculation, the Board believes section 267(a) prohibits use of a "low balance" type of method to determine if a member has met a minimum balance requirement to earn dividends on accounts other than rollback accounts. Credit unions are permitted under the law to set minimum balance requirements that must be met for the member to earn dividends, or to earn a specified rate for tiered balance accounts. For example, a credit union may choose to pay a 5.00% dividend rate on an account only for those days that a minimum balance of $500 is maintained. The Board believes that the statute further permits a credit union to provide that it will not pay dividends on the account for those days the balance drops below the required minimum balance.

The Board does not believe, however, that the statute permits a credit union to provide that the member does not earn any dividends for a given period unless the member maintains a minimum balance for the entire period. For example, under the proposal, a credit union may not provide that a member will earn a 5.00% dividend rate only if the consumer maintains a minimum balance of $500 for each day of a specified period or cycle. Such a practice, in effect, uses a low balance computation method to calculate whether dividends are earned on an account. Permitting such a practice would enable a credit union to refuse to pay dividends even if—under the example above—a member maintained a $10,000 balance for 29 days in a cycle, but permitted the balance to drop below $500 for one day in the same cycle.

Similarly, the Board does not believe that credit unions would be permitted to refuse to pay dividends on a portion of a balance once a member has met any required minimum balance. If a credit union sets its minimum balance requirement to earn dividends, for example, at $300 and a member deposits $500, the credit union must pay the stated dividend rate on the full $500, and could not pay dividends only on $200 (the amount in excess of the minimum) of that deposit. The Board believes that allowing such a practice would be contrary to the statutory requirement and the intent of the Congress to require payment of dividends at the disclosed rate on the full amount of principal in the account each day.

A related issue arises with regard to tiered-rate accounts and calculation of the balance on which dividends are paid. For example, assume that a credit union pays and discloses a 5.00% dividend rate on balances below $5,000, and a 6.00% dividend rate on balances of $5,000 and above. The Board believes the statute would *not* permit a credit union to pay the 5.00% rate for the entire cycle if the balance dropped below $5,000 for a few days during the cycle. For example, assume that a member maintained a $10,000 balance for 29 days in a cycle, but permitted the balance to drop to $4,999 for two days. The Board does not believe that the statute would permit the credit union to pay only 5.00% on $10,000 for 29 days, since the full amount of principal in the account for 29 days was actually $10,000 and should earn the stated 6.00% rate.

Likewise, the Board does not believe a credit union that uses an average daily balance method to determine the

balance needed to earn dividends is permitted to refuse to pay dividends on the average balance if the member fails to maintain a daily balance of, for example, $500 for each day of the cycle. This is similar to using a low balance method of computing interest. Thus, the proposal provides that a credit union must use the same method to determine any minimum balance required to earn dividends as it uses to determine the balance on which dividends are calculated. The proposal further provides that a credit union may use an additional method to determine the minimum balance to earn dividends, as long as that second method is unequivocally beneficial to the member. Credit unions are not permitted under this provision to require consumers to maintain both a daily minimum balance and an average daily balance to earn dividends. The Board views this last practice as an impermissible low balance method.

Paragraph (b)—Payment on Increments of Par Value

FCUs are permitted to pay dividends on par value increments as long as the par value of its shares is $5 or less. This authority derives from section 117 of the FCU Act which states that if the par value of a share exceeds $5, dividends shall be paid on all funds in the regular share account once a full share has been purchased. 12 U.S.C. 1763. Legislative history supports NCUA's longstanding position allowing for par value increments of dividends for a par value of $5 and below. NCUA has long interpreted this authority to apply to all types of share accounts in FCUs. Therefore, if par value is $5 and an account has a $24 balance, an FCU may pay dividends on $20, rather than the entire $24. However if par value is $10 and an account has a $24 balance, dividends must be paid on the entire $24, rather than on $10 increments. NCUA conducted a 1992 survey of 337 credit unions statistically representative of all credit unions, which showed that, in regular share accounts, 58% of the surveyed credit unions pay on par value increments; and in share draft accounts, 34% pay on par value increments. Comment is requested on whether FISCUs and NICUs have similar authority to pay dividends in par value increments. Comment is also sought on whether FISCUs and NICUs could take advantage of the payment on increments of par value, even if operative state statutes are silent or the par value amount differs from $5.

Paragraph (c)—Compounding and Crediting Policies

Section 707.7(c) of the proposed regulation implements section 267(b) of the statute. TISA does not mandate the frequency of any compounding. Thus, credit unions may compound biannually, annually, quarterly, monthly, daily, continuously, or on any other basis. The compounding frequency is required to be disclosed under proposed § 707.4(b)(2)(i) and is factored into the computation of the annual percentage yield. (See the discussion of the annual percentage yield in the supplemental information accompanying appendix A.)

Nor does § 707.7 mandate a specific crediting policy. Thus, credit unions could credit dividends earned on the account on an annual, semiannual, quarterly, monthly, or other basis. The credit union's crediting policy must be disclosed under § 707.4(b)(2)(i). A credit union may credit or post dividends to the account at any frequency, thus establishing the intervals at which the member can withdraw such dividends. However, credit unions may only credit declared dividends. A credit union may not credit payments of anticipated dividends until such dividends have been formally declared from available current and undivided earnings after required transfers to reserves at the close of a dividend period. Therefore, the crediting date of a credit union would normally be the dividend declaration date. Credit unions could change the crediting date by altering their dividend periods.

Unlike other financial institutions that pay interest on accounts, credit unions may treat undeclared, uncredited dividends as unearned. Legally, members only have an interest in dividends once declared. Nor does this provision require the credit union to permit the member to withdraw dividends that are declared before the dividend distribution date. If the member withdraws funds or closes an account before the dividend distribution date, the credit union may delay payment of the accrued dividends until the dividend distribution date. Finally, for certificate accounts, credit unions may assess a penalty for early withdrawal, as discussed in the supplemental information accompanying § 707.4(b)(6)(ii). This view is based on the unique nature of credit unions and the limitations on which dividends are paid. As this position varies somewhat from Regulation DD, comments are solicited on it.

Paragraph (d)—Date Dividends Begin to Accrue

Section 267(c) of the statute generally requires that depository institutions begin to accrue interest for *all* accounts no later than the business day specified in section 606 of the Expedited Funds Availability Act (EFAA) (12 U.S.C. 4005), subject to subsections 606 (a) and (b). (However, TISA recognizes the exemption provided for credit union rollback accounts by section 606(b) of the EFAA. This exception is discussed below.) Thus, the accrual of dividends rules in the EFAA apply to nontransaction accounts, such as certificates, as well as to transaction accounts covered by the EFAA. The EFAA and Regulation CC generally require a depository institution to begin accruing interest or dividends when the institution receives "provisional" credit. The Board believes a consistent rule is essential for determining the principal balance on which dividends accrue. The Board proposes to permit credit unions to use the methods set forth in Regulation CC for determining the principal balance. If a credit union accrues dividends on funds represented by a deposited check that is later returned due to insufficient funds on deposit, or for another reason, the credit union would not be required to pay dividends for the time period the check was outstanding.

While the EFAA establishes the time that credit unions must begin to accrue dividends, because of the general rule in section 267(a) of TISA that dividends must be computed on the full amount of principal in the account for each day, the Board believes that credit unions must accrue dividends on funds up to the date of withdrawal from the account. Thus, if a share draft written by the member on an account is debited from the account by the account-holding credit union on a Wednesday, the credit union must accrue dividends on those funds on deposit through Tuesday. (Because the share draft is debited on Wednesday, the balance in the account that day has been reduced. Thus, the Board believes that the credit union need not pay dividends for Wednesday.)

As previously discussed, TISA permits the use of rollback accounts. The legislative history of section 267(a) states that the provision is intended to prohibit institutions from using certain other balance computation methods, such as the "low balance" or "investable balance" method of computing interest. The investable balance method of paying a disclosed rate on only 88% of the funds deposited,

for example, was clearly one target of the legislation. The low balance method pays a disclosed rate only on the lowest amount of principal in the account on any day in the period. The Board notes that, while TISA specifically prohibits low balance accounts, it also specifically permits rollback accounts, which have a low balance feature. As an alternative, credit unions may wish to treat rollback accounts similar to accounts using the daily balance or average daily balance methods. In other words, even though credit unions may continue to accrue and pay dividends on these accounts by means of a low balance method, they may wish to treat them more as member-oriented accounts accruing dividends similarly to daily balance or average daily balance accounts with a retroactive deposit date. In the alternative, credit unions may wish to add minimum balance requirements to these accounts and treat them accordingly, with the rollback date relating back to the first date of the dividend crediting period. The Board requests comment on these suggestions.

Rollback accounts are permitted by TISA and proposed part 707. The 1992 NCUA survey showed that 7% of the surveyed representative credit unions offered low balance share accounts and 27% offered low balance share draft accounts without a rollback feature. Of the 7% offering straight low balance on regular share accounts, 67% of the 7% offer no other types of account; 13% of the 7% offer only low balance nonrollback accounts; and 21% of the 7% offer at least one daily balance or average daily balance share account, indicating that this last group has access to advanced computer software capabilities. Therefore, it appears that 80% of the 7% of the total number of surveyed credit unions that use straight low balance methods are not automated to the point where they can easily handle the requirements of TISA and proposed part 707. The Board asks for comments on how to handle these credit unions within the context of part 707. Should NCUA allow a delayed effective date for these credit unions, create minimal requirements, permit them to switch to rollback accounts, or enforce the part 707 requirements equally upon them? Comments are requested regarding this issue. The Board also requests comments on whether low balance accounts (without a rollback feature) are unique to credit unions, and, if so, whether NCUA can provide for their continuance pursuant to section 272(b) of TISA.

As proposed § 707.7(d)(2) explains, dividends will be earned only on funds that are in the account on or before the rollback date and remain in the account through the end of the dividend period or a portion of the dividend period for which the credit union provides provisional dividend credit. Comments are requested regarding the completeness of this description to describe all varieties of rollback accounts currently in use.

Section 707.8—Advertising

This section of the proposal incorporates the advertising provisions of section 263 of TISA. While TISA's disclosure rules apply to accounts of all depository institutions, section 263(a) of TISA's advertising provisions is phrased in terms of accounts offered by insured depository institutions. (Section 263 (b) and (c) of the advertising provisions, however, are not limited to insured depository institutions.) The Board's proposal, adopted from the FRB's regulation DD, would apply all of the advertising provisions to all credit unions, whether federally insured or not. The Board believes that TISA's purposes are furthered if all account advertisements provide uniform disclosures to compare accounts, and does not believe it desirable for only some advertising rules to apply to nonfederally insured credit unions. The Board notes that many of the TISA advertising requirements were already suggested for FCUs by the NCUA in § 5150.8 of the Accounting Manual for FCUs.

Paragraph (a)—Misleading or Inaccurate Advertisements

TISA and the proposed regulation prohibit credit unions from making misleading or inaccurate advertisements. Since section 271 of TISA extends the possibility of civil liability to advertising violations, the Board is interested in construing the term "misleading" appropriately and comments are requested concerning any guidance that might be given in the final rule to credit unions on this issue. Following the FRB's lead, use of the term "profit" is prohibited in advertisements for deposit accounts. However, since dividends are basically a return of the member's investment, the Board has not proposed to apply the prohibition to share accounts.

Advertising "Free" Accounts

Section 263(c) of TISA prohibits a credit union from advertising an account as a free or no-cost account if: (1) A regular service or transaction fee may be imposed; (2) a fee may be imposed if any minimum balance requirement is not met; or (3) a fee is imposed if the member exceeds a specified number of transactions. The proposed regulation, adopted from Regulation DD, captures these rules, but provides a different organizational approach. Credit unions would not be permitted to describe any account as "free" or "no-cost" (or words of similar meaning) if any "maintenance or activity" fee might be imposed on the account. A maintenance or activity fee includes, for example, periodic service charges; per-share-draft fees; fees imposed to deposit, withdraw or transfer funds; and fees to receive copies of share drafts written on the account. It also includes fees imposed if a minimum balance requirement is not met or if a transaction limit is exceeded. A maintenance or activity fee would not include fees such as stop-payment-fees or fees for returned share drafts, or fees unrelated to the account such as a fee for purchasing a cashier's check or traveller's checks.

However, since TISA prohibits references to "accounts" as free, the proposal would permit credit unions to refer to a specific service as "free" or "no cost" or words of similar import. For example, credit unions that offer free transactions at their ATMs could advertise that fact. If an account or an account service is free only for a limited time—for example, for the first year that an account is open—this limitation must be stated.

Paragraph (b)—Permissible Rates

Section 263(a) of TISA provides that a reference to a specific dividend rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the annual percentage yield. The proposed regulation requires that, for advertisements of accounts other than rollback accounts, if any rate or yield is stated it must be the "annual percentage yield," using that term. However, credit unions would be permitted under the proposal to abbreviate the annual percentage yield as "APY" if the term is printed out or stated in full at least once in an advertisement. For example, if an advertisement states "we offer a 5.25% Annual Percentage Yield (APY)," it may refer to that rate as the "APY" elsewhere in the advertisement. No such abbreviation is proposed as being permissible for the dividend rate, though comments are requested on this issue.

Except for the dividend rate, as explained below, no other rate or yield (such as an "average" or "aggregate" percentage yield) can be included in an advertisement. The Board believes that allowing credit unions to state rates or yields in addition to the annual

percentage yield would conflict with TISA's stated purpose of providing uniform disclosures to enable members to compare accounts. Also, the Board is concerned that permitting other rates to be stated in addition to the annual percentage yield would result in advertisements with a confusing array of terms and numbers. If a credit union states an annual percentage yield in an advertisement for a tiered-rate account, it must state all of the annual percentage yields for each tier, including those required to be shown as a range, as well as the corresponding minimum balance requirements. (See Appendix A for annual percentage yield calculations for tiered-rate accounts.) If dividend rates are stated, each dividend rate must appear in conjunction with the applicable annual percentage yield.

The Board believes that TISA permits the dividend rate to be stated in advertisements in addition to the annual percentage yield. Thus, the Board's proposal allows the dividend rate, using that term, to appear in conjunction with (but not more conspicuously than) the annual percentage yield. (The standard of allowing dividend rates but limiting their prominence is one that is in Regulation Z.) The proposed regulation would not permit credit unions to refer to the dividend rate as the "annual percentage rate" in advertisements. (See the discussion of this issue in the supplementary information accompanying proposed § 707.2(q).)

Paragraph (c)—When Additional Disclosures are Required

The terms required by this section apply to accounts other than rollback accounts, except to the extent applicable to rollback accounts as incorporated by paragraph (d) on rollback accounts. Also, these items are incorporated from Regulation DD, except for subparagraphs (7) regarding par value increments and (8) regarding the nature of dividends. Both of these issues are discussed previously. (See the discussion of these issues in the supplementary information accompanying proposed § 707.7(b) for par value increments and proposed § 707.4(b)(8) for the nature of dividends.) Comment is requested upon their inclusion in this section.

Section 263(a) of TISA requires additional information to be provided in account advertisements if the advertisement refers to a specific dividend rate, yield, or rate of earnings. TISA also imposes special format rules in certain cases to ensure that a member's attention is drawn to terms such as any differences in the annual percentage yield if a minimum balance is not met. The proposal generally follows TISA's approach for the format and content of advertisements, but simplifies the order of the information provided.

The proposed regulation provides that a reference to an annual percentage yield "triggers" advertising disclosures. Since other rates are not permitted (except for the dividend rate, which in turn requires a statement of the annual percentage yield), the regulation does not include any other "rate triggers." (See, however, the discussion of bonuses in § 707.8(e).)

There is no requirement that account advertisements state an annual percentage yield figure. Stating other information in advertisements—such as "one, three, and five year certificates available" or "high rates available"—does not trigger the duty to state other terms of the account, due to the lack of specific information regarding applicable rates.

Special rules apply to tiered-rate accounts: If a credit union states an annual percentage yield in an advertisement, it would have to state all of the annual percentage yields, including those required to be shown as a range, as well as the corresponding minimum balance requirements. (See Appendix A for annual percentage yield calculations for tiered-rate accounts.) For example, assume that a credit union pays a stated dividend rate only on that portion of the balance within the following specified balance levels (that is, Tiering Method B described in Appendix A), and compounds dividends daily:

Dividend rate	Deposit balance required to earn rate
5.25%	$.01-<$2,500
5.50%	2,500-<15,000
5.75%	15,000-100,000

Computing the figures in accordance with Appendix A, the credit union would have to state the following annual percentage yields:

Annual percentage yield	Balance required
5.39%	$.01-<$2,500
5.39%-5.61%	2,500-<15,000
5.61%-5.67%	15,000-100,000

If a trigger term is stated, the advertisement must provide the disclosures listed in paragraph (c) in a clear and conspicuous manner.

Paragraph (c)(1)—Variable Rates

The proposed regulation would require credit unions that advertise variable-rate accounts to state that the rate may change after the account is opened. Although TISA does not expressly require the statement, section 265(2) authorizes the FRB and NCUA to prescribe modifications for advertising rules relating to the annual percentage yield on variable-rate accounts. The FRB determined that a brief statement alerting the consumer to possible changes in the annual percentage yield is necessary in advertisements. Since most dividend-bearing accounts are variable-rate accounts by definition, comment is desired on the need of this disclosure for credit unions, especially in light of paragraph (c)(8) of this section on the nature of dividends and paragraph (c)(5) regarding conditions affecting account earnings.

Paragraph (c)(2)—Time Annual Percentage Yield Is Offered

TISA and the proposed regulation require that advertisements that state the annual percentage yield also state the period during which accounts with that annual percentage yield will be offered. Since credit unions cannot guarantee rates, comment is desired on how, or if, this requirement applies to credit unions. Perhaps, within the spirit of this requirement, credit unions could advertise anticipated rates or past rates. For example, if a credit union only anticipates its rates for a week, due to a weekly dividend period, its advertisement might state "this annual percentage yield is anticipated from June 1 through June 8."

Paragraph (c)(3)—Minimum Balance

TISA requires that advertisements contain a statement of the applicable minimum account balance requirements to obtain the advertised annual percentage yields. Further, in the case of tiered-rate accounts, the proposal tracks the specific statutory requirement that each annual percentage yield and the associated minimum balance must be in close proximity and have equal prominence.

Paragraph (c)(5)—Effect of Fees

TISA requires account advertisements to contain a statement that "fees or other conditions" could reduce the "yield" on the account. The proposed regulation requires the statement but uses the term "earnings" rather than yield. TISA does not mandate terminology, and the Board believes that the term "earnings" more accurately conveys the impact of fees on the account, since in no event does the annual percentage yield take fees into account. The Board proposes to require

this statement if a credit union can impose any of the maintenance and activity fees discussed in § 707.8(a) (discussing "free" accounts). Thus, for example, the statement would appear on advertisements for dividend-bearing transaction accounts that impose a monthly service charge or a fee if a minimum balance is not maintained. Comment is also sought regarding whether this disclosure is repetitive of paragraphs (c)(1) and (c)(8) of this section, since they all concern the nature of the dividend declaration process, and whether consolidation of some or all of these paragraphs is in order due to the limitations upon which credit unions pay dividends.

Paragraph (c)(6)—Features of Certificate Accounts

Paragraph (c)(6)(i)—Time Requirements

This paragraph implements section 263(a)(3) of TISA. It requires that advertisements state any time requirement necessary to earn the advertised yield. The Board proposes to limit this provision to certificates. If an institution advertises a one-year certificate, it would state that time period. It also requires advertisements to state any lower annual percentage yield that will be earned if funds are withdrawn prior to meeting the minimum time requirement. Once again, credit unions would be required to disclose a good faith anticipated dividend, and to declare that dividend at the maturity of the certificate account if such an amount was properly payable.

Paragraph (c)(6)(ii)—Early Withdrawal Penalties

TISA requires that advertisements include a statement that a dividend penalty will be imposed for early withdrawal. The terminology of the proposed disclosure is similar to that in TISA, but does not include the word "dividend." A disclosure may also be important for Regulation D purposes to qualify as a savings account (time deposit) with lower reserve requirements. 12 CFR 204.2(c)(1)(i). Additionally, due to recent changes in the FRB's Regulation D on transaction account reserve requirements (12 CFR part 204), penalties need no longer be "substantial"; therefore, this term was not used in the regulation. Similarly, the phrase "will or may" is used to cover both credit unions that impose early withdrawal penalties on a mandatory basis and those that impose such fees on a discretionary basis

Paragraph (c)(7)—Par Value Calculations

The Board proposes that advertisements of accounts on which dividends are calculated using the par value method announce that fact and the par value amount of the credit union's shares. For further discussion of this method, see the supplementary information of proposed § 707.7(b).

Paragraph (c)(8)—Nature of Dividends

NCUA believes that advertisements for dividend-bearing accounts must mention that dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period. For further discussion of this disclosure, see the supplementary information of proposed § 707.4(b)(8).

Paragraph (d)—Advertisement of Rollback Accounts

Because of the special, varied and complex nature of rollback accounts, the Board believes that special advertising disclosures should apply. Two alternatives are proposed. Under alternative one, a credit union would not be permitted to disclose an APY in an advertisement. Instead, the credit union could advertise the dividend rate, a statement that the rate is applied to the lowest balance in the account from the rollback date through the end of the dividend period, a statement regarding the nature of dividends, and information required by paragraphs (a) and (c) to the extent applicable. Under alternative two, a credit union could disclose an APY, but would also need to state that the stated APY assumes that all funds are deposited by the rollback date of the dividend period or a portion of the dividend period and remain in the account through the close of the dividend period or portion of the period and that the actual annual percentage yield may vary on account activity, the dividend rate, that the rate is applied to the lowest balance in the account from the rollback date through the end of the dividend period, a statement regarding the nature of dividends, and information required by paragraphs (a) and (c) to the extent applicable. The Board believes that more must be disclosed in an advertisement stating the APY (alternative two) than in an advertisement merely stating the dividend rate (alternative one), because there are more grounds for confusion in the minds of members, especially with the wide array of rollback accounts currently available to members. The Board is open to comments regarding simplification of rollback account advertising that would clearly educate members on these accounts, but reduce the regulatory burden on credit unions.

Paragraph (e)—Bonuses

Although TISA does not expressly require the bonus disclosures found in the proposal, the Board believes the additional information is consistent with TISA's purpose to provide uniform disclosures to assist in comparing accounts, particularly when "earnings" are being advertised. It should be kept in mind that these disclosures are triggered only if something worth over $10 per year is given to a member. See § 707.2(f) defining bonus.

The proposed regulation treats bonuses as a trigger term. If a bonus is advertised, an explanation of the conditions that must be met for bonuses to be paid and when they will be paid also must be stated, along with the annual percentage yield and the items listed in paragraph (c) of this section. If minimum balance and other requirements for the bonus are the same as those otherwise required to be stated, the disclosures may be combined.

Paragraph (f)—Exemption for Certain Advertisements

Section 263(b) of TISA authorizes the FRB, if it finds the disclosures to be unnecessarily burdensome, to exempt "broadcast and electronic media and outdoor advertising" from stating any initial deposit requirement, or stating that fees or other conditions could reduce the return. The statute limits any relaxation of the advertising rules to these two disclosures. In Regulation DD, the FRB established a limited exemption from several of the advertising provisions for broadcast or electronic media, such as television or radio; outdoor media, such as billboards; telephone response machines; and lobby boards facing inside an institution or the offices of a share or deposit broker. The Board agrees with the FRB that the purposes of TISA would be frustrated if burdensome disclosure requirements caused credit unions to place fewer advertisements that members may use to comparison shop, especially in light of the inherent limitations of time or space in certain media. Therefore, the proposal follows Regulation DD in providing that advertisements made by use of these media will remain subject to the prohibition regarding misleading or inaccurate advertisements. Rate information must be disclosed as an annual percentage yield. In addition, if an annual percentage yield is stated, these advertisements would need to state any minimum balance required to

earn that yield. For certificate accounts, the term would also need to be stated. Although space constraints may limit the likelihood that bonuses are mentioned, any advertisement in these media that states a bonus would trigger the disclosures required by this paragraph, as well as a statement regarding the conditions under which the bonus will be paid and the time it will be paid. Certain other disclosures required generally for advertisements (e.g., variable rates, minimum opening deposit) as set forth in that section are not required.

In the case of lobby boards inside a depository institution or a share or deposit broker's office, Regulation DD requires that a notice appear on the board advising consumers that they can obtain further information about these accounts. For example, the statement could read "ask us for further information about these accounts," or words of similar import. The FRB provided that lobby boards placed primarily for viewing by the general public rather than members inside the institution or share or deposit broker's office are not exempt from the advertising provisions of this section, since consumers are less likely to receive details about the account from customer service representatives. Comment is requested on whether this proviso should apply to credit unions. However, section 957 of the recently enacted Housing and Community Development Act of 1992 permit signs, including lobby boards, to be displayed on the premises of institutions (including credit unions) if the sign contains the accompanying annual percentage yield and a statement that the consumer should request further information from an employee of the institution concerning the fees and terms applicable to the advertised account. This provision applies only to signs viewable only from the interior of the premises of the institution.

Section 707.9—Enforcement and Record Retention

Paragraph (a)—Administrative Enforcement

Violations of the final regulation or TISA will be treated as a violation of the FCU Act. Violators will be subject to the full range of NCUA enforcement authority, such as cease-and-desist orders, suspensions, removals, prohibitions, civil money penalties, or any other action available to the NCUA.

Paragraph (b)—Civil Liability

This section is provided to notify credit unions of their potential civil liability to members for violations of the final regulation or TISA. Credit unions may be civilly liable to their members for any actual damages sustained by a member as a result of a violation; punitive damages of between $100–$1,000 for a violation against an individual; and punitive damages of up to the lesser of $500,000 or 1% of the credit union's net worth, which we would interpret as the credit union's reserves and undivided earnings, but not including member shares, for a violation against a class. TISA provides that credit unions will not be liable for undefined "bona fide" errors or for errors resulting in overpayments to members. One reason for the technicality of the proposed regulation is to provide standards for many requirements not clearly delineated in TISA that could potentially lead to liability. Commenters are urged to keep this in mind when commenting on looser, undefined standards for the final regulation; for such amorphous standards could lead to a loss of a safe harbor in civil liability suits.

Paragraph (c)—Record Retention

The Board proposes to require credit unions to retain records regarding their compliance with their responsibilities under the proposed regulation for a minimum of two years after disclosures are required to be made. Two years is the period commonly used in the FRB's other consumer regulations (for example, Regulations Z and E). Furthermore, given the frequency of examinations by the NCUA, a record retention requirement of this length should allow a credit union's examiners adequate review of pertinent documentation during periodic examinations.

The Board contemplates that records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information. The credit union need not retain disclosures in hard copy, as long as it retains enough information to reconstruct the required disclosures or other records. However, copies of all printed advertisements and the text of all advertisements conveyed by electronic or broadcast media should be retained. Logs of member requests for disclosures are not required, as long as procedures are maintained to ensure rule compliance.

Section 701.35—Share, Share Draft and Share Certificate Accounts

This section has been modified to include a cross-reference to proposed part 707 and to part 740. The term "disclosures" was deleted to reflect the supersedure of the NCUA preemption in this area by TISA and proposed part 707. The phrase "time for crediting of deposited funds" was deleted to reflect the supersedure of the NCUA preemption in this area by the EFAA and Regulation CC. NCUA seeks comment regarding the interrelation of the preemption afforded by § 701.35 on share, share draft and share certificate accounts for FCUs to the narrower preemption permitted by TISA and proposed part 707. The Board believes that FCUs should be afforded the broadest possible protection in the area of share accounts, while still respecting the prerogatives of states in matters of local interest. The Board also will continue to abide by E.O. 12612 on Federalism and relevant case law in making any decisions in this area, and intends to issue no blanket preemptions of any state laws.

Section 740.2—Accuracy of Advertising

The first sentence of this section has been modified to add a reference to proposed § 707.8 on advertising. This was made to eliminate possible confusion created by an inconsistency between §§ 707.8 and 740.2 by FCUs and FISCUs subject to part 740 with the proposed advertising requirements of part 707, which is also mandatory for FCUs and FISCUs.

Appendix A—Annual Percentage Yield Calculation

Appendix A establishes the rules that credit unions would use to calculate the annual percentage yield on all credit union accounts, including rollback accounts and those using the par value method of dividend calculation. The proposed appendix contains two main parts: Part I discusses the calculations for advertisements and account disclosures, and Part II deals with periodic statement calculations. The Board is proposing only two annual percentage yield formulas in Part I: a "general" formula that can be used for all types of accounts and a "simple" formula that can be used for those accounts that have a maturity of one year, or that have an unstated maturity. The appendix provides several examples to illustrate how these formulas work. The appendix explains the general rules and describes how they should be applied in more complicated accounts, such as stepped-rate and tiered-rate accounts. If an account has two types of features, such as variable- and tiered-rates, all applicable rules would have to be followed. Part II contains a single formula for calculating the annual

percentage yield on periodic statements, with no special for multiple rate accounts.

The appendix provides that the annual percentage yield shall reflect only dividends, and may not include the value of any bonuses. Factoring in the value of a bonus would add significant complexity to the calculation of the annual percentage yield. For example, the value would have to be established as well as when the merchandise is provided to the member. If a cash bonus is given, assumptions would have to be made about whether the bonus is deposited and whether dividends are accrued on the sum. The Board proposes to follow the FRB in this regard.

The proposed annual percentage yield calculation also excludes any amounts that are determined by circumstances that may or may not occur. For example, a credit union may provide earnings to the member based on changes in certain stock market indicators (from the date an account is opened to the date it matures or is closed, for example) or on foreign currency fluctuations. The annual percentage yield for these and similar types of accounts would exclude such potential earnings. Similarly, if a credit union chooses to pay .01% additional dividends for each point scored in a future sporting event, that potential would not be reflected in the annual percentage yield. Comments are requested concerning credit union usage of such products. (To the extent the credit union paid such dividends on the account, the annual percentage yield on the periodic statement would capture these dividends.)

Part I

Annual Percentage Yield for Account Disclosures and Advertising Purposes

A. General Rules

In general, the annual percentage yield reflects the relationship between the amount of dividends to be earned by the member for the term of the account (including any compounding of dividends) and the amount of principal assumed to have been deposited to earn that amount of dividends. Credit unions would be required to calculate the annual percentage yield based on the actual number of days in the term of the account. If an account has an unstated maturity, credit unions would calculate the annual percentage yield based on an assumed term of 365 days.

For time deposits that are offered in multiples of months, the Board proposes to permit credit unions to base the number of days on either the actual number of days during the applicable period, or the number that would occur for any actual sequence of that many calendar months. For example, if a credit union offers a six-month certificate, the credit union could calculate the annual percentage yield based on the number of days in a particular six-month period, or in any six-month period. The Board believes this will minimize the need of credit unions to recalculate the annual percentage yield on an ongoing basis. The Board proposes, however, that credit unions that choose to use this permissive rule would have to use the same number of days to calculate the dividends figure used in the annual percentage yield formula (where "Dividends" are divided by "Principal"). Thus, the credit union with the six-month certificate of deposit above could base the annual percentage yield calculation on any number of days from 181 to 184, since various six-month periods could contain that range of days. If the credit union chose to use 181 days as the "Days in Term," it must also use 181 days to compute the "Dividends" figure used in the formula. A credit union would not be permitted to use 181 as the "Days in Term" and use a "Dividends" figure based on 183 days. (The amount of dividends *paid* by the credit union would have to be based on the actual number of days in the account due to the requirement to pay dividends on the principal in the account each day See § 707.7 of the regulation.)

B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)

For accounts with two or more simple dividend rates applied in succeeding periods (where the rates are known at the time the account is opened), a credit union shall assume each dividend rate is in effect for the length of time provided for in any share agreement. This rule would apply to all accounts, not only certificate accounts.

C. Variable-Rate Accounts

Variable-rate accounts with an introductory premium or discount rate must be treated like stepped-rate accounts. That is, the calculation of the annual percentage yield must reflect the introductory interest rate for the length of time provided for in the share contract, and the variable interest rate that (but for the introductory rate) would have been in effect when the account was opened or advertised for the remainder of the 365-day year.

D. Tiered-Rate Accounts (different Rates Apply to Specified Balance Levels)

Due to the nature of tiered-rate accounts (in which the dividend rate paid on the account is determined by reference to specified balance levels), the Board believes special rules are required to enable members to compare annual percentage yields for such accounts.

The appendix sets out the two basic methods of tiering used by credit unions to calculate the dividends they will pay on such accounts.

Tiering Method A

In the first method (shown in the appendix as "Tiering Method A"), a credit union pays the applicable "tiered" dividends rate on the *entire amount* in the account. This is also known as a "hybrid" or "plateau" tiered-rate account. For accounts of this type, credit unions must state the annual percentage yield that applies to each balance tier. In the example given in the appendix, this results in three separate annual percentage yields to be disclosed—one for each tier. Other than the fact that multiple annual percentage yields must be stated for these types of accounts, each annual percentage yield is calculated according to the general rule in the appendix.

Tiering Method B

In the second method of calculating dividends on tiered-rate accounts (shown in the appendix as "Tiering Method B"), credit unions do not pay the applicable tiered dividends rate on the entire amount in the account, but only on the portion of the deposit balance that falls within each specified tier. This is also known as the "pure" or "split-rate" tiered-rate account. For credit unions that compute dividends in this manner, a range of annual percentage yields must be provided for each tier other than for the first tier—to accurately reflect how dividends are paid. The low end of each range is figured on the lowest balance in the tier and the high end is figured on the highest balance in the tier. This approach requires an assumed balance for the highest tier in cases where the balance in the account is not limited. The FRB concluded that if an institution limited the maximum balance on an account, that figure should be used as the highest balance in the highest tier. Thus, if the maximum balance that can be on deposit in a tiered-rate account is $100,000, institutions would use that number to figure the annual percentage yield for the high end of the tier. If the tiered account has no maximum balance, however, the institution may assume any amount as the maximum balance figure of a tiered-rate account.

The Board proposes to follow the FRB approach.

Part II

Annual Percentage Yield Earned for Periodic Statements

The annual percentage yield earned calculation for the periodic statement is similar to that used for advertising and opening account disclosures. The annual percentage yield earned is transaction specific for the periodic statement. Thus, the annual percentage yield earned is an annualized rate that reflects the relationship between the amount of dividends earned on the member's account during the statement period and the average balance in the account for the statement period. It factors in the actual number of days in the statement period, as well as the actual dividends and principal. It uses the same basic general formula as used in part I, but reflects the actual dividends earned and average daily balance during the period covered by the statement. Comment is requested on use of the FRB formula to situations involving par value calculations and rollback accounts. Comment is also requested regarding the situation when the statement cycle and dividend periods do not agree.

Appendix B—Model Clauses and Sample Forms

Appendix B contains model clauses and sample forms intended for optional use by credit unions to aid in compliance with the disclosure requirements of §§ 707.4 (account disclosures), 707.5 (subsequent disclosures) and 707.8 (advertisements). Section 269(b) of TISA provides that credit unions that use these clauses will be in compliance with TISA's disclosure provisions.

As discussed in the supplementary information to § 707.3(a), the proposed rule provides for flexibility in designing the format of the disclosures. Credit unions can choose to prepare a single document or brochure that incorporates disclosures for all accounts offered, or to prepare different documents for each type of account. Credit unions may also use inserts to a document, or fill in blanks to show current rates, fees, or other terms.

In the model clauses, words in parentheses indicate the type of disclosure a credit union should insert in the space provided (for example, a credit union might insert "March 23, 1993" in the blank for a "(date)" disclosure). Brackets and "/" indicate that a credit union must choose the alternative that best describes its practice (for example, "[daily balance/ average daily balance]").

Regulatory Procedures

Regulatory Flexibility Act

This action is being proposed because it is mandated by the Federal Truth in Savings Act ("TISA"), promulgated in December 1991.

The proposed rule is intended to implement the TISA and Congressional intent that consumers should receive clear information about how interest/ dividends are paid by various institutions so that they may make informed choices about where to place their funds.

For the purpose of this analysis, credit unions under $2 million in assets will be considered small entities. As of June 30, 1992, there were 4,944 such entities, with a total of 3,753.7 million in assets, with an average asset size of $0.8 million. These small entities make up 37 percent of all credit unions, but only 12.5 percent of all credit union assets.

Under the proposed rule, all credit unions will be required to disclose the exact terms and conditions of their accounts and dividend and interest calculation methods. These disclosures are to be made in writing to prospective members at the time of inquiry, and to existing members under three circumstances:

(1) When they are considering opening an account or changing one;

(2) When the credit union changes the terms of an existing account; and

(3) When the member receives a "periodic statement" of account(s). "Periodic" is defined as at least quarterly. The periodic statement must include the annual percentage yield earned on all the funds in the account for the entire time that they remain there.

Many credit unions already distribute written disclosures. For small credit unions, these tend to be printed with imbedded blanks, so that volatile information such as rates can be written in by hand at the time the disclosure is given.

The third circumstance is expected to be the most burdensome, because it will take some calculation expertise that may not be readily available in credit unions that now calculate and pay dividends based on the lowest balance during a period, whether or not a rollback account.

NCUA conducted a survey of 337 credit unions statistically representative of all credit unions, and how they pay dividends, in order to understand and estimate the effects of the proposed rule. NCUA found that small credit unions are very likely to have no other kind of account besides "regular shares", in effect passbook accounts, for which no periodic statement is necessary. In the sample survey, of the 100 small credit unions, only 4 percent have the second most common kind of account—share drafts (checking accounts)—compared to 54 percent of the larger credit unions, which offer that kind of account.

The data suggest that smaller credit unions will have a minimal burden if their statements are issued less frequently than on a quarterly basis.

There are no federal rules which duplicate, overlap, or conflict with the proposed rule.

The NCUA Board would be interested in any comments about ways to establish a performance standard or otherwise ease the burden on small entities.

The NCUA Board does not believe that an exemption for small credit unions is appropriate, given the flexibility built in for these entities. These 4,944 credit unions have 2.3 million members, who deserve clear and comparable information as much as any other consumer. Nevertheless, the Board requests comments on this issue.

Paperwork Reduction Act

The Paperwork Reduction Act requires NCUA to obtain approval from the Office of Management and Budget for any new recordkeeping or reporting requirements. The Board is currently preparing this application, and will publish the required information for public comment in the **Federal Register** at a later date.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that Federal action limiting the policymaking discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope. The authority of the NCUA to regulate FISCUs and NICUs under TISA is clear. Furthermore, as Congress has found, the problems of inconsistent disclosures, consumer confusion and the inability of consumers to make meaningful comparisons among financial institutions, including credit unions, are problems of national scope. Moreover, TISA, as discussed in the Supplementary Information, requires that NCUA issue a regulation for all credit unions and includes specific language preempting inconsistent state laws.

With all of this in mind, the NCUA Board, pursuant to Executive Order 12612, has determined that this rule may have an occasional direct effect 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. Further, the proposed rule may supersede provisions of state laws, regulations or approvals. Since the proposed rule might lead to conflicts between the NCUA and state credit union regulators on occasion, comments are requested on means and methods to eliminate, or at least limit, potential conflicts in this area. Commenters may wish to provide recommendations on the potential use of delegated authority, cooperative decisionmaking responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated credit unions, or other ways of meeting the intent of the Executive Order. NCUA also desires comment from the state credit union regulators in developing the proposed rule.

By the National Credit Union Administration Board on November 12, 1992.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, the proposed rule published at 55 FR 21618, May 5, 1990, is hereby withdrawn and, pursuant to authority granted in section 272 of the Truth in Savings Act (12 U.S.C. 4311), the Board proposes to add a new regulation in 12 CFR part 707, and to amend 12 CFR 701.35 and 12 CFR 740.2.

List of Subjects

12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 707

Advertising, Credit unions, Consumer protection, Interest, Interest rates, Truth in Savings.

12 CFR Part 740

Advertising, Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 would be revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Pub. L. 101-73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601-3610. Section 701.35 is also authorized by 12 U.S.C. 4311-4312.

2. Section 701.35 would be amended by revising paragraph (c) to read as follows:

§ 701.35 Share, share draft and share certificate accounts.

* * * * *

(c) A Federal credit union may, consistent with this section, parts 707 and 740 of this chapter, other Federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

* * * * *

3. Part 707 would be added to read as follows:

PART 707—TRUTH IN SAVINGS

707.1 Authority, purpose, coverage and effect on state laws.
707.2 Definitions.
707.3 General disclosure requirements.
707.4 Account disclosures.
707.5 Subsequent disclosures.
707.6 Periodic statement disclosures.
707.7 Payment of dividends.
707.8 Advertising.
707.9 Enforcement and record retention.

Appendix A to Part 707—Annual Percentage Yield Calculation

Appendix B to Part 707—Model Clauses and Sample Forms

Authority: 12 U.S.C. 4311.

§ 707.1 Authority, purpose, coverage and effect on state laws.

(a) *Authority.* This part is issued by the National Credit Union Administration Board to implement the Truth in Savings Act of 1991 (the "TISA"), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4301 *et seq.*, Pub. L. No. 102-242, 105 Stat. 2236).

(b) *Purpose.* The purpose of this part is to enable credit union members and potential members to make informed decisions about accounts at credit unions. This part requires credit unions to provide disclosures so that members and potential members can make meaningful comparisons among credit unions and depository institutions.

(c) *Coverage.* This part applies to all credit unions whose accounts are either insured by, or eligible to be insured by, the National Credit Union Share Insurance Fund. In addition, the advertising rules in § 707.8 apply to any person who advertises an account offered by a credit union, including any person who solicits any amount from any other person for deposit in a credit union.

(d) *Effect on state laws.* State law requirements that are inconsistent with the requirements of the TISA and this part are preempted to the extent of the inconsistency.

§ 707.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Account* means a share or deposit account held by or offered to a member or potential member by a credit union. It includes, but is not limited to, accounts such as share, share draft, checking and certificate accounts. For purposes of the advertising regulations in § 707.8 of this part, the term also includes an account at a credit union that is held by or offered to a share or deposit broker. The term does not include an existing account held by an unincorporated nonbusiness association of natural persons prior to [THE EFFECTIVE DATE OF THE FINAL RULE], unless the association notifies the credit union that it meets the definition of "member."

(b) *Advertisement* means a commercial message, appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account.

(c) *Annual percentage yield* means a percentage rate reflecting the total amount of dividends paid on an account, based on the dividend rate and the frequency of compounding for a 365-day period and calculated according to the rules in Appendix A of this part.

(d) *Average daily balance method* means the application of a periodic rate to the average daily balance in the account for the period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) *Board* means the National Credit Union Administration Board.

(f) *Bonus* means a premium, gift, award, or other consideration worth more than $10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a member during a year in exchange for opening, maintaining, or renewing an account, or increasing an account balance. The term does not include dividends, other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

(g) *Business day:*

[Alternative one] means a calendar day other than a Saturday or a Sunday,

January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

[Alternative two] means a day on which the credit union is open to its membership for carrying on substantially all business functions.

[Alternative three] means a day in which the credit union is open which is not a Saturday, Sunday or federal or state holiday for credit unions.

[Alternative four] means a calendar day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C. 6103(a).

(h) *Certificate account* means any share certificate or interest-bearing certificate of deposit account offered by a credit union to a member or potential member.

(i) *Credit union* means a federal or state-chartered credit union that is either insured by, or is eligible to apply for insurance from, the National Credit Union Share Insurance Fund.

(j) *Daily balance method* means the application of a daily periodic rate to the full amount of principal in the account each day.

(k) *Dividend* and *dividends* mean any declared or anticipated earnings on a member's share in a credit union to be paid to a member or to the member's account. For purposes of this part, the term does not include the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

(l) *Dividend period* means the span of time established by the board of directors of a credit union by the end of which shares on deposit earn dividend credit. The dividend period may be different for each type of account.

(m) *Dividend rate* means the declared or anticipated annual dividend rate paid on an account, which does not reflect compounding. For purposes of the account disclosures in § 707.4(b)(1)(A) of this part, the rate may, but need not, be referred to as the "annual percentage rate" in addition to being referred to as the "dividend rate."

(n) *Fixed-rate account* means an account that is not a variable-rate account as defined in paragraph (z) of this section.

(o) *Grace period* means a period following the maturity of an automatically renewing certificate account during which the member may withdraw funds without being assessed a penalty.

(p) *Interest* means any payment to a member or to a member's account for the use of funds in an account at a state-chartered credit union offered pursuant to state law, calculated by application of a periodic rate to the balance. For purposes of this regulation, the term does not include the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses. Except as is specifically otherwise provided in this part, in the case of an interest-bearing account held in or offered by a state-chartered credit union pursuant to state law, the word "interest" shall be substituted for all references to "dividend" or "dividends" in this part.

(q) *Member* means:

(1) A natural person member of the credit union (or an unincorporated nonbusiness association of such persons) who holds an account primarily for personal, family, or household purposes;

(2) A natural person nonmember (or an unincorporated nonbusiness association of such persons) who holds an account primarily for personal, family, or household purposes, either jointly with a natural person member or in a credit union designated as a low-income credit union, or to whom such an account is offered; and

(3) A natural person nonmember who holds a deposit account in a state-chartered credit union pursuant to state law, or to whom such deposit account is offered.

The term also includes an unincorporated nonbusiness association of natural person members. The term does not include a natural person who holds an account for another in a professional capacity.

(r) *Passbook account* means an account in which the member retains a book or other document in which the credit union records transactions on the account.

(s) *Periodic statement* means a statement setting forth information about an account (other than a certificate account or passbook account) that is provided to a member on a regular basis four or more times a year.

(t) *Potential member* means a natural person within the credit union's field of membership (or an unincorporated nonbusiness association of such persons) or otherwise eligible to become a member as defined in paragraph (q) of this section.

(u) *Rollback account* means an account in which dividends are earned only on those funds which are deposited on or before a rollback date and remain in the account through the end of the dividend period or a portion of the dividend period for which the credit union provides provisional dividend credit. Dividends on funds in a rollback account must accrue from the first day of a dividend period or a portion of a dividend period.

(v) *Rollback date* means the date or dates, set by the credit union, by which funds must be deposited in a rollback account in order to earn dividends. The rollback date may not be a date earlier than the tenth day of a month.

(w) *State* means a state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(x) *Stepped-rate account* means an account that has two or more dividend rates that take effect in succeeding periods and are known when the account is opened.

(y) *Tiered-rate account* means an account that has two or more dividend rates that are applicable to specified balance levels.

(z) *Variable-rate account:*

[Alternative one] means an account in which the dividend rate may change after the account is opened, as long as that rate is determined by reference to an index.

[Alternative two] means a share, share draft, or checking account in which the simple dividend rate may change after the account is opened, unless the credit union contracts to give at least 30 days advance written notice of rate decreases.

[Alternative three] means any share or share draft account in which the dividend rate may change after the account is opened.

§ 707.3 General disclosure requirements.

(a) *Form.* Credit unions shall make the disclosures required by §§ 707.4 through 707.6 of this part, as applicable, clearly and conspicuously in writing and in a form that the member or potential member may keep. Disclosures for each account offered by a credit union may be presented separately or they may be combined with disclosures for the credit union's other accounts, as long as the applicable disclosures to the member's account are clear.

(b) *General.* The disclosures shall reflect the terms of the legal obligation between the member and the credit union. Disclosures may be made in languages other than English, provided the disclosures are available in English upon request.

(c) *Relation to Regulation E (12 CFR part 205).* Disclosures required by and

provided in accordance with the Electronic Fund Transfer Act (15 U.S.C. 1601) and its implementing Regulation E (12 CFR part 205) that are also required by this part may be substituted for the disclosures required by this part.

(d) *Multiple members.* If an account is held by more than one member, disclosures may be made to any one of the members.

(e) *Oral responses to inquiries.* In an oral response to a member or potential member's inquiry about dividend rates payable on its accounts, the credit union shall state the annual percentage yield. For accounts earning dividends, the credit union must also state the following: "Dividends are based on credit union earnings at the end of a dividend period." If a credit union states an annual percentage yield for a rollback account, it shall also disclose that the stated annual percentage yield assumes that all funds in the account are deposited by the rollback date and remain in the account through the end of the dividend period or a portion of the dividend period, and that the actual annual percentage yield may vary depending on account activity. For accounts on which dividends are calculated based on increments of par value pursuant to § 707.7(b) of this part, the credit union shall also disclose that fact, including the par value of its shares. The dividend rate may be stated in addition to the annual percentage yield. No other rate may be stated.

(f) *Rounding and accuracy rules for rates and yields.*—(1) *Rounding.* The annual percentage yield, the annual percentage yield earned, and the dividend rate shall be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. For advertisements, the dividend rate shall be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places.

(2) *Accuracy.* The annual percentage yield (and the annual percentage yield earned) will be considered accurate if not more than one-twentieth of one percentage point (.05%) above or below the annual percentage yield (and the annual percentage yield earned) determined in accordance with the rules in appendix A of this part.

§ 707.4 Account disclosures.

(a) *Delivery of account disclosures.*—(1) *Account opening.* The credit union shall provide the account disclosures to the member or potential member before an account is opened or a service is provided, whichever is earlier. A credit union is deemed to have provided a service when a fee required to be disclosed is assessed. If the member is not present at the credit union when the account is opened or a service is provided and has not already received the disclosures, the credit union shall mail or deliver the disclosures no later than ten business days after the account is opened or the service is provided, whichever is earlier.

(2) *Requests.*—(i) A credit union shall provide the account disclosures to any member or potential member upon request. If the member is not present at the credit union when the request is made, the credit union shall mail or deliver the disclosures within a reasonable time after it receives the request.

(ii) In providing disclosures upon request, the credit union may:

(A) Specify a dividend rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and provide a telephone number members may call to obtain current rate information; and

(B) State the maturity of a certificate account as a term rather than a date.

(b) *Content of account disclosures.* Account disclosures shall include the following, as applicable:

(1) *Rate information.*—(i) *Annual percentage yield and dividend rate.* The "annual percentage yield" and the "dividend rate," using those terms, and for fixed-rate accounts the period of time the dividend rate will be in effect.

(ii) *Variable rates.* For variable-rate accounts:

(A) The fact that the dividend rate and annual percentage yield may change;

(B) How the dividend rate is determined;

(C) The frequency with which the dividend rate may change; and

(D) Any limitation on the amount the dividend rate may change.

(iii) *Rollback accounts.* In the case of rollback accounts, the fact that the stated annual percentage yield assumes that all funds in the account are deposited by the rollback date and remain in the account through the end of the dividend period or a portion of a dividend period for which the credit union provides provisional dividend credit, and that the actual annual percentage yield will vary depending on account activity. Such statement shall be of equal prominence with the stated annual percentage yield.

(2) *Compounding and crediting.*—(i) *Frequency.* The frequency with which dividends are compounded and credited.

(ii) *Effect of closing an account.* If members will forfeit dividends if they close an account before accrued dividends are credited, a statement that the dividends will not be paid in such cases.

(3) *Balance information.*—(i) *Minimum balance requirements.* Any minimum balance required to:

(A) Open the account;

(B) Avoid the imposition of a fee; or

(C) Obtain the annual percentage yield disclosed. Except for the balance to open the account, the disclosure shall state how the balance is determined for these purposes.

(ii) *Balance computation method.*

(A) For accounts other than rollback accounts, an explanation of the balance computation method specified in § 707.7 of this part used to calculate dividends on the account.

(B) For rollback accounts, the credit union shall make the following disclosure: "Dividends will be earned only on funds that are placed in the account on or before the rollback date and remain in the account through the end of the [dividend period] or [portion of the dividend period for which the credit union provides provisional dividend credit]. Dividends on funds that are placed in the account on or before the rollback date and remain in the account through the end of the [dividend period] or [a portion of the dividend period for which the credit union provides provisional dividend credit] will accrue from the first day of the [dividend period] or [a portion of a dividend period for which the credit union provides provisional dividend credit]. Funds withdrawn before the end of the [dividend period] or [portion of the dividend period for which the credit union provides provisional dividend credit] will not earn any dividends." (Applicable options in brackets to be chosen.)

(iii) *When dividends begin to accrue.* A statement of when dividends begin to accrue on noncash deposits.

(4) *Fees.* The amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.

(5) *Transaction limitations.* Any limitations on the number or dollar amount of withdrawals or deposits.

(6) *Features of Certificate Accounts.* For certificate accounts:

(i) *Time requirements.* The maturity date.

(ii) *Early withdrawal penalties.* A statement that a penalty will be imposed for early withdrawal, how it is calculated, and the conditions for its assessment.

(iii) *Withdrawal of dividends prior to maturity.* If compounding occurs and dividends may be withdrawn prior to maturity, a statement that the annual percentage yield assumes dividends remain on deposit until maturity and that a withdrawal will reduce earnings.

(iv) *Renewal policies.* A statement of whether or not the account will renew automatically at maturity. If it will, a statement of whether or not a grace period will be provided and, if so, the length of that period must be stated. If the account will not renew automatically, a statement of whether dividends will be paid after maturity if the member does not renew the account must be stated.

(7) *Bonuses.* The amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirements to obtain the bonus.

(8) *Nature of dividends.* For accounts earning dividends, a statement that dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

(c) *Notice to existing account holders.*—(1) *Notice of availability of disclosures.* Credit unions shall provide a notice to members who receive periodic statements and who hold existing accounts of the type offered by the credit union on [THE EFFECTIVE DATE OF THE FINAL RULE]. The notice shall be included on or with the first periodic statement sent after [THE EFFECTIVE DATE OF THE FINAL RULE] (or on or with the first periodic statement for a statement cycle beginning on or after that date). The notice shall state that the members may request account disclosures containing terms, fees, and rate information for the account. In responding to such a request, credit unions shall provide disclosures in accordance with paragraph (a)(2) of this section.

(2) *Alternative to notice.* As an alternative to the notice described in paragraph (c)(1) of this section, credit unions may provide account disclosures to members. The disclosures may be provided either with a periodic statement or separately, but must be sent no later than when the periodic statement described in paragraph (c)(1) of this section is sent.

§ 707.5 Subsequent disclosures.

(a) *Change in terms.*—(1) *Advance notice required.* A credit union shall give advance notice to affected members of any change in a term required to be disclosed under § 707.4(b) of this part if the change may reduce the annual percentage yield or adversely affect the member. The notice shall include the effective date of the change. The notice shall be mailed or delivered at least 30 calendar days before the effective date of the change.

(2) *No notice required.* No notice under this section is required for:

(i) *Variable-rate changes.* Changes in the dividend rate and corresponding changes in the annual percentage yield in variable-rate accounts.

(ii) *Share draft and check printing fees.* Changes in fees assessed by third parties for check printing.

(iii) *Short-term certificate accounts.* Changes in any term for certificate accounts with maturities of one month or less.

(b) *Notice before maturity for certificate accounts longer than one month that renew automatically.* For certificate accounts with a maturity longer than one month that renew automatically at maturity, credit unions shall provide the disclosures described below before maturity. The disclosures shall be mailed or delivered at least 30 calendar days before maturity of the existing account. Alternatively, the disclosures may be mailed or delivered at least 20 calendar days before the end of the grace period on the existing account, provided a grace period of at least five calendar days is allowed.

(1) *Maturities of longer than one year.* If the maturity is longer than one year, the credit union shall provide account disclosures set forth in § 707.4(b) of this part for the new account, along with the date the existing account matures. If the dividend rate and annual percentage yield that will be paid for the new account are unknown when disclosures are provided, the credit union shall state that those rates have not yet been determined, the date when they will be determined, and a telephone number members may call to obtain the dividend rate and the annual percentage yield that will be paid for the new account.

(2) *Maturities of one year or less but longer than one month.* If the maturity is one year or less but longer than one month, the credit union shall either:

(i) Provide disclosures as set forth in paragraph (b)(1) of this section; or

(ii) Disclose to the member:

(A) The date the existing account matures and the new maturity date if the account is renewed;

(B) The dividend rate and the annual percentage yield for the new account if they are known (or that those rates have not yet been determined, the date when they will be determined, and a telephone number the member may call to obtain the dividend rate and the annual percentage yield that will be paid for the new account); and

(C) Any difference in the terms of the new account as compared to the terms required to be disclosed under § 707.4(b) of this part for the existing account.

(c) *Notice for certificate accounts one month or less that renew automatically.* For certificate accounts with a maturity one month or less that renew automatically at maturity, credit unions shall disclose any difference in the terms of the new account as compared to the terms required to be disclosed under section 707.4(b) of this part for the existing account, other than a change in the dividend rate and corresponding change in the annual percentage yield. The notice shall be mailed or delivered within a reasonable time after the renewal.

(d) *Notice before maturity for certificate accounts longer than one year that do not renew automatically.* For certificate accounts with a maturity longer than one year that do not renew automatically at maturity, credit unions shall disclose to members the maturity date and whether dividends will be paid after maturity. The disclosures shall be mailed or delivered at least 10 calendar days before maturity of the existing account.

§ 707.6 Periodic statement disclosures.

(a) *General rule.* If a credit union mails or delivers a periodic statement, the statement shall include the following disclosures:

(1) *Annual percentage yield earned.* The "annual percentage yield earned" during the statement period, using that term calculated according to the rules in appendix A of this part.

(2) *Amount of dividends.* The dollar amount of dividends earned during the statement period.

(3) *Fees imposed.* Fees required to be disclosed under § 707.4(b)(4) of this part imposed during the statement period. The dollar amounts of the fees shall be itemized by type and dollar amounts.

(4) *Length of period.* The total number of days in the statement period, or the beginning and ending dates of the period.

(b) *Special rule for average daily balance method.* In making the disclosures described in paragraph (a) of this section, credit unions that use the average daily balance method and that calculate dividends for a period other than the statement period shall calculate and disclose the annual percentage yield earned and amount of dividends earned based on that period rather than the statement period. The information in paragraph (a)(4) shall be stated for that

period as well as for the statement period.

§ 707.7 Payment of dividends.

(a) *Permissible methods.*—(1) *Balance on which dividends are calculated.* Credit unions shall calculate dividends on the full amount of principal in an account for each day by use of either the daily balance method or the average daily balance method, except as otherwise specified in paragraphs (b) and (d)(2) of this section. Credit unions shall calculate dividends by use of a daily rate of at least 1/365 of the dividend rate. In a leap year a daily rate of 1/366 of the dividend rate may be used.

(2) *Determination of minimum balance to earn dividends.* A credit union shall use the same method to determine any minimum balance required to earn dividends as it uses to determine the balance on which dividends are calculated. A credit union may use an additional method that is unequivocally beneficial to the member.

(b) *Payment on increments of par value.* A federal credit union with shares having a par value of $5 or less may calculate dividends based on increments of par value.

(c) *Compounding and crediting policies.* This section does not require credit unions to compound or credit dividends at any particular frequency.

(d) *Date dividends begin to accrue.* (1) For accounts other than rollback accounts, dividends shall begin to be earned not later than the day that the credit union receives provisional credit for the deposit as specified in section 606(a) of the Expedited Funds Availability Act (12 U.S.C. 4005(a)).

(2) For rollback accounts, dividends will be earned only on funds that are in the account on or before the rollback date and remain in the account through the end of the dividend period or the portion of the dividend period for which the credit union provides provisional dividend credit. Dividends on funds that are in the account on or before the rollback date and remain in the account through the end of the dividend period or said portion of the dividend period shall accrue from the first day of the dividend period or said portion of the dividend period.

(3) Dividends shall be earned on funds until the day funds are withdrawn, except for rollback accounts.

§ 707.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement shall not be misleading or inaccurate and shall not misrepresent a credit union's account contract. An advertisement shall not refer to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee may be imposed on the account. The word "profit" shall not be used in referring to interest paid on an account.

(b) *Permissible rates.* For accounts other than rollback accounts, if an advertisement states a rate of return, it shall state the rate as an "annual percentage yield," using that term. (The abbreviation "APY" may be used provided the term "annual percentage yield" is stated at least once in the advertisement.) The advertisement shall not state any other rate, except that the "dividend rate," using that term, may be stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates.

(c) *When additional disclosures are required.* Except as provided in paragraph (f) of this section, if the annual percentage yield is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) *Variable rates.* For variable-rate accounts, a statement that the rate may change after the account is opened.

(2) *Time annual percentage yield is offered.* The period of time the annual percentage yield will be offered, or a statement that the annual percentage yield is accurate as of a specified date.

(3) *Minimum balance.* The minimum balance required to earn the advertised annual percentage yield. For tiered-rate accounts, the minimum balance required for each tier shall be stated in close proximity and with equal prominence to the applicable annual percentage yield.

(4) *Minimum opening deposit.* The minimum deposit required to open the account, if it is greater than the minimum balance necessary to earn the advertised annual percentage yield.

(5) *Effect of fees.* A statement that fees or other conditions could reduce the earnings on the account.

(6) *Features of certificate accounts.* For certificate accounts:

(i) *Time requirements.* The term of the account.

(ii) *Early withdrawal penalties.* A statement that a penalty will or may be imposed for early withdrawal.

(7) *Par value calculations.* In the case of an account for which dividends are calculated based on increments of par value pursuant to § 707.7(b) of this part, a statement to that effect, including the par value of the credit union's shares.

(8) *Nature of dividends.* For accounts earning dividends, a statement that dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

(d) *Advertisement of rollback accounts.* For rollback accounts,

[Alternative one] a credit union shall not state an annual percentage yield in an advertisement. A credit union shall state the following information, clearly and conspicuously, in an advertisement for a rollback account:

(1) The dividend rate and crediting policy;

(2) That the rate is applied to the lowest balance in the account from the rollback date through the end of the dividend period or portion of the dividend period for which the credit union provides provisional dividend credit; and

(3) The information required by paragraphs (a) and (c) of this section, to the extent applicable.

[Alternative two] if the annual percentage yield is stated in an advertisement, the advertisement shall also state the following information clearly and conspicuously:

(1) That the stated annual percentage yield assumes that all funds are deposited on the first day of the dividend period or a portion of a dividend period and remain in the account through the close of the dividend period or a portion of a dividend period, that the actual annual percentage yield may vary depending on account activity;

(2) The dividend rate and crediting policy;

(3) That the rate is applied to the lowest balance in the account from the rollback date through the end of the dividend period or portion of the dividend period for which the credit union provides provisional dividend credit; and

(4) The other information required by paragraphs (a) and (c) of this section, to the extent applicable.

(e) *Bonuses.* Except as provided in paragraph (f) of this section, if a bonus is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) The "annual percentage yield," using that term;

(2) The time requirements to obtain the bonus;

(3) The minimum balance required to obtain the bonus;

(4) The information in paragraph (d) of this section, to the extent applicable;

(5) The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and

(6) When the bonus will be provided.

(f) *Exemption for certain advertisements.* If an advertisement is made through one of the following media, it need not contain the information in paragraphs (c)(1), (c)(2), (c)(4), (c)(5), (c)(6)(ii), (e)(5) and (e)(6) of this section:

(1) Broadcast or electronic media, such as television or radio;

(2) Outdoor media, such as billboards;

(3) Telephone response machines; or

(4) Lobby boards inside a credit union (provided they contain a notice advising members to contact an employee for further information).

§ 707.9 Enforcement and record retention.

(a) *Administrative enforcement.* Section 270 of TISA (12 U.S.C. 4309) contains the provisions relating to administrative sanctions for failure to comply with the requirements of TISA and this part.

(b) *Civil liability.* Section 271 of the TISA (12 U.S.C. 4310) contains the provisions relating to civil liability for failure to comply with the requirements of the Act and this regulation.

(c) *Record retention.* A credit union shall retain evidence of compliance with this regulation for a minimum of two years after the date disclosures are required to be made or action is required to be taken.

Appendix A to Part 707—Annual Percentage Yield Calculation

The annual percentage yield (APY) measures the total amount of dividends a credit union pays on an account based on the dividend rate and the frequency of compounding. The annual percentage yield is expressed as an annualized rate, based on a 365-day year. (Credit unions may calculate the annual percentage yield based on a 365-day or a 366-day year in a leap year.) Part I of this appendix discusses the annual percentage yield calculations for account disclosures and advertisements, while Part II discusses annual percentage yield calculations for periodic statements. The annual percentage yield reflects only dividends and does not include the value of any bonus (or other consideration worth $10 or less) that may be provided to the member to open, maintain, increase or renew an account. Interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future.

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

In general, the annual percentage yield for account disclosures under §§ 707.4 and 707.5 and for advertising under § 707.8 is an annualized rate that reflects the relationship between the amount of dividends that would be earned by the member for the term of the account and the amount of principal used to calculate those dividends. Special rules apply to accounts with tiered and stepped dividend rates.

A. General Rules

The annual percentage yield shall be calculated for all accounts, including grace period accounts and those using the par value method, by the formula shown below. Credit unions shall calculate the annual percentage yield based on the actual number of days for the term of the account. For accounts without a stated maturity date (such as a typical share or share draft account), the calculation shall be based on an assumed term of 365 days. In determining the total dividends figure to be used in the formula, credit unions shall assume that all principal and dividends remain on deposit for the entire term, and that no other transactions (deposits or withdrawals) occur during the term. (This assumption shall not be used if a credit union requires, as a condition of the account, that consumers withdraw dividends during the term. In such a case, the dividends (and annual percentage yield calculation) shall reflect that requirement.) For share certificate accounts that are offered in multiples of months, credit unions may base the number of days on either the actual number of days during the applicable period, or the number of days that would occur for any actual sequence of that many calendar months. If credit unions choose to use this permissive rule, they must use the same number of days to calculate the dollar amount of dividends that will be earned on the account in the annual percentage yield formula (where "Dividends" are divided by "Principal".)

The annual percentage yield is to be calculated by use of the following general formula (("APY") is used for convenience in the formulas):

APY = 100 [(1 + Dividends/Principal) (365/Days in term) − 1].

"Principal" is the amount of funds assumed to have been deposited at the beginning of the account.

"Dividends" is the total dollar amount of dividends earned on the Principal for the term of the account.

"Days in term" is the actual number of days in the term of the account.

When the "days in term" is 365 (that is, where the stated maturity is 365 days or where the account does not have a stated maturity), the APY can be calculated by use of the following simple formula:

APY = 100 (Dividends/Principal).

Examples

(1) If a credit union would pay $61.68 in dividends for a 365-day year on $1,000 deposited into a share draft account, the APY is 6.17%:

APY = 100 [(1 + 61.68/1,000) (365/365) − 1]
APY = 6.17%.

Or, using the simple formula above (since the term is deemed to be 365 days):

APY = 100 (61.68/1,000)
APY = 6.17%.

(2) If a credit union pays $30.37 in dividends on a $1,000 six-month share certificate (where the six-month period used by the credit union contains 182 days), using the general formula above, the APY is 6.18%:

APY = 100 [(1 + 30.37/1,000) (365/182) − 1]
APY = 6.18%.

B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)

For accounts with two or more simple dividends rates applied in succeeding periods (where the rates are known at the time the account is opened), a credit union shall assume each simple dividend rate is in effect for the length of time provided for in any share agreement.

Examples

(1) If a credit union offers a $1,000 6-month share certificate on which it pays a 5% simple dividend rate, compounded daily, for the first three months (which contain 88 days), and a 5.5% simple dividend rate, compounded daily, for the next three months (which contain 91 days), the total dividends for six months is $26.68, and, using the general formula above, the APY is 5.39%:

APY = 100 [(1 + 26.10/1,000) (365/183) − 1]
APY = 5.39%.

(2) If a credit union offers a $1,000 2-year share certificate on which it pays a 6% simple dividend rate, compounded daily, for the first year, and a 6.5% simple dividend rate, compounded daily, for the next year, the total dividends for two years is $133.13, and, using the general formula above, the APY is 6.45%:

APY = 100 [(1 + 133.13/1,000) (365/730) − 1]
APY = 6.45%.

C. Variable-Rate Accounts

For variable-rate accounts without an introductory premium or discounted rate, a credit union must base the calculation only on the initial simple dividend rate in effect when the account is opened (or advertised), and assume that this rate will not change during the year.

Variable-rate accounts with an introductory premium or discount rate must be treated like stepped-rate accounts. Thus, a credit union shall assume that: (1) The introductory simple dividend rate is in effect for the length of time provided for in the deposit contract; and (2) the variable simple dividend rate that would have been in effect when the account is opened or advertised (but for the introductory rate) is in effect for the remainder of the year. If the variable rate is tied to an index, the index-based rate in effect at the time of disclosure must be used for the remainder of the year. If the rate is not tied to an index, the rate in effect for existing consumers holding the same account (who are not receiving the introductory dividend rate) must be used for the remainder of the year.

For example, if a credit union offers an account on which it pays a 7% simple dividend rate, compounded daily, for the first three months (which, for example, contains 91 days), while the variable simple dividend rate that would have been in effect when the account was opened was 5%, the total dividends for a 365-day year for a $1,000 account balance is $56.52, (based on 91 days at 7% followed by 274 days at 5%). Using the simple formula, the APY is 5.65%.

APY = 100 (56.35/1,000)
APY = 5.65%.

D. Accounts with Tiered Rates (Different Rates Apply To Specified Balance Level)

For accounts in which two or more simple dividend rates paid on the account are applicable to specified balance levels, the credit union must calculate the annual percentage yield in accordance with the method described below that it uses to calculate dividends. In all cases, an annual percentage yield (or a range of annual percentage yields, if appropriate) must be disclosed for each balance tier.

For purposes of the examples discussed below, assume the following:

Simple dividend rate (%)	Share balance required to earn rate
5.25	Up to but not exceeding $2,500.
5.50	Above $2,500, but not exceeding $15,000.
5.75	Above $15,000.

Tiering Method A

Under this method, a credit union pays on the full balance in the account the stated simple dividend rate that corresponds to the applicable share balance tier. For example, if a member deposits $8,000, the credit union pays the 5.50% simple dividends rate on the entire $8,000. This is also known as a "hybrid" or "plateau" tiered rate account.

When this method is used to determine dividends, only one annual percentage yield will apply to each tier. Within each tier, the annual percentage yield will not vary with the amount of principal assumed to have been deposited.

For the simple dividend rates and account balances assumed above, the credit union will state three annual percentage yields—one corresponding to each balance tier. Calculation of each annual percentage yield is similar for this type of account as for accounts with a single fixed simple dividend rate. Thus, the calculation is based on the total amount of dividends that would be received by the member for each tier of the account for a year and the principal assumed to have been deposited to earn that amount of dividends.

First tier. Assuming daily compounding, the credit union will pay $53.90 in dividends on a $1,000 account balance. Using the general formula for the first tier, the APY is 5.39%:

APY=100 [(1+53.90/1,000) (365/365)−1]
APY=5.39%.

Using the simple formula:

APY=100 (53.90/1,000)
APY=5.39%.

Second tier. The credit union will pay $452.29 in dividends on an $8,000 deposit. Thus, using the simple formula, the annual percentage yield for the second tier is 5.65%:

APY = 100 (452.29/8,000)
APY = 5.65%.

Third tier. The credit union will pay $1,183.61 in dividends on a $20,000 account balance. Thus, using the simple formula, the annual percentage yield for the third tier is 5.92%.

APY = 100 (1,183.61/20,000)
APY = 5.92%.

Tiering Method B

Under this method, a credit union pays the stated simple dividend rate only on that portion of the balance within the specified tier. For example, if a member deposits $8,000, the credit union pays 5.25% on only $2,500 and 5.50% on $5,500 (the difference between $8,000 and the first tier cutoff of $2,500). This is also known as a "pure" tiered rate account.

The credit union that computes dividends in this manner must provide a range that shows the lowest and the highest annual percentage yields for each tier (other than for the first tier, which, like the tiers in Method A, has the same annual percentage yield throughout). The low figure for an annual percentage yield is calculated based on the total amount of dividends earned for a year assuming the *minimum* principal required to earn the simple dividend rate for that tier. The high figure for an annual percentage yield is based on the amount of dividends the credit union would pay on the highest principal that could be deposited to earn that same simple dividend rate. If the account does not have a limit on the amount that can be deposited, the credit union may assume any amount.

For the tiering structure assumed above, the credit union would state a total of five annual percentage yields—one figure for the first tier and two figures stated as a range for the other two tiers.

First tier. Assuming daily compounding, the credit union could pay $53.90 in dividends on a $1,000 account balance. For this first tier, using the simple formula, the annual percentage yield is 5.39%.

APY = 100 (53.90/1,000)
APY = 5.39%.

Second tier. For the second tier the credit union would pay between $134.75 and $841.45 in dividends, based on assumed balances of $2,500.01 and $15,000, respectively. For $2,500.01, dividends would be figured on $2,500 at 5.25% simple dividend rate plus dividends on $.01 at 5.50%. For the low end of the second tier, therefore, the annual percentage yield is 5.39%. Using the simple formula:

APY = 100 (134.75/2,500)
APY = 5.39%.

For $15,000, dividends are figured on $2,500 at 5.25% simple dividend rate plus dividends on $12,500 at 5.50% simple dividend rate. For the high end of the second tier, the annual percentage yield, using the simple formula, is 5.61%:

APY = 100 (841.45/15,000)
APY = 5.61%.

Thus, the annual percentage yield range that would be stated for the second tier is 5.39% to 5.61%.

Third tier. For the third tier, the credit union would pay $841.45 and $5,871.78 in dividends on the low-end of the third tier (a balance of $15,000.01). For $15,000.01, dividends would be figured on $2,500 at 5.25% simple dividend rate, plus dividends on $12,500 at 5.50% simple dividend rate, plus dividends on $.01 at 5.75% simple dividend rate. For the low end of the third tier, therefore, the annual percentage yield, using the simple formula, is 5.61%:

APY = 100 (841.45/15,000)
APY = 5.61%

Assuming the credit union does not limit the account balance, it may assume any maximum amount for the purposes of computing the annual percentage yield for the high end of the third tier. For an assumed maximum balance amount of $100,000, dividends would be figured on $2,500 at 5.25% simple dividend rate, plus dividends on $12,500 at 5.50% simple dividend rate, plus dividends on $85,000 at 5.75% simple dividend rate. For the high end of the third tier, therefore, the annual percentage yield, using the simple formula, is 5.87%:

APY = 100 (5,871.78/100,000)
APY = 5.87%

Thus, the annual percentage yield that would be stated for the third tier is 5.61% to 5.87%. If the assumed maximum balance amount is $1,000,000, credit unions would use $985,000 rather than $85,000 in the last calculation. In that case for the high end of the third tier, the annual percentage yield, using the simple formula, is 5.91%:

APY = 100 (59,134.22/1,000,000)
APY = 5.91%

Thus, the annual percentage yield range that would be stated for the third tier is 5.61% to 5.91%.

Part II. Annual Percentage Yield Earned for Periodic Statements

The annual percentage yield earned for periodic statements under § 707.6 is an annualized rate that reflects the relationship between the amount of dividends actually paid and credited to the member's account during the period and the average daily balance in the account for the statement period.

Pursuant to § 707.6(b), however, if a credit union uses the average daily balance method and calculates interest for a period other than the statement period, the annual percentage yield earned shall reflect the relationship between the amount of interest earned and the average daily balance in the account for the other period.

The annual percentage yield shall be calculated by using the following formula:

APY Earned = 100 [(1 + Interest earned/Balance)(365/Days in period)−1].

"Balance" is the average daily balance in the account for the period.

"Interest earned" is the actual amount of dividends accrued and credited to the account for the period.

"Days in period" is the actual number of days for the period.

Examples

(1) If a credit union calculates dividends for the statement period (and uses either the daily balance or the average daily balance method), and the account had a balance of $1,500 for 15 days and a balance of $500 for the remaining 15 days of a 30-day statement period, the average daily balance for the period is $1,000. Assume that $5.25 in dividends was earned during the period. The

annual percentage yield earned (using the formula above) is 6.58%:

APY Earned=100 [(1+5.25/1,000) (365/30)−1]
APY Earned=6.58%

(2) Assume a credit union calculates dividends on the average daily balance for the calendar month and provides periodic statements that cover the period from the 16th of one month to the 15th of the next month. The account has a balance of $2,000 September 1 through September 15 and a balance of $1,000 for the remaining 15 days of September. The average daily balance for the month of September is $1,500, which results in $6.50 in dividends earned for the month. The annual percentage yield earned for the month of September would be shown on the periodic statement covering September 16 through October 15. The annual percentage yield earned (using the formula above) is 6.69%:

APY Earned=100 [(1+6.50/1,500) (365/30)−1]
APY Earned=6.69%

(3) Assume a credit union calculates dividends on the average daily balance for a quarter (for example, the calendar months of September through November), and provides monthly periodic statements covering calendar months. The account has a balance of $1,000 throughout the 30 days of September, a balance of $2,000 throughout the 31 days of October, and a balance of $3,000 throughout the 30 days of November. The average daily balance for the quarter is $2,000, which results in $21 in dividends earned for the quarter. The annual percentage yield earned would be shown on the periodic statement for November. The annual percentage yield earned (using the formula above) is 4.28%:

APY Earned=100 [(1+21/2,000) (365/91)−1]
APY Earned=4.28%.

Appendix B to Part 707—Model Clauses and Sample Forms

[Note: The text of Appendix B to Part 707 will appear as part of a final rule document. The proposed text of Appendix B, together with explanatory material and requests for comments, appears at Appendix 1 to the proposed rule document.]

4. The authority citation for part 740 would be revised to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1789 and 4311.

5. Section 740.2 would be amended by revising the first sentence to read as follows:

PART 740—ADVERTISING

§ 740.2 Accuracy of advertising.

No insured credit union shall use any advertising (which includes print or broadcast media, displays and signs, stationery, and all other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services, contracts, or financial condition, or which violates the requirements of § 707.8 of this chapter, if applicable. * * *

Appendix 1 to This Proposed Rule—Model Clauses and Sample Forms

[Note: Appendix 1 contains the proposed text for Appendix B to part 707. Agency interpretations and instructions are included in the proposal and will appear as part of the final rule. Appendix 1 also includes certain other explanatory matter and requests for comments, which will not appear in the final rule document. Those items are printed in capital letters so that they may be distinguished from the text of the proposed Appendix B.]

B–1 MODEL CLAUSES FOR ACCOUNT DISCLOSURES (§ 707.4(b))

(a) Rate Information (Sec. 707.4(b)(1))

(i) *Fixed-Rate Accounts* (§ 707.4(b)(1)(i))

1. Deposit Accounts

The interest rate on your deposit account is _____% with an annual percentage yield of _____%. You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days].

Note: This provision reflects an accurate statement for an interest-bearing account authorized by state law for state-chartered credit unions. While the proposed definition of "interest" indicates the term may be substituted for the term "dividends," separate disclosures should be made.

2. Share Accounts

The dividend rate on your share account is _____%. You will be paid this rate for [(time period)/at least 30 calendar days].

or

The dividend rate on your share account is _____%. This rate will not change unless the credit union notifies you at least 30 calendar days prior to any change.

Note: This provision reflects a credit union policy to set anticipated dividend rates for the next month (or at least 30 days), quarter or other period. Many credit unions, at their mid-monthly board meeting, set anticipated dividend rates for the next month beginning on the 1st day of the month and continuing to the last day of the month. These rates must be formalized at the end of a dividend period. Given the timing of the board meetings, the time to prepare and mail notices and the 30 day period, it will often take credit unions 45 to 60 days to effectively change rates.

(ii) *Variable-Rate Accounts* (§ 707.4(b)(1)(ii))

1. Deposit Accounts

The interest rate on your deposit account is _____%, with an annual percentage yield of _____%. The interest rate and annual percentage yield may change every (time period) based on [(name of index)/the determination of the credit union board of directors]. The interest rate for your account will [never change by more than _____% each (time period)/never be less/more than _____% never exceed _____% above or fall more than _____% below the initial interest rate].

Note: The variable nature of a deposit account either is based on an external index or is set at the discretion of the board. Rarely would there be limitations on rate changes, but language is provided.

2. Share Accounts

The dividend rate on your share account is _____% with an annual percentage yield of _____%. The dividend rate and annual percentage yield may change every (time period) as determined by the credit union board of directors.

Note: This language meets the variable-rate disclosure requirements of § 707.4(b)(1)(ii). Generally, there is only one variable-rate feature for share accounts: the frequency of rate changes (e.g., monthly or quarterly). Normally, there are no contractual limitations on share account earnings, nor are earnings based on any internal or external index. If contractual limitations or an index are involved, however, those factors would need to be disclosed.

(iii) *Rollback Accounts* (§ 707.4(b)(1)(iii))

In addition to the applicable disclosure for fixed or variable-rate accounts, the following disclosure must be made for rollback accounts:

The stated annual percentage yield assumes that the funds in the account are deposited by the rollback date and remain in the account through the end of the [month/dividend period/(other portion of the dividend period for which the credit union provides provisional dividend credit)]. The actual annual percentage yield may be less depending on account activity. The rollback date for this account is (specify date of month or other rollback date).

Note: If applicable, this provision would be tacked on to the end of the fixed- or variable-rate provision above as required by § 707.4(b)(1)(iii).

(iv) *Stepped-Rate Accounts*

The initial [dividend/interest] rate on your [share/deposit] account is _____%. You will be paid that rate [for (time period)/ until (date)]. After that time, the [dividend/interest] rate for your [share/deposit] account will be _____% and you will be paid that rate [for (time period)/ until (date)]. The annual percentage yield for your account is _____%.

Note: Stepped-rate accounts are accounts with two or more rates that take effect in succeeding periods. The applicable rates and time periods *are known* when the account is opened. By nature these are fixed-rate accounts and are usually associated with certificate accounts. Accordingly, a contract provision (for share accounts) to change rates should be included.

(v) *Tiered-Rate Accounts*

Tiering Method A

1. If your [daily balance/average daily balance] is $_____ or more, the [dividend/interest] rate paid on the entire balance in your account will be _____%, with an annual percentage yield of _____%. If your [daily balance/average daily balance] is less than $_____, the [dividend/interest] rate paid on the entire balance in your account

will be _____%, with an annual percentage yield of _____%.

Note: Tiering Method A pays the stated dividend or interest rate that corresponds to the applicable deposit tier on the full balance in the account. This example contemplates a two-tier system.

Tiering Method B

2. A [dividend/interest] rate of _____% will be paid only on the portion of your [daily balance/average daily balance] that is [greater than $_____/greater than $_____ but less than $_____]. The annual percentage yield for this tier will range from _____% to _____%, depending on the balance in the account.

or

If your [daily balance/average daily balance] is $_____ or less, the [simple dividend/simple interest] rate paid on the entire balance will be _____%, with an annual percentage yield of _____%.

Note: Tiering Method B pays different stated dividend or interest rates corresponding to applicable deposit tiers, on the applicable balance in each tier of the account. For example, a credit union might pay a 3% dividend on account funds of $500 or below, and pay a 4% dividend on the portion of the same account that exceeds $500. A credit union may also pay no dividend at all on the lowest tier of an account. The example contemplates an account with two tiers, but additional tiers are possible.

Tiered-rate accounts can be either fixed-rate or variable-rate accounts. Thus, the disclosures outlined above will be made in addition to either: (i) disclosure of the period the fixed-rates are in effect or (ii) the variable-rate disclosures. Tiered-rate accounts are also subject to the requirement for disclosure of the balance computation method, *see* paragraph (e) to this appendix.

(b) Nature of Dividends (§ 707.4(b)(8))

Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

Note: The Board of Directors declares dividends based on current income and available earnings of the credit union after providing for the required reserves at the end of the month. The dividend rate and annual percentage yield shown reflect the earnings the Credit Union anticipates having available for distribution. This disclosure only applies to share (as opposed to deposit) accounts and should be grouped with the Rate Information to make the disclosure more meaningful.

(c) Compounding and Crediting (§ 707.4(b)(2))

[Dividends/Interest] will be compounded (frequency) and will be credited (frequency).

and, if applicable:

If you close your [share/deposit] account before [dividends/interest] [are/is] paid, you will not receive the accrued [dividends/interest].

Note: Where the word "(frequency)" appears, time periods should be inserted to coincide with those specified in board resolutions.

(d) Minimum Balance Requirements (§ 707.4(b)(3)(i))

(i) *To open the account*

The minimum balance required to open this account is $_____.

or, for first share account at a credit union.

The minimum required to open this account is the purchase of a (par value of a share) share in the credit union.

(ii) *To avoid imposition of fees*

You must maintain a minimum daily balance of $_____ in your account to avoid a service fee. If, during any (time period), your account balance falls below the required minimum daily balance, your account will be subject to a service fee of $_____ for that (time period).

or

You must maintain a minimum average daily balance of $_____ in your account to avoid a service fee. If, during any (time period), your average daily balance is below the required minimum, your account will be subject to a service fee of $_____ for that (time period).

Note: Where the words "(time period)" appear, time periods should be inserted to coincide with those specified in board resolutions.

(e) Balance Computation Method (§ 707.4(b)(3)(ii))

(i) *Daily Balance Method*

[Dividends/Interest] [are/is] calculated by the daily balance method which applies a daily periodic rate to the principal in the account each day.

(ii) Average Daily Balance Method

[Dividends/Interest] [are/is] calculated by the average daily balance method which applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

(iii) Rollback Disclosure

Dividends will be earned only on funds that are placed in the account on or before the rollback date and remain in the account through the end of the [month/(dividend period)/(other portion of the dividend period for which the credit union provides provisional dividend credit)]. Dividends on funds that are placed in the account on or before the rollback date and remain in the account through the end of the [month/(dividend period)/(other portion of the dividend period for which the credit union provides provisional dividend credit)] will accrue from the first day of the [month/dividend period]. Funds withdrawn before the end of the [month/(dividend period)/(other portion of the dividend period for which the credit union provides provisional dividend credit)] will not earn any dividends. The rollback date for this account is (specify date of month or other rollback date).

Note: The rollback disclosure language is mandatory, except where alternatives are given.

(iv) Par Value Method Disclosure

Dividends are calculated on par value increments of (par value of share in credit union).

(f) Accrual of Dividends/Interest on Noncash Deposits § 704.4(b)(3)(iii))

(i) Standard (Nonrollback) Accounts

[Dividends/Interest] will begin to accrue on the business day you deposit noncash it. .s (e.g. checks) to your account.

or

[Dividends/Interest] will begin to accrue no later than the business day we receive provisional credit for the deposit of noncash items (e.g. checks) to your account.

Note: Accrual information is not included in the explanation of balance computation method required by § 707.4(b)(4)(ii). Disclosure of when interest or dividends begin to accrue is appropriate for both rollback and standard (nonrollback) accounts. The above disclosures apply to standard accounts.

(ii) Rollback Accounts

If we receive a deposit to your account on or before the rollback date, the deposit, whether it was a deposit of cash or checks, will earn dividends as of the 1st day of the month. If we receive the deposit after the rollback date, the deposit will earn dividends as of the 1st day of the following month. For example, where the rollback date is the 10th day of the month, a deposit made on June 7 earns dividends from June 1, while a deposit made on June 11 earns dividends from July 1.

Note: Under the Expedited Funds Availability Act, credit unions are subject to different accrual requirements if a later accrual time is imposed (i.e. rollback ("in by the 10th") accounts). The rule only applies if the later accrual time is imposed on both cash and noncash deposits. *See* 12 U.S.C. § 4005(b).

(g) Fees and Charges (§ 707.4(b)(4))

The following fees and charges may be assessed against your account:

(service/explanation) $_____

(service/explanation) $_____

Note: Fees and charges may be disclosed in an account disclosure, or separately in a Rate and Fee Schedule (see section B–11 of this appendix). In either event, the disclosure should also specify when the fee will be assessed by using phrases such as "per item," "per month," or "per inquiry."

(h) Transaction Limitations (§ 707.4(b)(5))

The minimum amount you may [withdraw/write a draft for] is $_____.

During any statement period, you may not make more than six withdrawals or transfers to another credit union account of yours or to a third party by means of a preauthorized or automatic transfer or telephonic order or instruction. No more than three of the six transfers may be made by check, draft, debit card, if applicable, or similar order to a third party. If you exceed the transfer limitations set forth above in any statement period, your account will be subject to [closure by the credit union/a fee of $_____].

Note: This paragraph would satisfy the requirements of § 707.4(b)(6) with respect to Regulation D limitations on share accounts and money market accounts. These will be some of the more common limitations applicable.

The credit union reserves the right to require a member intending to make a withdrawal from any account (except a share draft account) to give written notice of such intent not less than seven days and up to 60 days before such withdrawal.

Note: THIS LIMITATION IS PERMITTED BY ARTICLE III, SECTION 5(a) OF THE STANDARD FEDERAL CREDIT UNION BYLAWS. HOWEVER, THE BOARD QUESTIONS WHETHER IT IS ACTUALLY UTILIZED BY FCUS. THE BOARD SOLICITS COMMENTS ON WHETHER ANY FCUS USE THIS LIMITATION AND, IF SO, UNDER WHAT CIRCUMSTANCES. THE BOARD ALSO SOLICITS COMMENTS ON WHETHER ANY STATE-CHARTERED CREDIT UNIONS USE SIMILAR LIMITATIONS AND, IF SO, UNDER WHAT CIRCUMSTANCES AND PURSUANT TO WHAT AUTHORITY. This limitation does not directly relate to the "number" or "amount" of transactions, and accordingly, may not be necessary under § 707.4(b)(5), but would, if applicable, be required by § 707.3(b).

(i) Disclosures Related to Time Accounts (§ 707.4(b)(6))

(i) Time Requirements

Your account will mature on (date).

or

Your account will mature after (time period).

(ii) Early Withdrawal Penalties

We [will/may] impose a penalty if you withdraw [any/all] of the [funds/principal] in your account before the maturity date. The penalty will equal [_____ [days'/weeks'/months'] [interest/dividends] on your deposit/ $_____].

If you withdraw some of your funds before maturity, the [dividend/interest] rate for the remaining funds in your account will be _____%, with an annual percentage yield of _____%.

Note: In most cases, the dividend rate and annual percentage yield on the funds remaining in the account after early withdrawal are the same as before the withdrawal. Accordingly, the disclosure of dividend rate and annual percentage yield after withdrawal should be required only if they will change.

(iii) Withdrawal of Interest/Dividends Prior to Maturity

The annual percentage yield is based on an assumption that [interest/dividends] will remain on deposit until maturity. A withdrawal will reduce earnings.

Note: This disclosure may be used if the credit union compounds dividends/interest and allows withdrawal of accrued dividends/interest before maturity. This disclosure alerts members that the annual percentage yield is based on an assumption that the dividends/interest remain on deposit until maturity.

(iv) Renewal Policies

1. *Automatically renewable time accounts.* Your certificate account will automatically renew at maturity. You will have a grace period of _____ [calendar/business] days after the maturity date to withdraw the funds in the account without being charged an early withdrawal penalty.

or

Your certificate account will automatically renew at maturity. There is no grace period following the maturity of this account.

2. *Non-automatically renewable time accounts.* This account will not renew automatically at maturity. If you do not renew the account, your deposit will [continue to earn/no longer earn] [dividends/interest] after the maturity date.

(j) Bonuses (§ 704.4(b)(7))

You will [be paid/receive] [$_____/(description of item)] as a bonus [when you open the account/on (date)].

You must maintain a minimum [daily balance/average daily balance] of $_____ to obtain the bonus.

To earn the bonus, [$_____/your entire principal] must remain on deposit [for (time period)/until (date)].

B–2 MODEL CLAUSES FOR CHANGES IN TERMS (§ 707.5(a))

On (date), the (type of fee) will increase to $_____.

On (date), the [interest/dividend] rate on your account will decrease to _____%, with an annual percentage yield of _____%.

On (date), the [minimum daily balance/average daily balance] required to avoid imposition of a fee will increase to $_____.

B–3 MODEL CLAUSES FOR PRE-MATURITY NOTICES FOR TIME ACCOUNTS (§ 707.5)

(a) Maturity date

Your certificate account will mature on _____.

(b) Nonrenewal

Unless your certificate account is renewed, it will not accrue further dividends after the maturity date.

(c) Rate Information

The dividend rate and annual percentage yield that will apply to your certificate account if it is renewed have not yet been determined. That information will be available on _____. After that date, you may call the credit union during regular business hours at (000) 000–0000 to find out the dividend rate and annual percentage yield that will apply to your certificate account if it is renewed.

B–4 SAMPLE FORM (SIGNATURE CARD/APPLICATION FOR MEMBERSHIP)

APPLICATION FOR MEMBERSHIP/ACCOUNT SIGNATURE CARD

ACCOUNT NUMBER_____

_____

(last name)

_____

(first name)

_____

(middle name)

_____

(street address)

_____

(apartment number)

_____

(city)

_____

(state)

_____

(zip code)

_____

(home telephone number)

_____

(business telephone number)

_____

(Social Security Number)

_____

(date of birth)

_____

(mother's maiden name)

_____

(employer, occupation)

I hereby make application for membership in and agree to conform to the Bylaws, as amended, of _____ Credit Union (the "Credit Union"). I certify that: I am within the field of membership of this Credit Union; the information provided on this application is true and correct; and my signature on this card applies to all accounts under my name at this Credit Union. I also agree to be bound to the terms and conditions of any account that I have in the Credit Union now or in the future.

Under penalties of perjury, I certify: (1) That the number shown on this form is my correct taxpayer identification number; and (2) That I am not subject to backup withholding under the provisions of Section 3406(a)(1)(c) of the Internal Revenue Code either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service (IRS) has notified me that I am no longer subject to backup withholding. (Instruction: If you have been notified by the IRS that you are subject to backup withholding due to payee underreporting and you have not received a notice from the IRS that the backup withholding has terminated, you must strike out the language in clause 2 of the above certification regarding withholding.)

_____

(signature of applicant)

This application approved _____ (date) by the (Check one)

( ) Board ( ) Exec. Committee ( ) Membership Officer

Signed: _____

(Secretary; Exec. Cmte. Member, or Membership Officer)

Note: This form is modeled on NCUA Form FCU 150, Application for Membership, as discussed in the *Accounting Manual for*

FCUs, §§ 5030.1, 5150.3. It is noted that other information can also be requested on the signature card, as long as it is in accordance with federal and state laws. For example, identification of the member, such as a state driver's license number, could be added. The types of accounts that the signature applies to could be specified. *SINCE THE SIGNATURE CARD IS MAINTAINED IN THE RECORDS OF A CREDIT UNION, THE NCUA BOARD PROPOSES TO EXCLUDE IT FROM THE COVERAGE OF THE ADVERTISING RULES IN § 707.8 OF THE PROPOSAL. COMMENTS ARE SOLICITED ON THIS APPROACH.* Furthermore, the Board notes that this card contains much identification information that may not be necessary for all credit unions; common sense should guide credit union boards of directors in designing their applications for membership/signature cards. However, the Board believes that the information solicited on this proposed form is reasonable and prudent for most credit unions. Payable on death designations, joint account language required under state law, life savings beneficiary designations, and other like variations and designations may be added to the card if so desired. The taxpayer certification may be made on another document if so desired. However, the Internal Revenue Code requires this information for all accounts. The information may be included on the front and back of a standard size signature card, or on the front of a large size signature card. However, no account terms may be included on a signature card unless a copy of the signature card is provided to the member at the time of account opening. The Board recommends that credit unions refrain from this practice, and instead use standard account disclosures. One reason for this is that if laws, regulations or credit union policies change, discrepancies may result between them and the earlier signature card terms. Given the longevity of credit union membership, signature cards may well be in use for up to or over a century. In addition, as signature cards are relatively small, they probably will not contain enough space to make all desired and required disclosures. Fragmentation of terms, some on signature cards, some on separate disclosures, could easily lead to member confusion. As terms are usually construed against the drafter, the credit unions should be very careful in their use of account terms and conditions.

B–5 SAMPLE FORM (SHARE CERTIFICATE)

SHARE CERTIFICATE

_____

Date Issued

_____

Account Number

_____

Certificate Number

_____

Social Security Number

This is to certify that (name(s)) _____ [is/are] the owner(s) of a certificate account in the _____ Credit Union (the "Credit Union") in the amount of _____ Dollars ($_____). This certificate account may be redeemed on (maturity date) _____ only upon presentation of the certificate to the Credit Union. The annual percentage yield of this certificate account is _____ %. The dividend rate of this certificate account is _____ %. The annual percentage yield and dividend rate assume that dividends are to be [check one] ( ) added to principal/( ) paid to regular share account number _____/( ) mailed to owner(s). This certificate account is subject to all terms and conditions stated in the Certificate Account Disclosures, as they may be amended from time to time, and incorporates the same by reference into this agreement.

_____

Authorized signature

_____

Authorized signature

Note: This form is modeled on NCUA Form FCU 107SCP, Credit Union Share Certificate, as discussed in the *Accounting Manual for FCUs*, §§ 5030.1, 5150.6. It is simplified to reflect the share certificate account agreement, the parties involved, the maturity term and the annual percentage yield and dividend rate. All other terms are incorporated by reference. This should allow the credit union maximum flexibility in fashioning certificate account products. Of course, if a credit union so desired, other terms and conditions could be incorporated into the certificate itself, as long as a copy is presented to the member at the account opening. Care should also be taken to ensure that the certificate format addresses any necessary state law concerns. *COMMENTS ARE SOLICITED ON THIS APPROACH.*

B–6 SAMPLE FORM (REGULAR SHARE ACCOUNT DISCLOSURES)

REGULAR SHARE ACCOUNT DISCLOSURES

1. *Rate information.* The dividend rate on your share account is _____% with an annual percentage yield of _____%. [Figures to be added when initial disclosures given to member.] You will be paid this rate for the initial dividend period. The dividend rate and the annual percentage yield may change (frequency,) as determined by the Credit Union's board of directors.

2. *Compounding and crediting.* Dividends will be compounded (frequency) and will be credited (frequency). [*If applicable:*] If you close your regular share account before dividends are credited, you will not receive accrued dividends.]

3. *Minimum balance requirements.* The minimum balance to open this account is the purchase of a $5 share in the Credit Union. You must maintain a minimum daily balance of $500 in your account to avoid a service fee. If, during any (time period), your account balance falls below the required minimum daily balance, your account will be subject to a service fee of $5 for that (time period).

4. *Balance computation method.* Dividends are calculated by the daily balance method which applies a daily periodic rate to the principal in your account each day.

5. *Accrual of dividends.* Dividends will begin to accrue on the business day you deposit noncash items (e.g., checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies: $5.00 per statement
b. Account inquiries: $3.00 per inquiry
c. Dormant account fee: $10.00 per month
d. Wire transfers: $8.00 per transfer
e. Minimum balance violation: $5.00 per day
f. Share transfer: $1.00 per transfer

[The amount of this last item is limited by *NCUA Standard FCU Bylaws*, Art. III, § 4.]

g. Excessive share withdrawals: $1.00 per item

[This last item is permitted by *NCUA Standard FCU Bylaws*, Art. III, § 5(f).]

7. *Transaction limitations.* During any statement period, you may not make more than six withdrawals or transfers to another credit union account of yours or to a third party by means of a preauthorized or automatic transfer or telephonic order or instruction. No more than three of the six transfers may be made by check, draft, debit card, if applicable, or similar order to a third party. If you exceed the transfer limitations set forth above in any statement period, your account will be subject to closure by the credit union or to a fee of $1.00 per item.

8. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

9. *Bylaw Requirements.* A member who fails to complete payment of one share within _____ of his admission to membership, or within _____ from the increase in the par value in shares, or a member who reduces his share balance below the par value of one share and does not increase the balance to at least the par value of one share within _____ of the reduction may be terminated from membership at the end of a dividend period. [All blanks should be filled with time chosen by credit union board of directors, but must be at least 6 months.] Shares may be transferred only from one member to another, by written instrument in such form as the Credit Union may prescribe. The Credit Union reserves the right, at any time, to require members to give, in writing, not more than 60 days notice of intention to withdraw the whole or any part of the amounts so paid in by them. Shares paid in under an accumulated payroll deduction plan may not be withdrawn until credited to a member's account. No member may withdraw shareholdings that are pledged as required on security on loans without the written approval of the credit committee or a loan officer, except to the extent that such shares exceed the member's total primary and contingent liability to the Credit Union. No member may withdraw any shareholdings below the amount of his/her primary or contingent liability to the Credit Union if he/she is delinquent as a borrower, or if borrowers for whom he/she is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer.

10. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $5. The dividend period of the Credit Union is monthly, beginning on the first of a month and ending on the last day of the month.

11. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

12. *Other Terms and Conditions.* [In this item, which may be titled or subdivided in any manner by each credit union, NCUA suggests that the following issues be covered or handled: statutory lien or setoff; expenses (garnishments and bankruptcy orders and holds on account); joint ownership accounts; trust accounts; payable-on-death accounts; retirement accounts; Uniform Transfer to Minor Act accounts; sole proprietorship accounts; escrow and custodial accounts; corporation accounts; not-for-profit corporation accounts; voluntary association accounts; partnership accounts; public unit accounts; power of attorney (guardianship orders); tax disclosures and certifications; Uniform Commercial Code variances; amendments; reliance on signature card; change of address; incorporations of other documents by reference, such as expedited funds availability policies, service charges schedules or electronic banking disclosures; ability to suspend services; and operational matters (stop payment orders—verbal and written, satisfactory identification, refusal of deposits not in proper form, wire transfers, stale check deposits, availability of periodic statements or passbook feature.)]

Note: This form is modeled on the share account disclosures in the *Accounting Manual for FCUs,* § 5150.7. The disclosures are for a fixed-rate, daily balance method dividend calculation regular share account in an FCU with a $500 minimum balance to avoid service fees. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures will reflect the anticipated dividend rate for a given dividend period. Item nos. 1–8 reflect standard truth in savings disclosures discussed in sections B–1 through B–3 of this Appendix. Note that if the credit union limits the maximum amount of shares which may be held by one member under *NCUA Standard FCU Bylaws,* Art. III, § 2, that this should be stated in item no. 7, transaction limitations. Item no. 9 reflects various terms provided in Art. III, sections 3–6 of the *NCUA Standard FCU Bylaws.* If this were a passbook account, then the requirements of Art. IV, Receipting for Money—Passbooks, in the *NCUA Standard FCU Bylaws* would also be included in item no. 9. Item no. 10 reflects the par value amount of regular shares in a federal credit union, pursuant to section 117 of the FCU Act, 12 U.S.C. § 117, and Art. XIV, § 3 of the *NCUA Standard FCU Bylaws.* It also states the dividend period of the credit union, which is set by the board of directors. Item no. 11 addresses the requirements of 12 CFR Part 740. Nonfederally insured credit unions (NICUs) would be expected to disclose information required by section 151 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 USC § 1831t. By December 19, 1992, all NICUs must include conspicuously on all periodic statements of account, signature cards, passbooks, share certificates and other similar instruments of deposit and in all advertising a notice that the credit union is not federally insured. Additional disclosures will be required of NICUs by June 19, 1994. Item no. 12 is inserted to ensure that credit unions add other account terms and conditions not covered by the proposed regulation. These sorts of terms are contemplated by proposed section 707.3(b), requiring that the disclosures reflect the terms of the legal obligation between the member and the credit union. This list is not meant to be exhaustive, but to give a general idea of other topics often covered in share account contracts. *COMMENTS ARE REQUESTED ON ANY OTHER ISSUES THAT SHOULD BE INCLUDED IN THIS LIST.*

B–7 SAMPLE FORM (SHARE DRAFT ACCOUNT DISCLOSURES)

SHARE DRAFT ACCOUNT DISCLOSURES

1. *Rate information; Rollback account.* The dividend rate on your share account is _____% with an annual percentage yield of _____%. [Figures to be added when initial disclosures given to member.] You will be paid this rate for (dividend period). The stated annual percentage yield assumes that the funds in the account are deposited by the rollback date and remain in the account through the end of the (dividend period). The actual annual percentage yield may be less than the stated rate depending upon account activity. The dividend rate and the annual percentage yield may change each dividend period as determined by the Credit Union's board of directors. The rollback date for this account in s the tenth day of each month.

2. *Compounding and crediting.* Dividends will be compounded (frequency) and will be credited (frequency). [Time periods inserted to coincide with Credit Union board resolutions.] [*If applicable:*] If you close your share draft account before dividends are credited, you will not receive accrued dividends.

3. *No Minimum balance requirements apply to this account.*

4. *Balance computation method.* Dividends will be earned only on funds that are placed in the account on or before the rollback date and remain in the account through the end of the (dividend period). Dividends on funds that are placed in the account on or before the rollback date and remain in the account through the end of the (dividend period) will accrue from the first day of the month in which the rollback date occurs. Funds withdrawn before the end of the (dividend period) will not earn any dividends. Dividends are calculated on par value increments of $5.

5. *Accrual of dividends.* If we receive a deposit to your account on or before the rollback date, the deposit, whether it was a deposit of cash or checks, will earn dividends as of the first day of the month in which the rollback date occurs. If we receive the deposit after the rollback date, the deposit will earn dividends as of the first day of the following month. For example, where the rollback date is the 10th day of each month, a deposit made on June 7 earns dividends from June 1, while a deposit made on June 11 earns dividends from July 1.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement
b. Account inquiries—$3.00 per inquiry
c. Dormant account fee—$10.00 per month
d. Wire transfers—$8.00 per transfer
e. Overdrafts/Returned Items—$5.00 per draft
f. Share transfer—$1.00 per transfer

(The amount of this item is limited by *NCUA Standard FCU By-laws,* Art. III, § 4.)

g. Excessive share withdrawals—$1.00 per item

(This item is permitted by *NCUA Standard FCU Bylaws,* Art. III, § 5(f).)

h. Certified checks—$5.00 per check
i. Stop Payment Order—$5.00 per order
j. Check Printing Fee—$12.00 per 200 checks

(Varies depending on style of check ordered.)

7. *No transaction limitations apply to this account.*

8. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

9. *Bylaw Requirements.* A member who fails to complete payment of one share within ____ of his admission to membership, or within ____ from the increase in the par value in shares, or a member who reduces his share balance below the par value of one share and does not increase the balance to at least the par value of one share within ____ of the reduction may be terminated from membership at the end of a dividend period. [All blanks should be filled with time chosen by credit union board of directors, but must be at least 6 months.] Shares may be transferred only from one member to another, by written instrument in such form as the Credit Union may prescribe. The Credit Union reserves the right, at any time, to require members to give, in writing, not more than 60 days notice of intention to withdraw the whole or any part of the amounts so paid in by them. Shares paid in under an accumulated payroll deduction plan may not be withdrawn until credited to a member's account. No member may withdraw shareholdings that are pledged as required on security on loans without the written approval of the credit committee or a loan officer, except to the extent that such shares exceed the member's total primary and contingent liability to the Credit Union. No member may withdraw any shareholdings below the amount of his/her primary or contingent liability to the Credit Union if he/she is delinquent as a borrower, or if borrowers for whom he/she is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer.

10. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $5. The dividend period of the Credit Union is monthly, beginning on the first of a month and ending on the last day of the month.

11. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union

are federally insured by the National Credit Union Share Insurance Fund.

12. *Other Terms and Conditions.* [See section B–6, item 12, of this appendix].

Note: This form is modeled on the share account disclosures in the Accounting Manual for FCUs, § 5150.7. The disclosures are for a rollback, par value method dividend calculation share draft account in an FCU with no minimum balance requirement. The rollback date is the 10th of each month, and the Credit Union has monthly dividend periods. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures will reflect the anticipated dividend rate for a given dividend period. The disclosures are very similar to the ones in section B–6 of Appendix B, except for the rollback and par value disclosures.

B–8 SAMPLE FORM (MONEY MARKET SHARE ACCOUNT DISCLOSURES)

MONEY MARKET SHARE ACCOUNT DISCLOSURES

1. *Rate information.* If your average daily balance is $500 or more, the dividend rate paid on the entire balance in your account will be ____%, with an annual percentage yield of ____%. If your average daily balance is less than $500, the dividend rate paid on the entire balance in your account will be ____%, with an annual percentage yield of ____%. [Figures to be added when initial disclosures given to member.] The dividend rate and the annual percentage yield may change each dividend period as determined by the Credit Union's board of directors.

2. *Compounding and crediting.* Dividends will be compounded (frequency) and will be credited (frequency). [*If applicable:*] If you close your share money market account before dividends are credited, you will not receive accrued dividends.

3. *Minimum balance requirements.* The minimum balance required to open this account is $500. You must maintain a minimum daily balance of $500 in your account to avoid a service fee. If, during any (time period), your account falls below the required minimum daily balance, your account will be subject to a service fee of $5 for that (time period).

4. *Balance computation method.* Dividends are calculated by the average daily balance method which applies a periodic rate to the average daily balance in your account for the period. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

5. *Accrual of dividends.* Dividends will begin to accrue on the business day you deposit noncash items (e.g., checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement
b. Account inquiries—$3.00 per inquiry
c. Dormant account fee—$10.00 per month
d. Wire transfers—$8.00 per transfer
e. Minimum balance violation—$5.00 per day
f. Share transfer—$1.00 per transfer
g. Excessive share withdrawals—$1.00 per item
h. Certified checks—$5.00 per check
i. Stop Payment Order—$5.00 per order
j. Check Printing Fee—$12.00 per 200 checks (varies depending on style of check ordered)

7. *Transaction limitations.* During any statement period, you may not make more than six withdrawals or transfers to another credit union account of yours or to a third party by means of a preauthorized or automatic transfer or telephonic order or instruction. No more than three of the six transfers may be made by check, draft, debit card, if applicable, or similar order to a third party. If you exceed the transfer limitations set forth above in any statement period, your account will be subject to closure by the credit union or to a fee of $1.00 per item.

8. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

9. *Bylaw Requirements.* [This section should reflect any requirements concerning share accounts in the FISCU's bylaws or charter.].

10. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $50. The dividend period of the Credit Union is monthly, beginning on the first of a month and ending on the last day of the month.

11. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

12. *Other Terms and Conditions.* [See section B–6, item 12, of this appendix.]

Note: This form is modeled on the share account disclosures in the *Accounting Manual for FCUs,* § 5150.7 and on the share draft account disclosures in section B-7 of this appendix. The disclosures are for a tiered-rate (method A), average daily balance method dividend calculation share money market account in a FISCU with a $500 minimum balance to open the account and to avoid service fees. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures will reflect the anticipated dividend rate for a given dividend period. Note that the contents of Item 9, Bylaw requirements, must be tailored to the specific bylaws of a FISCU or NICU. Also note the high par value amount in Item 10. *NCUA REQUESTS COMMENT REGARDING HOW TO HANDLE FISCUS AND NICUS THAT WOULD LIKE TO USE THE PAR VALUE DIVIDEND CALCULATION METHOD.*

B–9 SAMPLE FORM (CERTIFICATE ACCOUNT DISCLOSURES)

CERTIFICATE ACCOUNT DISCLOSURES

1. *Rate information.* The initial dividend rate on your certificate account is ____%. You will be paid that rate for the first 30 days. After that time, the dividend rate for your share account will be ____% and you will be paid that rate until (maturity date of the certificate account). The annual percentage yield for your account is ____%. [Figures to be added when initial disclosures given to member.] The annual percentage yield is based on an assumption that dividends will remain on deposit until maturity. A withdrawal will reduce earnings.

2. *Compounding and crediting.* Dividends will be compounded (frequency) and will be credited (frequency). [*If applicable:*] If you close your certificate account before dividends are credited, you will not receive accrued dividends.

3. *Minimum balance requirements.* The minimum balance required to open this account is $500.

4. *Balance computation method.* Dividends are calculated by the daily balance method, which applies a daily periodic rate to the principal in your account each day.

5. *Accrual of dividends.* Dividends will begin to accrue on the business day you deposit noncash items (e.g., checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement
b. Account inquiries—$3.00 per inquiry
c. Share transfer—$1.00 per transfer

7. *Transaction limitations.* After the account is opened, you may not make deposits into or withdrawals from the account until the maturity date stated on the certificate.

8. *Maturity date.* Your account will mature on (date).

9. *Early withdrawal penalties.* We may impose a penalty if you withdraw any of the funds before the maturity date. The penalty will equal three months' dividends on your deposit.

10. *Renewal policies.* Your certificate account will automatically renew at maturity. You will have a grace period of 10 business days after the maturity date to withdraw the funds in the account without being charged an early withdrawal penalty.

11. *Bonus.* You will receive a new toaster-oven as a bonus when you open the account by June 30, 1992. You must maintain your entire principal on deposit until the maturity date of your certificate account to obtain the bonus.

12. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

13. *Bylaw Requirements.* [This section should reflect any requirements concerning share accounts in the FISCU's bylaws or charter.]

14. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $25. The dividend period of the Credit Union is weekly, beginning on Monday and ending on Sunday.

15. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

16. *Other Terms and Conditions.* [See section B–6, item 12, of this appendix.]

Note: This form is modeled on the share account disclosures in the *Accounting Manual for FCUs,* § 5150.7 and upon the regular share account disclosures in section B–6 of this appendix. The disclosures are for a stepped-rate, daily balance method dividend calculation, automatically renewing certificate account in a FISCU with a $500 minimum balance to open the account and a

ten day grace period. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures will reflect the anticipated dividend rate for a given dividend period. Note the special disclosures for certificate accounts, items nos. 8–10. Note also the bonus disclosure, item no. 11.

B–10 SAMPLE FORM (PERIODIC STATEMENT)

PERIODIC STATEMENT

Member name

Account Number

[Transaction account activity by date]

Your account earned $____, with an annual percentage yield earned of ____%, for the statement period from May 1 through and including May 31. Any fees assessed against your account are shown in the body of the periodic statement and are identified by the code at the bottom margin of this statement.

Service Charge Codes

SC–1 Stop Payment Order Fee
SC–2 Statement Copy Fee
SC–3 Draft Return Fee
SC–4 Transfer from Shares
SC–5 Microfilm Copy
SC–6 Share Draft Printing Fee
SC–7 Dormant Account Fee
SC–8 Wire Transfer Fee
SC–9 Excessive Share Withdrawal Fee
SC–10 ____

Other Transactions

D—Dividends
EC—Error Correction
OR—Overdraft Returned
OL—Overdraft Loan
OS—Overdraft Share Transfer

Note: This form is modeled on the share draft statement of account, Form FCU 107G–SD, in the *Accounting Manual for FCUs*, § 5150.4. Codes of transactions are not required, but are a common credit union practice. The information regarding fees could also be included on the line of the periodic statement showing when the fees were debited from the account. Alternatively, a credit union could show all fees debited against the account for the statement period in a special area of the periodic statement. Clarity to the member of the required information—annual percentage yield earned; amount of dividends; fees imposed and length of period—is the important component.

B–11 SAMPLE FORM (RATE AND FEE SCHEDULE)

RATE AND FEE SCHEDULE FOR ALL TRANSACTION ACCOUNTS

This Rate and Fee Schedule for all Accounts sets forth certain conditions, rates, fees and charges applicable to your regular share, share draft accounts at the ____ Federal Credit Union as of ____ [insert date of delivery to member]. This schedule is incorporated as part of your account agreement with the ____ Federal Credit Union.

REGULAR SHARE

Dividend Rate: ____%
Annual Percentage Yield: ____%
Dividends Compounded: [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily]
Dividends Credited: At close of a dividend period
Dividend Period: [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily]
Minimum Opening Deposit: $5.00 par value share
Minimum Monthly Balance: [None, $ amount]

SHARE DRAFT

Dividend Rate: ____%
Annual Percentage Yield: ____%
Dividends Compounded: [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily]
Dividends Credited: At close of a dividend period
Dividend Period: [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily]
Minimum Opening Deposit: [None, $ amount]
Minimum Monthly Balance: [None, $ amount]

MONEY MARKET

Dividend Rate: ____%
Annual Percentage Yield: ____%
Dividends Compounded: [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily]
Dividends Credited: At close of a dividend period
Dividend Period: [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily]
Minimum Opening Deposit: [None, $ amount]
Minimum Monthly Balance: [None, $ amount]

The following fees may be assessed in connection with your accounts:

Fees Applicable to All Accounts

Returned item fee—$5.00 per item
Account reconciliation fee—$10.00 per hour
Statement copies fee—$5.00 per statement
Certified draft fee—$2.00 per draft
Wire transfer fee—$8.00 per transfer
Account inquiry fee—$3.00 per inquiry
Dormant account fee—$10.00 per month
Minimum balance violation fee—$5.00 per day
Share transfer fee—$1.00 per transfer
Excessive share withdrawals fee—$1.00 per item

Share Draft Account Fees

Monthly service fee—$5.00 per month
Overdraft transfers fee—$1.00 per overdraft
Drafts returned insufficient funds fee—$5.00 per draft
Stop payment order fee—$5.00 per order
Draft copy fee—$1.00 per copy
Check printing fee—$12.00 per 200 drafts

Money Market Share Account Fees

Monthly service fee—$5.00 per month
Check printing fee—$12.00 per 200 drafts

Note: This illustration is for use of an FCU. The information provided on a Rate and Fee Schedule can be presented in any format. To ensure that it is a part of the account agreement, if used, it should be incorporated by reference into the appropriate share account disclosures. The figures used are illustrative only, except for the overdraft transfer fee of $1.00 per overdraft and the excessive share transfer fee of $1.00 per item, which are set in the NCUA Standard FCU Bylaws, Art. III, section 4 and section 5(f), respectively.

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Federal Register

Monday
November 30, 1992

Part IV

Environmental Protection Agency

40 CFR Parts 302 and 355

Administrative Reporting Exemptions for Certain Radionuclide Releases; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[FRL-4153-7]

Administrative Reporting Exemptions for Certain Radionuclide Releases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking provides notice of, and requests comments on, certain administrative exemptions from the notification requirements under section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, and section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as title III of the Superfund Amendments and Reauthorization Act (SARA title III). The administrative reporting exemptions are proposed to be granted for: Releases of naturally occurring radionuclides from large generally undisturbed land holdings, such as golf courses and parks; releases of radionuclides naturally occurring from the disturbance of large areas of land for purposes other than mining, such as farming or building construction; releases of radionuclides from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and radionuclide releases to all media from coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

The Environmental Protection Agency (EPA) had originally granted these administrative reporting exemptions in a final rule on May 24, 1989 (54 FR 22524) because EPA believed that reporting of radionuclide releases from these four source categories would serve no useful purpose. Subsequent to promulgation of that final rule, the United States Court of Appeals for the District of Columbia held in *The Fertilizer Institute* v. *United States Environmental Protection Agency* (935 F.2d 1303 (DC Cir. 1991)) that the administrative reporting exemptions were not properly promulgated because they were issued without sufficient notice and opportunity for public comment. The Court, however, allowed the exemptions to remain in place while EPA provides the public with notice of, and the opportunity to comment on, the exemptions. This notice of proposed rulemaking provides such notice of, and requests comments on, the four above-mentioned reporting exemptions.

DATES: Comments must be submitted on or before January 29, 1993.

ADDRESSES: *Comments:* Comments should be submitted in triplicate to: Emergency Response Division, Attention: Superfund Docket Clerk, Docket Number 102RQ-RN-1, Superfund Docket Room M2427, U.S. Environmental Protection Agency, Mail Code OS-245, 401 M Street, SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are contained in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 102RQ-RN-1). The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling (202) 260-3046. The public may copy up to 267 pages from any regulatory docket at no cost. For 268 pages or more, the first 100 copies are free and additional copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: Ms. Gerain Perry, Acting Chief of the Response Regulations Development Section, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; or the RCRA/Superfund Hotline at (800) 424-9346 (in the Washington, DC metropolitan area, contact (703) 920-9810). The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 553-7672 (in the Washington, DC metropolitan area, contact (703) 486-3323).

SUPPLEMENTARY INFORMATION: The contents of today's document are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of this Rulemaking
II. Regulatory Reporting Exemptions
III. Regulatory Analyses
  A. Executive Order 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96-510), 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499), establishes broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. Section 101(14) of CERCLA defines the term "hazardous substance" primarily by reference to other environmental statutes. Section 102 of CERCLA gives the U.S. Environmental Protection Agency (EPA) authority to designate additional hazardous substances. Currently there are 783 CERCLA hazardous substances.

Section 103 of CERCLA requires the person in charge of a vessel or facility to notify the National Response Center immediately when he has knowledge that there is a release of a hazardous substance in an amount equal to or greater than the reportable quantity (RQ) for that substance. As established by EPA in an earlier RQ adjustment rulemaking (50 FR 13463, April 4, 1985), a 24-hour period is used for measuring whether an RQ or more of a hazardous substance has been released (i.e., only releases of an RQ or more within 24 hours need to be reported). Section 102(b) of CERCLA establishes RQs at one pound for releases of hazardous substances, except for those substances for which RQs were established pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust the RQs for all hazardous substances by regulation.

CERCLA sections 102(a), 103, and 115 (the general rulemaking authority under CERCLA) together provide EPA with authority to grant administrative reporting exemptions. Such exemptions may be granted for releases of hazardous substances which pose little or no risk or to which a Federal response is infeasible or inappropriate. EPA has determined that requiring reports of such releases serves little or no useful purpose and could, instead, impose a significant burden on the Federal response system and on the persons responsible for notifying the Federal government of the release. Through such reporting exemptions, the Federal response system is able to more effectively focus on release reports that are more likely to pose a significant hazard to human health and the environment. In order to more effectively protect human health, welfare, and the environment and to implement CERCLA more efficiently, therefore, EPA may grant administrative exemptions from the release notification requirements of CERCLA for certain releases of hazardous substances.

In addition to the reporting requirements established pursuant to CERCLA, section 304 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA or SARA title III) requires the owner or operator of certain facilities to immediately report releases of CERCLA hazardous substances at or above their RQ to State

and local entities. The notification is to be given to the community emergency coordinator for each local emergency planning committee (LEPC) for any area likely to be affected by the release and to the State emergency response commission (SERC) of any State likely to be affected by the release. Through this notification, State and local officials can assess whether a response to the release is appropriate, regardless of whether the Federal government intends to respond. EPCRA section 304 notification requirements apply only to releases that have the potential for off-site exposure and that are from facilities that produce, use, or store a "hazardous chemical," as defined by regulations promulgated under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and by section 311 of EPCRA.

B. Background of this Rulemaking

A major purpose of the section 103(a) notification requirements is to alert the appropriate government officials to releases of hazardous substances that may require a response to protect public health or welfare or the environment. EPA emphasizes that an RQ is merely a trigger for informing the government of a release so that the appropriate government personnel can evaluate the need for a response action and can undertake any necessary response action in a timely fashion. Federal personnel evaluate all reported releases, but in some cases will not initiate a response because the release of an RQ does not pose a hazard in all circumstances. Government personnel assess each reported release on a case-by-case basis to determine the appropriate response action, if any.

Radionuclides are CERCLA hazardous substances because they are hazardous air pollutants pursuant to section 112 of the Clean Air Act. Radionuclides initially had a statutory one-pound RQ pursuant to CERCLA section 102(b). EPA recognized that an RQ of one pound for radionuclides was not appropriate because radionuclides are not generally measured in units of pounds, and releases of much less than one pound of radionuclides may present a substantial threat to public health or welfare or the environment. On March 16, 1987, EPA published a Notice of Proposed Rulemaking (NPRM) concerning the adjustment of RQs for radionuclide releases (52 FR 8172). The comment period ended on May 15, 1987. A total of 28 comment letters, totaling about 150 pages, were received, five of which were received after the comment deadline. The comments received, together with the Agency's responses, are contained in "Responses to Comments on the Notice of Proposed Rulemaking on the Adjustment of Reportable Quantities for Radionuclides" (Responses to Comments), which is available for inspection in the Superfund Docket in room M2427, U.S. Environmental Protection Agency (OS-240), 401 M Street, SW., Washington, DC 20460 (Docket Number 102RQ-RN).

The Agency promulgated a final rule (54 FR 22524; May 24, 1989) to adjust the RQs for all (approximately 1,500) radionuclides. In preparing the final rule, EPA considered carefully all of the public comments submitted on the proposals made in the March 16, 1987 NPRM. At the time of the final rule, EPA granted four administrative exemptions from CERCLA section 103 and EPCRA section 304 reporting requirements based on those comments. The Agency exempted: (1) Releases of naturally occurring radionuclides from large generally undisturbed land holdings, such as golf courses and parks; (2) releases of radionuclides naturally occurring from the disturbance of large areas of land for purposes other than mining, such as farming or building construction; (3) releases of radionuclides from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (4) radionuclide releases to all media from coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

Subsequently, the United States Court of Appeals for the District of Columbia rendered a decision in *The Fertilizer Institute* v. *United States Environmental Protection Agency* (935 F2d 1303). In that case, the Court reviewed the promulgation of the radionuclide RQ adjustment final rule and found that administrative reporting exemptions contained therein were improperly promulgated because EPA failed to provide adequate notice of, and opportunity for public comment on, those exemptions. However, the Court left the four exemptions in place while the Agency undertakes a new round of notice and comment rulemaking.

II. Regulatory Reporting Exemptions

In response to numerous comments received on the proposed rule adjusting the RQs for radionuclides (52 FR 8172), EPA decided in the final rule (54 FR 22524) to exempt from the CERCLA section 103 and EPCRA section 304 notification requirements the four above-mentioned release sources for which reporting would serve no useful purpose. In granting these exemptions, the Agency considered the risks posed by the sources and activity in light of the purposes of the CERCLA section 103 reporting requirements. A primary purpose of the reporting requirements under CERCLA is to provide "notification of releases so that the appropriate Federal personnel can evaluate the need for a Federal response action and undertake any necessary response." (50 FR 13456, 13457, April 4, 1985). Therefore, if the Agency determines that the Federal government would never, or only rarely, undertake removal or remedial action because of the risk posed, or the infeasibility or inappropriateness of a Federal response, a basis for an exemption from the section 103 reporting requirements may exist.

In the final rule adjusting the RQs for radionuclides (54 FR 22524), the Agency found that there was indeed such a basis for exemption for the four above-mentioned release sources. These administrative reporting exemptions are intended to allow EPA to focus its resources on the most serious releases and to protect public health and welfare and the environment more effectively. With respect to large undisturbed land sources, as well as disturbances of large areas of land, the release of an RQ or more of naturally occurring radionuclides (radon in particular) may occur, but such a release would in all likelihood not pose a hazard to public health, welfare, or the environment because the radionuclides would be dispersed widely in the environment at levels not much (if at all) above natural background. As a result, even if these releases were reported, in all likelihood the Agency would not take any response action. Thus, such reporting would only divert Federal and State response resources unnecessarily, preventing timely responses to those releases that truly warrant a response.

The Agency also believes that reporting releases resulting from the dumping of coal and coal ash, as well as radionuclide releases to all media from coal and coal ash piles, at utility and industrial facilities with coal-fired boilers should be exempted, based on a risk assessment performed by EPA using conservative fate and transport models and site-specific exposure data. The EPA risk assessment used reasonably conservative models to estimate the radiation doses and resulting health risks to residents and workers living or working near or on coal and coal ash piles at utility or industrial facilities. EPA estimated doses and risks to nearby residents via the following potential exposure pathways: (1) Direct radiation; (2) various pathways of

exposure to particulates released to the air, including inhalation, immersion in an airborne plume, direct radiation from particulates deposited on the ground, and ingestion of crops contaminated by airborne deposition; (3) inhalation of radon; (4) ingestion of contaminated ground water, as well as ingestion of crops and livestock assumed to be contaminated by the ground water; and (5) ingestion of contaminated surface water, as well as ingestion of crops and livestock assumed to be contaminated by the surface water. The critical exposure pathway for nearby residents (i.e., the one yielding the highest dose and risk estimates) was found to be the inhalation of radon from the coal and coal ash piles.

For workers, EPA estimated radiation doses and resulting health risks via four potential exposure pathways: (1) Direct radiation when standing next to (i.e., 10 meters from) a coal or ash pile; (2) direct radiation when standing on a coal or ash pile; (3) various pathways of exposure to airborne particulates, including inhalation, immersion in an airborne plume, and direct radiation from particulates deposited on the ground; and (4) inhalation of radon. The critical exposure pathway for workers was found to be direct radiation, especially when standing on a coal or coal ash pile. (See "Technical Background Supplement in Support of Rulemaking Adjustment Activities for Reportable Quantities of Radionuclides," in the Superfund Docket No. 102RQ-RN-1).

The EPA risk assessment showed that the estimated health risks to nearby residents and to workers attributable to radiation releases from coal and coal ash piles are all within the general range of 10^{-4} and 10^{-7} individual lifetime excess cancer risk. Such a risk range generally represents the goal of a Superfund response action, as opposed to an action level under Superfund. Although the Agency could take a response action for risks within this range, in all likelihood it would not do so in situations involving air emissions at the assessed levels which disburse widely.

In addition, the Agency believes that the submission of individual reports from each industrial and utility facility with coal and coal ash piles may not be consistent with the purposes of the section 103 reporting requirements. In the case of radiation releases from coal and coal ash piles, the amount and rate of radiation released is extremely similar across all industrial and utility facilities with coal-fired boilers. For example, all coal and coal ash piles will contain the same radionuclides in low concentrations. The radiation emitted from these piles, therefore, will always be emitted continuously at low levels spread over large areas—it never will be emitted at a high rate or in an unusually large amount as the result of a sudden, episodic release. EPA is already aware of the amount and concentration of these radiation releases. Because of these two factors, submission of individual notifications of these releases is not necessary for the government to assess whether a response action is needed under CERCLA.

Perhaps more importantly, however, a response action (i.e., removal or remedial action) under CERCLA does not appear to be the most appropriate Federal regulatory response to radiation releases that simultaneously (1) are similar in amount and concentration across an entire sector of industry; (2) pose individual lifetime excess cancer risks within the general range of 10^{-4} and 10^{-7}; and (3) disperse quickly in the environment such that a response is not likely to clean up the accumulation of what has already been released. Whereas CERCLA is designed to enable the government to respond on a case-by-case basis where each site or release poses different hazards and requires a different type of response, other Federal regulatory programs, such as the National Emission Standards for Hazardous Air Pollutants (NESHAPs) or the Effluent Guidelines and Standards for discharges of water, are more appropriately designed to address the hazards of releases that uniformly occur across an entire industry. In sum, because the health risks from radiation releases from coal and coal ash piles from industrial and utility facilities with coal-fired boilers are such that it is extremely unlikely that the Agency would take a response action to these releases, the Agency is proposing to exempt these releases from the CERCLA section 103 and EPCRA section 304 notification requirements.

Based on these considerations, in the final rule adjusting RQs for radionuclides, EPA granted these four administrative reporting exemptions. Subsequent to the rule's publication in the **Federal Register**, the United States Court of Appeals for the District of Columbia was asked to review the rule on the ground that the Agency had not provided adequate notice of, and requested comment on, the reporting exemptions. The Court agreed and directed EPA to provide opportunity for notice and comment on the four administrative reporting exemptions. To minimize the burden on the Federal and State response system and, in particular, to prevent overwhelming the National Response Center with unnecessary reports of radionuclide releases from these four sources, the Court allowed the administrative reporting exemptions to remain in place, pending completion of the new round of notice and comment rulemaking.

Today's notice of proposed rulemaking provides notice of, and requests comment on, these four exemptions from the CERCLA section 103 and EPCRA section 304 notification requirements: (1) Releases of naturally occurring radionuclides from large, generally undisturbed land holdings, such as golf courses and parks; (2) releases of radionuclides naturally occurring from the disturbance of large areas of land for purposes other than mining, such as farming or building construction; (3) releases of radionuclides from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (4) radionuclide releases to all media from coal and coal ash piles at utility and industrial facilities with coal-fired boilers. EPA believes that these are four release sources for which reporting would serve no useful purpose and so requests comments on their exemption from the reporting requirements for releases of radionuclides under CERCLA section 103 and EPCRA section 304. Exemptions are from CERCLA section 103 and EPCRA section 304 reporting requirements only, not from CERCLA liability provisions nor from any other applicable reporting requirements.

III. Regulatory Analyses

A. Executive Order 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that this proposed rule is nonmajor because the

rule would maintain previously granted administrative reporting exemptions for certain radionuclide releases. Thus, the rule would not impose any costs on society. Moreover, the rule would not cause a major increase in costs or prices mentioned in (2) above or cause any of the significant adverse effects mentioned in (3) above.

This proposed rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." Because this proposed rule would grant reporting relief to certain sources of radionuclide releases, the rule would not result in a significant impact on a substantial number of small entities. EPA certifies that this proposed rule is not likely to have a significant impact on a substantial number of small entities and, therefore, that a Regulatory Flexibility Analysis is not required.

C. Paperwork Reduction Act

Because this rule provides an exemption from CERCLA 103(a) reporting requirements for certain radionuclide releases, there are no unique reporting or recordkeeping provisions that require approval from the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*

Approval has previously been granted by OMB for other release reporting requirements referenced in this rule: CERCLA section 103(a) releases of a hazardous substance equal to or greater than the RQ (OMB control No. 2050–0046).

List of Subjects

40 CFR Part 302

Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemicals, Disaster assistance, Hazardous substances, Hazardous Waste, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 4, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602, 9603, 9604, and 9615; 33 U.S.C. 1321 and 1361.

2. In § 302.6 Paragraph (c) continues to read as follows:

§ 302.6 Notification requirements.

* * * * *

(c) The following categories of releases are exempt from the notification requirements of this section: (1) Releases of those radionuclides that occur naturally in the soil from land holdings such as parks, golf courses, or other large tracks of land; (2) releases of radionuclides occurring naturally from the disturbance of land for purposes other than mining, such as for agricultural or construction activities; (3) releases of radionuclides from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (4) releases of radionuclides from coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

* * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for part 355 continues to read as follows:

Authority: 42. U.S.C. 11002, 11004, and 11048.

2. In § 355.40, paragraph (a)(2)(vi) continues to read as follows:

§ 355.40 Emergency release notification.

(a) * * *

(2) * * *

(vi) Any radionuclide release which occurs (A) naturally in soil from land holdings such as parks, golf courses, or other large tracts of land; (B) naturally from the disturbance of land for purposes other than mining, such as for agricultural or construction activities; (C) from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (D) from coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

* * * * *

[FR Doc. 92–28513 Filed 11–27–92; 8:45 am]
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federal register

Monday
November 30, 1992

Part V

Office of Personnel Management

5 CFR Part 297
Privacy Act of 1974; Implementation; Rule and Systems of Records; Notice

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

RIN 3206-AF03

Privacy Act of 1974; Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (the Office) is adopting a regulatory change regarding privacy procedures for personnel records covered by the Privacy Act of 1974, 5 U.S.C. 552a. This regulatory change clarifies that records covered by the Privacy Act are not to be disclosed in response to attorney-issued or clerk-issued subpoenas, unless the subpoena has the specific approval of a judge of a court of competent jurisdiction.

EFFECTIVE DATE: This regulation becomes effective December 30, 1992.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor, (202) 606-1955.

SUPPLEMENTARY INFORMATION: The Office proposed this regulatory change in the **Federal Register** on August 10, 1992, at 57 FR 35491. The 60-day comment period ended October 9, 1992. OPM received one written comment on its proposal. That comment agreed with the proposed regulatory change.

Therefore, the Office is adopting the proposed change to its regulations so that, where the Government is a party to litigation or administrative action, records will only be disclosed pursuant to an order signed by a judge. The Office considers a subpoena signed by a judge of competent jurisdiction to be a court order as described in section (b)(11) of the Privacy Act.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354, because it applies only to Federal employment and personnel records.

List of Subjects in 5 CFR Part 297

Privacy.

Office of Personnel Management,

Douglas A. Brook,

Acting Director.

Accordingly, OPM is amending part 297 of title 5 of the Code of Federal Regulations to read as follows:

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

1. The authority citation for part 297 continues to read as follows:

Authority: Sec 3, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. In § 297.402, an introductory paragraph and paragraphs (d), (e), (f), (g), (h), and (i) are added to read as follows:

§ 297.402 Disclosure pursuant to a compulsory legal process served on the Office.

For purposes of this section, the Office considers that a subpoena signed by a judge is equivalent to a court order.

* * * * *

(d) Before responding to the order or subpoena signed by a judge, an official with authority to disclose records under this subpart in consulting with legal counsel will ensure that—

(1) The requested material is relevant to the subject matter of the related judicial or administrative proceeding;

(2) Motion is made to quash or modify an order that is unreasonable or oppressive:

(3) Motion is made for a protective order when necessary to restrict the use or disclosure of any information furnished for purposes other than those of the involved proceeding; or

(4) Request is made for an extension of time allowed for response, if necessary.

(e) If an order or subpoena signed by a judge for production of documents also requests appearance of an Office employee, the response should be to furnish certified copies of the appropriate records. In those situations where the subpoena is not signed by a judge, the Office will return the document to the sender and indicate that no action will be taken to provide records until the subpoena is signed by a judge.

(f) If oral testimony is requested by the order or subpoena signed by a judge, an explanation that sets forth the testimony desired must be furnished to the Office system manager. The individual who has been ordered or subpoenaed to testify should consult with counsel to determine the matters about which the individual may properly testify.

(g) In all situations concerning an order, subpoena signed by a judge, or other demand for an employee of the Office to produce any material or testimony concerning the records that are subject to the order, that are contained in the Office's systems of records, and that are acquired as part of the employee's official duties, the employee shall not provide the information without the prior approval of the appropriate Office official.

(h) If it is determined that the information should not be provided, the individual ordered or subpoenaed to do so should respectfully decline to comply with the demand based on the instructions from the appropriate Office official.

(i) Notice of the issuance of the ex parte order or subpoena signed by a judge is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) pursuant to 5 U.S.C. 552a(j) by a Notice of Exemption published in the **Federal Register.**

§ 297.403 [Removed]

§ 297.404 [Redesignated as § 297.403]

3. Section 297.403 is removed. Section 297. 404 is redesignated as § 297.403.

[FR Doc. 92-28877 Filed 11-27-92; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of System Notice; Correction

AGENCY: Office of Personnel Management.

ACTION: Notice; correction to a system of records.

SUMMARY: On August 10, 1992 (57 FR 35697), OPM published in their entirety, all of its Governmentwide systems of records and two of its Central systems of records. One part to one of those Governmentwide notices was inadvertently omitted. That part had previously been published and is effective as part of the particular system notice. This correction does not establish new policy, but provides a complete text to that system notice.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor, (202) 606–1955.

SUPPLEMENTARY INFORMATION: One example of material that was exempted from the requirements of 5 U.S.C. 552a(d) in the OPM/GOVT–6, Personnel Research and Test Validation Records system, previously subject to final rulemaking as published at 57 FR 20955 (May 18, 1992), was omitted. This correction is made to place that example back on the list of materials exempted from certain provisions of the Privacy Act. That list is on page 35719, column 1.

Office of Personnel Management,

Douglas A. Brook,

Acting Director.

Accordingly, OPM/GOVT–6 is corrected by adding paragraph p. to the Systems Exempted from Certain Provisions of the Act to read as follows:

OPM/GOVT–6

SYSTEM NAME:

Personnel Research and Test Validation Records.

* * * * *

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

* * * * *

p. Performance appraisals for research purposes.

[FR Doc. 92–28878 Filed 11–27–92; 8:45 am]
BILLING CODE 6325–01

Federal Register

Monday
November 30, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact: Cow Creek Band of Umpqua Tribe of Indians, Oregon; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact: Cow Creek Band of Umpqua Tribe of Indians, Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Tribal-State Compact for the Conduct of Class III Gaming Between the Cow Creek Band of Umpqua Tribe of Indians and the State of Oregon, which was enacted on October 2, 1992.

DATES: This action is effective November 30, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C., 20240, (202) 219–0994.

Dated: November 20, 1992.

Ron Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–28850 Filed 11–27–92; 8:45 am]

BILLING CODE 4310–02–M

Monday
November 30, 1992

Federal Register

Part VII

Department of Health and Human Services

Administration for Children and Families

Request for Applications Under the Office of Community Services' Fiscal Year 1993 Community Food and Nutrition Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 93-2]

Request for Applications Under the Office of Community Services' Fiscal Year 1993 Community Food and Nutrition Program

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Community Food and Nutrition Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681A of the Community Services Block Grant Act of 1981 as amended. This Program Announcement contains forms and instructions for submitting an application. Grants made under this program announcement are subject to the availability of funds for support of these activities.

CLOSING DATE: The closing date for submission of applications is 60 days after publication in the **Federal Register.**

CONTACT: Office of Community Services, Eleria M. Hunter, Director, Division of Community Discretionary Programs, 370 L'Enfant Promenade SW., Washington, DC 20447, (202) 401-9345.

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Part A—Preamble

1. Legislative Authority

The Community Services Block Grant Act as amended authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at section 681A, Community Food and Nutrition, which authorizes the Secretary to make funds available for grants to be awarded on a competitive basis to eligible entities for local and statewide programs (1) to coordinate existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income communities; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local levels to meet the nutrition needs of low-income people.

The Act also requires that 20 percent of appropriated funds in excess of $6 million be awarded on a competitive basis to eligible agencies for nationwide programs, including programs benefiting Native Americans and Migrant Farmworkers.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—*Displaced worker:* An individual who is in the labor market but has been unemployed for six months or longer.

—*Indian tribe:* A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

—*Innovative project:* One that departs from or significantly modifies past program practices and tests a new approach.

—*Migrant farmworker:* An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

—*Seasonal farmworker:* Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

—*Underserved area* (as it pertains to child nutrition programs): A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.

—*Budget Period:* The term "budget period" refers to the interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.

—*Eligible Entity:* States and other public and private non-profit agencies/organizations including agencies which administer nationwide programs.

—*Project Period:* The term "project period" refers to the total time a project is approved for support, including any approved extensions.

—*Self-Sufficiency:* A condition where an individual or family does not need and is not eligible for public assistance.

Part B—Application Prerequisites

1. Eligible Applicants

Eligible applicants are States, public and private non-profit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. OCS encourages Historically Black Colleges and Universities to submit applications. In addition, applicants for the set-aside must be either: (1) Indian tribes, (2) private non-profit groups whose governing board is comprised of a majority of Indians and whose primary purpose is serving Indian populations, or (3) groups whose sole purpose is serving migrant and seasonal farmworker populations.

Proof of non-profit status must be included in the Appendices of the Project Narrative where applicable.

4. Availability of Funds and Grant Amounts

a. FY 93 Funding

The funds available for grant awards under the CFN Program in FY 93 are:

General Projects	$2,644,000.
Set-Asides	$400,000.
Nationwide Programs	$300,000.

b. Grant Amounts

No individual grant request will be considered for an amount which is in excess of $50,000 for applications submitted under General Projects and Set-Asides and $300,000 or the amount indicated above in 2.a, whichever is the lesser amount, for Nationwide Programs.

c. Mobilization of Resources

OCS would like to mobilize as many resources as possible to enhance projects funded under this program. OCS supports and encourages proposals submitted by applicants whose programs will leverage other resources, either cash or third party in-kind.

3 Project Periods and Budget Periods

For most projects OCS will grant funds for one year. However, in rare instances, depending on the characteristics of any individual project and on the justification presented by the applicant in its proposal, a grant may be made for a period of up to 17 months.

4. Administrative Costs/Indirect Costs

There is no administrative cost limitation for projects funded under this program.

OCS accepts approved indirect cost rates as allowable costs. Applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

5. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people as defined in the most recent Annual Update of Poverty Income Guidelines published by DHHS:

Attachment A to this announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately defined poverty guidelines are applicable to the determination of low income eligibility for this OCS program.

6. Number of Projects in Application

An application may contain only one project and this project must address the basic criteria found in Part C. Applications which are not in compliance with these requirements will be ineligible for funding.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted as long as each application contains a proposal for a different project. However, no applicant can receive more than one grant.

8. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to other organizations.

Part C—Purpose

The Department of Health and Human Services is committed to improving the health and well-being of individuals through improved preventive health care and promotion of personal responsibility. The Department seeks to unify the approach to health promotion and disease prevention activities with personal messages aimed at families and communities, in various settings and environments in which individuals and groups can most effectively be reached.

The Department is specifically interested in improving the health status of minority and low-income persons. HHS encourages community efforts to improve the coordination and integration of health services for all low-income families, and to identify opportunities for integrating other programs and services for this population.

1. Project Requirements

Projects funded under this program should:

a. Be designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people;

b. Provide outreach or public education to inform low-income individuals and displaced workers of the services available to them under the various Federally-assisted nutrition programs;

c. Focus on one or more legislatively mandated program activities: (1) Coordination of existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations; (2) assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating new programs in underserved or unserved areas; and (3) development of innovative approaches at the national, state or local levels to meet the nutrition needs of low-income people.

2. Project Elements

Projects Must

Focus on one or more of the legislatively mandated program activities in the above—Part C.1.c.

3. General Projects

The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. The application must contain a detailed and specific work program that is both sound and feasible. Projects funded under this announcement must produce permanent and measurable results that fulfill the purposes of this program as described in the above. The OCS grant funds, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Applicants will certify in their submission that projects will only serve the low-income population as stipulated in the DHHS Poverty Income Guidelines (Attachment A). If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply

with the cited Act may result in the application being ineligible for consideration for funding.

In the case of projects proposed for funding which mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, in the case of projects providing direct assistance to beneficiaries through grants funded under this program, beneficiaries must fall within the official DHHS Poverty Income Guidelines as set forth in Attachment A.

Submissions which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Any films or visual presentations approved for development under the grant must be submitted to the Office of Community Services for clearance by the Department of Health and Human Services prior to dissemination. In cases where material outlays for equipment (audio and visual) are requested, specific evidence must be presented that there is a definite programmatic connection between the equipment (audio and visual) usage and the outreach requirements described in Part C.1.b of this Announcement.

OCS also is interested in projects that address the needs of homeless families, welfare families in public housing, low-income and minority health initiatives.

OCS welcomes project proposals which seek to develop innovative approaches to promote health particularly among low-income and minority populations. These proposals should have as their goals the reduction of incidences of premature death and chronic disease among these populations.

4. Set-Asides

In recognition of the special needs of Indians and Migrant and Seasonal Farmworkers, a set-aside will be established to afford priority consideration to proposals submitted by agencies serving these populations. Applications which are not funded within this limited set-aside will also be considered competitively within the larger pool of eligible applicants. See Part D, Section 2, (Criterion II) for special instructions on developing a work program.

5. Nationwide Programs

Projects funded must be nationwide in scope and must meet the requirements of Part C.3 (General Projects).

Part D—Review Criteria

Applications which pass the initial screening and prerating review (See Part F, Section 5) will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements as described in Part F.

Applicants should write their project narrative to the review criteria using the same sequential order.

(**Note:** The following review criteria reiterate collection of information requirements contained in Part D of this Announcement. These requirements are approved under OMB Control Number 0970-0062.)

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

1. Criterion I: Analysis of Needs/ Priorities (Maximum: 13 points)

(a) Target area and population to be served are adequately described (0–5 points).

In addressing the above criterion, the application should include the following:

The applicant should include a description of the target area and population to be served including specific details on the minority population(s).

(b) Nature and extent of problem are adequately described and documented (0–8 points).

In addressing the above criterion, the applicant should include the following:

Applicant should discuss the nature and extent of the problem including specific information on minority population(s).

2. Criterion II: Adequacy of Work Program (Maximum: 15 Points)

(a) Set forth realistic quarterly time targets by which the various work tasks will be completed (0–7 points).

(b) Activities are adequately described and appropriately related to goals (0–8 points).

In addressing the above criterion, the applicant should include the following:

The application should address the basic criteria and legislatively-mandated activities found in Part C.1.c and should include:

(a) Project priorities and rationale for selecting them;

(b) Goals and objectives; and

(c) Project activities.

3. Criterion III: Significant and Beneficial Impact (Maximum 38 Points)

(a) Applicant proposes to significantly improve or increase nutrition services to low-income people and such improvements or increases are quantified. (0–12 points).

(b) Project incorporates minority low-income health prevention activities along with nutritional services (0–8 points).

(c) Project will significantly leverage or mobilize other community resources and such resources are detailed and quantified (0–6 points).

(d) Project builds on an existing outreach activity (0–5 points).

(e) Proposal addresses a problem which can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without Federal support (0–7 points).

Quantitative data must be provided with regard to items (a), (b), (c), and (d).

4. Criterion IV: Coordination/Services Integration (Maximum 15 Points)

Proposal addresses applicant's understanding of the importance of improving the integration, coordination, and continuity of various HHS-funded services potentially available to families with children living in poverty, and the difficulty of undertaking collaborative efforts between organizations.

In addressing the above criterion, the applicant should include the following:

Strategies should be identified which support coordinated community-based planning, maximize the efficient and effective use of scarce resources, reduce duplicative overhead, improve accountability, and result in measurable outcomes.

If the applicant is receiving funds from the State for community food and nutrition activities, the applicant should address how the funds are being utilized. If State funds are being used in the project for which OCS funds are being requested, their usage should be specifically described.

5. Criterion V: Organization Experience in Program Area and Staff Responsibilities (Maximum 12 Points)

(a) Organizational experiences in program area (0–4 points).

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations which propose providing training and technical assistance have detailed

competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

(b) Management History (0–4 points).

Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures along with a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(c) Staffing skills, Resources and Responsibilities (0–4 points).

The application briefly describes the experience and skills of the proposed project director showing that the individual is not only well qualified, but that his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project.

The application must indicate that the applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan.

In addressing the above criterion, the applicant should include the following:

The applicant must clearly show that sufficient time of the Project Director and other senior staff will be budgeted to assure timely implementation and oversight of the project and that the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

6. Criterion VI: Adequacy of Budget (Maximum: 7 Points)

(a) Budget is adequate and administrative costs are appropriate in relation to the services proposed (0–7 points).

Part E—Additional Instructions for Completing Application Package

(Approved by the OMB under Control Number 0970–0062)

The standard forms attached to this Announcement shall be used when submitting applications for all funds under this Announcement.

It is recommended that the applicant reproduce the SF–424 (Attachment B), SF–424A (Attachment C), and SF–424B (Attachment D), and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write "NA" for "Not Applicable."

The application should be prepared in accordance with the standard instructions in Attachments B and C corresponding to the forms, as well as the specific instructions set forth below:

1. SF–424 "Application for Federal Assistance"

Item:

1. For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications."

5/6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status such as IRS determination, Articles of Incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New".

9. Enter "DHHS–ACF/OCS".

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is "93.571".

The title is "Community Services Block Grant Discretionary Awards—Community Food and Nutrition Program."

15a. For purposes of this Announcement, this amount should reflect the amount requested for the entire project period.

15b-e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—"Budget Information-Non-Construction Programs"

See Instructions accompanying this page as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS Community Food and Nutrition Program funds only, and "Non-Federal" will include mobilized funds from all other sources—applicants, State, and other. Federal funds other than those requested from the Community Food and Nutrition Program should be included in "Non-Federal" entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized funds).

Section A—Budget Summary

Line 1–4
Col. (a):
Line 1 Enter "OCS Community Food and Nutrition Program";
Col. (b):
Line 1 Enter "93.571".
Col. (c) and (d): Not Applicable
Col. (e)—(g);

For each line 1–4, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5 Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. If the budget/project period exceeds twelve (12) months, applicant should submit additional copies of SF–424A to document the appropriate number of budget/project quarters for the specific budget project period. Allowability of costs is governed by applicable cost principles set forth in 45 CFR parts 74 and 92.

A separate itemized budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the object Class Categories of this section.

Line 6a-Personnel: Enter the total costs of salaries and wages.

Justification

Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification

Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c—Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification

Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property", for purposes of non-governmental entities, means tangible personal property having a useful life or more than two years and an acquisition cost per unit of $500. Non-expendable personal property", for purposes of governmental entities, means tangible personal property having a useful life of more than one year and an acquisition value of $5,000 or more.

Justification

Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j—Indirect Charges: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be also budgeted or charged as direct costs to the grant.

The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Line 7—Program Income: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column #1 to Column 5 for all line items.

Justification

Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of "Non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (See Section B.6) and whether it is cash or third-party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—

Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Col. (e): Enter the total of columns (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12—Carry the total of each column of Line 8, (b) through (e).

The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification

Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12 month budget period. Submit a separate sheet for each additional quarter or portion thereof, not to exceed 17 months.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF-424B "Assurances Non-Construction"

All applicants must sign and return the "Assurances" with the application.

4. Project Narrative

Each narrative should include the following major Sections:

a. Analysis of Need
b. Project Design (Work Programs)
c. Organizational Experience in Program Areas
d. Management History
e. Staffing and Resources
f. Staff Responsibilities

The project narrative must address the specific purposes mentioned in Part C of this Program Announcement. The narrative should provide information on how the application meets the evaluation criteria in part D of this Program Announcement.

Part F—Application Procedures

1. Availability of Forms

Applications for awards under this OCS program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part F and attachments B, C, and D to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications. Copies of the **Federal Register** containing this Announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed in the section entitled **"FOR FURTHER INFORMATION"** at the beginning of this Announcement.

2. Application Submission

The date by which applications must be received is indicated under "Closing Date" at the beginning of this Announcement. An application will be considered to be received on time under either one of the following two circumstances:

a. Applications may be mailed to: Administration For Children and Families, Division of Discretionary Grants, 200 Independence Avenue, SW., room 341–F–1, Washington, DC 20201.

b. Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at the above listed address.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it list the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

One signed original application and four copies is required. The first page of the SF–424 must contain in the lower right-hand corner, one of the following designations:

FN—for general grants

SA—for projects where migrant and seasonal farmworker organizations and Indian tribes or Indian organizations are applying specifically for set-aside funds described in Part B.

NP—for grants to organizations with nationwide programs.

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these thirteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue, SW., room 341–F–1, Washington, DC 20201.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this Announcement.

4. Application Consideration

Applications which meet the screening requirements in Section 5 below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this Announcement. Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years: comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances

on OCS or other Federal agency grants. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a completed Standard Form (SF) 424.

(2) The SF-424 must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in the Section below and the specific requirements contained in Part C of this Announcement. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this program announcement in the following areas:

(1) Eligibility: Applicant meets the eligibility requirements found in Part B.

(2) Number of Projects: The application contains only one project.

(3) Target Populations: The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries as defined in the DHHS Poverty Income Guidelines (Attachment A).

(4) Grant Amount: The amount of funds requested does not exceed $50,000 (except for nationwide programs).

(5) Program Focus: The application addresses the purposes described in Part C of this Announcement.

c. Evaluation Criteria

Applications which pass the initial screening and prerating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this Announcement.

Part G—Contents of Application Package and Application

(Approved by the Office of Management and Budget under Control Number 0970-0062.)

Application Package

Each application submission must include:

A signed original and four additional copies of the application.

Each copy of the application must contain in the order listed each of the following:

a. Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all appendices, must be numbered consecutively.

b. Standard Form 424. Application for Federal Assistance. (See Attachment B) The SF-424 should be completed in accordance with instructions provided with the form, as well as OCS specific instruction set forth in Part E of this Announcement.

Applicants must also be aware that the applicant's legal name as required in SF-424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

c. Standard Form 424A, Budget Information. (See Attachment C) Pages 1 and 2 should be completed.

d. Standard Form 424B, Assurances—Non-Construction Programs. (See Attachment D) This form must be signed and submitted with the Application.

e. Restriction on Lobbying Activities—Certification for Contracts, Grants, Loans, and Cooperative Agreements: (Required only if lobbying has actually taken place or is expected to take place in trying to obtain the grant for which the applicant is applying.) Fill out, sign and date form found at Attachment H.

f. Disclosure of Lobbying Activities—SF-LLL: Fill out, sign and date form found at Attachment H.

g. Project Narrative—(See Part E, Section 4.)

Please note the following:

—Applications may not exceed 30 pages in their entirety.

—The SF-424 must contain an original signature of the certifying representative of the applicant organization.

—Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore applications must be submitted on 8½ × 11 inch paper only. They must not include colored, oversized or folded materials, organizational brochures, or other promotional materials, slides, films, clips, etc., in the proposal. Such materials will be discarded if included.

—Applications should be submitted in ringbinders that will allow for easy separation and reassembly.

—While applications must be comprehensive, OSC encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.

—An acknowledgment postcard will be mailed to all applicants with an identification number which will be noted on the acknowledgment. This number must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the deadline date, applicants must notify ACF by telephone (202) 401-9230.

—Applicant should also submit a mailing label for the acknowledgment card.

Part H—Award Recipient Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) along with OMB Circulars 122 and 87.

Grantees will be required to submit quarterly progress and financial reports (SF-269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92.

Section 319 of Public Law 101-121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying when applicant has engaged in lobbying activities or is expected to lobby in trying to obtain the grant. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative

agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly up-dates about the use of lobbyists if any event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Discretionary Grant Program.

Dated: November 13, 1992.

Eunice S. Thomas,

Director, Office of Community Services.

ATTACHMENT A.—1992 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$6,810
2	9,190
3	11,570
4	13,950
5	16,330
6	18,710
7	21,090
8	23,470

For family units with more than 8 members, add $2,380 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$8,500
2	11,480
3	14,460
4	17,440

POVERTY INCOME GUIDELINES FOR ALASKA—Continued

Size of family unit	Poverty guideline
5	20,420
6	23,400
7	26,380
8	29,360

For family units with more than 8 members, add $2,980 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$7,830
2	10,570
3	13,310
4	16,050
5	18,790
6	21,530
7	24,270
8	27,010

For family units with more than 8 members, add $2,740 for each additional member.

BILLING CODE 4130-01-M

Attachment B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award B. Decrease Award C. Increase Duration
D Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4130-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

Attachment C

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by functions or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a) and enter the catalog number in Column (b). For applications pertaining to multiple programs where one of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) an (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the Totals for all Columns Used

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For exact program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the Totals of Lines 6a to 6h in Each Column

Line 6j—Show the Amount of Indirect Cost

Line 6K—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or

supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment D.—OMB Approval No. 0348–0040

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and

protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official
Title

Applicant Organization

Date Submitted

BILLING CODE 4130-01-M

Attachment E

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 May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to 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 an ongoing 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 in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar 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, consistent with the requirements of the Rehabilitation Act of 1973, as amended; 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).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Points of Contact

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Officer of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004, Telephone (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114

Georgia

Charles H. Badger Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–8172

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance,

Michigan Department of Commerce, Telephone (517) 373-7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025

New Mexico

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640, FAX (505) 827-3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538-1535.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326.

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington, 98504-4151, Telephone (206) 753-4978.

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010.

Wisconsin

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266-1741.

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574.

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750

Attachment H—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.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement 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 require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4130-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:* _____	Congressional District, *if known*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable.* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4130-01-C

Attachment I

The following DHHS regulations apply to all applicants/grantees under the Community Food and Nutrition Program:

Title 45 of the Code of Federal Regulations:

Part 16—Procedures of the Departmental Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Sections:
74.62(a)—Non-Federal Audits
74.173—Hospitals
74.174(b)—Other Nonprofit Organizations
74.304—Final Decisions in Disputes
74.710—Real Property, Equipment and Supplies
74.715—General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76
Debarment and Suspension from Eligibility for Financial Assistance
Subpart F—Drug Free Workplace Requirements
Part 80—Non-discrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Non-discrimination on the basis of sex in the admission of individuals to training programs
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Optional Checklist (for Use of Applicant Only) To Verify Contents of Application

	Check
A. Application contains:	
1. Table of Contents	[ ]
2. Completed SF 424, Application for Federal Assistance	[ ]
3. Completed SF 424A, Budget Information—Non-Construction Programs	[ ]
4. Signed SF 424B, Assurances—Non-Construction Programs	[ ]
5. A project narrative with the following components:	
a. Analysis of need	[ ]
b. Project design	[ ]
c. Organizational experience in program	[ ]
d. Management history	[ ]
e. Staffing and resources (resume or job description)	[ ]
f. Staff responsibilities	[ ]
6. Relevant portions of the organization's by-laws and articles of incorporation confirming eligibility	[ ]
7. A signed copy of Certification Regarding the Anti-Lobbying Provision;	[ ]
8. A completed Disclosures of Lobbying Activities form, if appropriate;	[ ]
9. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application	[ ]
B. Application does not exceed a total of 30 pages	[ ]
C. Application includes one original and four copies, printed on white 8½ by 11 inch paper	[ ]
D. Applicant is aware that in signing and submitting the application for funds under the CFN Program, it is certifying that it has read and understood the Federal Guidelines concerning a drug-free workplace and the debarment regulations set forth in attachments E and F respectively	[ ]

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federal register

Monday
November 30, 1992

Part VIII

Environmental Protection Agency

40 CFR Part 81
Air Quality Designations and Classifications; Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Air Docket No. A-90-42; FRL-4060-9]

RIN NO. 2060-AC56

Designations of Areas for Air Quality Planning Purposes; Amendments and Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing amendments to the State-by-State designations and classifications for the status of ozone, carbon monoxide (CO), lead, and particulate matter nominally 10 microns and less in diameter (PM-10) areas. These are changes based on information identified by EPA after publication of the original rule which established the current designations and classifications or information that was brought to EPA's attention by comments on the rule.

EFFECTIVE DATE: December 30, 1992.

ADDRESSES: Materials relevant to this rulemaking are included in Air Docket A-90-42, located in Rm. M-1500, First Floor, Waterside Mall, 401 M St., SW., Washington, DC, and may be inspected at this location during the hours from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m., Monday through Friday, except for legal holidays. A duplicate copy of the docket for each affected area is located in the EPA Regional Office of the Region in which the area is located.

FOR FURTHER INFORMATION CONTACT: For questions relating to specific areas, please contact the appropriate EPA Regional Office:

Regional Offices	States
Susan Studlien, Chief, State Air Programs Branch, EPA Region I, J.F.K. Federal Building, Boston, MA 02203-2211, (617) 565-3245..	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
William S. Baker, Chief, Air Programs Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264-2517..	New Jersey, New York, Puerto Rico, and Virgin Islands
Marcia Spink, Chief, Air Programs Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-9075..	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia
Tom Hanson, Acting Chief, Air Programs Branch, EPA Region IV, 345 Courtland St., NE., Atlanta, GA 30365, (404) 347-2864..	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee
Stephen H. Rothblatt, Chief, Regulation Development Branch, EPA Region V, 230 South Dearborn St., Chicago, IL 60604, (312) 353-2211.	Illinois and Indiana
Gary Gulezian, Chief, Air Toxics and Radiation Branch, EPA Region V, 230 South Dearborn St., Chicago, IL 60604, (312) 353-8559.	Michigan and Wisconsin
George Czerniak, Chief, Air Enforcement Branch, EPA Region V, 230 South Dearborn St., Chicago, IL 60604, (312) 353-2088.	Ohio and Minnesota
Gerald Fontenot, Chief, Air Programs Branch, EPA Region VI, 1445 Ross Ave., Dallas, TX 75202-2733, (214) 655-7204.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas
Gale Wright, Chief, Air Branch, EPA Region VII, 726 Minnesota Ave., Kansas City, KS 66101, (913) 236-7020.	Iowa, Kansas, Missouri, and Nebraska
Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, 999 18th St., Denver Place - Suite 500, Denver, CO 80202-2405, (303) 293-1750.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming
David L. Calkins, Chief, Air Programs Branch, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105, (415) 744-1219.	Arizona, California, Guam, Hawaii, and Nevada
George Abel, Chief, Air Programs Branch, EPA Region X, 1200 Sixth Ave., Seattle, WA 98101, (206) 442-1275.	Alaska, Idaho, Oregon, and Washington

Ozone/CO Issues:
Valerie Broadwell/Barry Gilbert, Ozone/CO Programs Branch, (919) 541-3310/5238.
Lead and SO_2 Issues:
Laurie Ostrand SO_2/Particulate Matter Programs Branch, (919) 541-3277.
Particulate Matter issues:
Larry Wallace, SO_2/Particulate Matter Programs Branch, (919) 541-0906.
Issues of a general nature:
Hank Young, Regional Operations Branch, (919) 541-5534.
Air Quality Management Division (MD-15), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. For the convenience of the reader, EPA has prepared an updated version of the individual State air designation listings that were amended in the **Federal Register** of November 6, 1991 (56 FR 56694), merged into the 1992 Code of Federal Regulations and further amended by this document. The updated files are also available at 9 a.m. the day of publication. By modem dial 202-512-3187 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1, and ASCII.

In the **Federal Register** of November 6, 1991 (56 FR 56694), EPA issued a final rule promulgating or announcing the designations, boundaries, and classifications of virtually all ozone and CO areas, all PM-10 areas, and some lead areas. Under sections 107(d)(2)(B) and (d)(5), 172(a)(1)(B), 181(a)(3), 186(a)(2), and 188(a) of the amended Clean Air Act (CAA), EPA was not required to solicit public comment prior to these promulgations, and in view of the tight time frames imposed under the amended CAA for designations, classifications, and State implementation plan (SIP) submittals, EPA determined that a formal public comment period prior to the promulgations would not be appropriate. However, in the November 6 rule, EPA entertained public comments addressing the technical correctness of its determinations and significant new policy issues. The EPA indicated that the rule would take effect 60 days after the date of publication.

The designations and boundaries promulgated by the rule took effect on January 6, 1992. During the comment period, EPA received comments addressing typographical errors, 40 CFR part 81 table presentations, and technical errors. Independent of the comments, EPA identified errors in the 40 CFR part 81 tables. With this issuance, EPA is making corrections to some of the designations, boundaries, and classifications that were promulgated or announced in the rule. These corrections are made under section 110(k)(6) of the CAA which provides as follows:

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or

plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

The EPA interprets this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to EPA's satisfaction that (1) EPA clearly erred in failing to consider or inappropriately considered information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate; and (2) other information persuasively supports a change in the regulation.

Following is a discussion of the corrections made to the November 6, 1991 final rule. All other comments submitted with respect to the rule are discussed in a Technical Support Document contained in Air Docket A-90-42.

Comments Relating to Typographical Errors and 40 CFR part 81 Table Presentation

Carbon Monoxide

California

The Air Pollution Control District of San Diego County commented that the boundary description for the San Diego CO nonattainment area is incorrect in the November 6, 1991 document. The Area's preenactment boundary and the boundary described by the State in a December 28, 1990 letter to EPA are identical. However, EPA incorrectly expanded the nonattainment area in the November 6, 1991 document. The EPA acknowledges this error. The correct boundary description for the San Diego area CO nonattainment area now appears in the tabular entry of this document.

Virginia

The Commonwealth of Virginia questioned why the following areas that are part of the Air Quality Control Regions (AQCR) and are in attainment are separated out from their respective AQCR's in the November 6, 1991 rule: AQCR 047 (National Capital Interstate), AQCR 223 (Hampton Roads Intrastate), and AQCR 225 (State Capital Intrastate).

The explanation is that in the rule, EPA followed the same listing format as formerly described in 40 CFR 81.348. However, EPA will combine the areas under their respective AQCR's in a tabular entry of this document since the Commonwealth has requested this. The Commonwealth should be aware that doing so may affect the prevention of significant deterioration (PSD) baseline study area.

AQCR 223 Hampton Roads was incorrectly listed as "AQCR 223 Hampton Roads." The area is now listed correctly as "AQCR 223 Hampton Roads Intrastate" in the tabular entry of this document.

Ozone

Illinois

The townships "Goose Lake" and "Aux Sable" were incorrectly listed as "Gooselake" and "Auxsable" in the November 6, 1991 document. This error is corrected in this document.

North Carolina

The word "Bumcombe" was incorrectly listed as "uncombe" in the Designated Area column of the November 6, 1991 document. This error is corrected in this document.

Virginia

The Commonwealth of Virginia commented that "Hampton Roads Area" is the preferred description for the area that EPA describes as the "Norfolk-Virginia Beach-Newport News Area." Although EPA's original description is consistent with how other areas are named, i.e., by using the Metropolitan Statistical Area (MSA) name, EPA concurs with the Commonwealth's request and has revised the description to read "Norfolk-Virginia Beach-Newport News (Hampton Roads) Area."

The Richmond nonattainment area was listed incorrectly as the "Richmond-Petersburg Area." Since Petersburg is in attainment, the area is now described as the "Richmond Area" in the tabular entry of this document.

The Commonwealth also commented that the title for AQCR 207 is incorrect. The ozone table is corrected by changing this title to "AQCR 207 Eastern Tennessee - SW Virginia Interstate."

Ozone and Carbon Monoxide

Oregon

The Oregon Department of Environmental Quality commented that the Salem area was listed in the November 6, 1991 notice as the "City of Salem" for both ozone and CO. However, in an earlier letter to EPA (March 15, 1991), Governor Roberts recommended that these ozone and CO nonattainment boundaries be reaffirmed as the "Salem Area Transportation Study (SATS)."

Accordingly, the subheading "City of Salem" is replaced with "Salem Area Transportation Study (SATS)" as requested.

Also, in her March 15, 1991 letter to EPA, the Governor recommended that the carbon monoxide nonattainment boundary for Medford be established as the "Medford Urban Growth Boundary." The rule incorrectly designated the "Medford-Ashland Urban Growth Boundary." There is no such geographical entity; therefore, the description is corrected in the tabular entry of this document to read "Medford Urban Growth Boundary."

Virginia

Since Nansemond County is no longer a governmental entity, the County is removed from the tabular entries of this document. Nansemond County has been annexed by Suffolk City.

EPA-Discovered Errors in 40 CFR part 81 Tables

PM-10

The EPA inadvertently erred in crafting the PM-10 tables included in the November 6, 1991 final rule. The PM-10 tables appropriately identified those areas currently designated as nonattainment for PM-10 pursuant to section 107(d)(4)(B) of the CAA. However, all of the areas in a State not designated nonattainment for PM-10 were designated unclassifiable under section 107(d)(4)(B)(iii) of the CAA (see 56 FR 56705). The PM-10 tables published in the November 6, 1991 document omitted the "Unclassifiable" designation for the "Rest of State" areas not otherwise designated nonattainment. (If the State currently has no PM-10 nonattainment areas, then it follows that the entire State is designated unclassifiable for PM-10.) [See section 107(d)(4)(B)(iii).] For administrative efficiency reasons, EPA is not codifying in 40 CFR part 81 these State-wide unclassifiable designations.) The 40 CFR part 81 tables appearing in this document correct the oversight. The PM-10 table headings are also modified by removing the word "initial."

It is important to reiterate that total suspended particulates (TSP) national ambient air quality standards (NAAQS) designations will remain in effect for the purpose of implementing the maximum allowable increases (increments) in concentrations of particulate matter, measured in terms of TSP, pursuant to section 163(b) of the CAA, until EPA determines that the TSP designations are no longer necessary for that purpose (see section 107(d)(4) and 56 FR 56706 and 56709; November 6, 1991).

Carbon Monoxide

Connecticut

A typographical error involving the New Haven-Meriden-Waterbury entry is corrected. The tabular listing incorrectly

included the classification description in the designation column. The error is corrected in this document.

Michigan

The tabular listing for AQCR 082 incorrectly omitted "South Bend" in its title. The correct entry "AQCR 082 South Bend-Elkhart-Benton Harbor Interstate" is included in this document.

Minnesota

In the November 6, 1991 rule, portions of three Minnesota Counties (Benton, Sherburne, and Stearns) that make up the City of St. Cloud were listed as "Unclassifiable/Attainment." However, the table should have included a footnote explaining that the area is in the process of being redesignated to attainment for CO, and until such time as the redesignation approval is finalized the listing will have no force or effect (see the footnote added to the Minnesota — Carbon Monoxide table for clarification).

West Virginia

A footnote explaining the attainment status of Brooke and Hancock Counties was accidentally left out of the November 6, 1991 final rule. The footnote is included in the tabular section of this document.

Comments Relating to Technical Errors

Lead

Georgia

The Georgia Environmental Protection Division (on behalf of the State of Georgia) submitted comments requesting a revision to the lead nonattainment boundary for Muscogee County. The State proposed to change the boundary of the lead nonattainment area from the entire County to a circle with a radius of 2.3 kilometers, with the GNB, Inc., lead smelting and battery production facility in the center. Georgia submitted dispersion modeling demonstrating that this boundary is more appropriate than the entire county.

In the preamble to the November 6, 1991 rule, EPA described its policy for determining the boundary of a lead nonattainment area. The EPA indicated that the definition of nonattainment area in section 107(d)(1)(A)(i) of the CAA is the controlling legal standard. The EPA noted that generally it had recommended that the lead nonattainment boundary be defined by the county perimeter for the county in which the ambient lead monitor(s) recording the violation of the lead NAAQS and/or lead source is located. The EPA also noted that there may be situations when a boundary other than the county perimeter may be appropriate:

States may seek to alternatively define the lead nonattainment or unclassifiable boundary by using one, or a combination, of the following techniques: (1) Qualitative analysis, (2) spatial interpolation of air monitoring data, or (3) air quality simulation by dispersion modeling. The techniques are described in more detail in "Procedures for Estimating Probability of Nonattainment of a PM-10 NAAQS Using Total Suspended Particulate or PM-10 Data," EPA-450/4-86-017, December 1986. If a State seeks to alternatively define a lead nonattainment area, EPA recommends that it submit a reasoned and documented justification for the boundary identified (56 FR 56707).

Also in the preamble to the November 6, 1991 rulemaking, EPA indicated that it would entertain comments on the technical corrections of its determinations and significant new policy issues (56 FR 56694). The dispersion modeling and associated documents submitted by Georgia reflect a reasoned and documented justification for defining the nonattainment boundary to include only the area within a 2.3-kilometer radius of the GNB facility. The State has demonstrated that the 2.3-kilometer boundary includes both the portion of the county that does not meet the lead NAAQS and the source of the nonattainment problem [see section 107(d)(1)(A)(i) of the CAA]. Further, Georgia's submittal called into question the technical correctness of the earlier boundary determination for this area. For these reasons, relying on its authority under section 110(k)(6) of the CAA, EPA is modifying the lead nonattainment boundary for Muscogee County, Georgia, from the entire county to that part of the county which includes a circle with a radius of 2.3-kilometers with the GNB lead smelting and battery production facility in the center.

As provided in section 191(a), the Part D SIP for that portion of the County remaining nonattainment for lead will be due 18 months from the effective date of the nonattainment designation for that area (i.e., 18 months from January 6, 1992, the effective date of the November 6, 1991 rule).

Ozone

Michigan

As described in the November 6, 1991 final rule, EPA generally relied on the years 1987-1989 for ozone designations and classifications. However, in some cases, EPA used complete 1988-1990 data if they were quality assured and publicly available in the Aerometric Information Retrieval System (AIRS) by February 13, 1991, and the State requested a lower classification for the nonattainment area. In the November 6, 1991 final rule, EPA announced the classification of Muskegon County, Michigan, as serious based on 1987-1989 data. Based on correspondence with the State and upon reviewing the record, EPA has determined that the 1988-1990 ozone concentrations data for Muskegon County, Michigan, were submitted before February 13, 1991, and justify a moderate classification based on the design value. In addition, the State of Michigan requested that EPA classify the area as moderate. Thus, Muskegon meets EPA's criteria for classification as a moderate area.

Washington

In a letter from Governor Booth Gardner to the Administrator, dated December 18, 1991, Washington State presented a case that the Puget Sound Region "experiences unique geographic and urbanization patterns and climatological conditions" and that a rigorous evaluation to establish more appropriate boundaries than those proposed is warranted. The State submitted a specific boundary recommendation on January 17, 1992, in a letter from the Assistant Director of the Washington Department of Ecology to the Regional Administrator of Region X. This letter contains the technical details and justification for the State's boundary recommendation.

In light of this information, EPA is correcting the Seattle ozone nonattainment area boundary under section 110(k)(6) of the CAA as amended. In amending the nonattainment boundary, the State relied on a variety of information, including air quality data, point source information, land use patterns and projections, climatic and meteorological data, ozone generation and transport dynamics, and population density data. The State obtained population density information from the Puget Sound Regional Council and compiled it into zones which are nearly identical to U.S. Census tracts. The population in each tract was ranked by density and then accumulated and mapped by percentages of total population. The population data were mapped into a band which represents 95 percent of the population in the three-county area. This information was compiled for 1990 as well as projection years of 2010 and 2020. The map encompassing 95 percent of the three-county population for each was the preliminary step in establishing the boundary. The State then compared the map with the other criteria. Land uses such as major industrial sites, cities, and transportation corridors were reviewed, and boundaries were expanded as necessary to assure inclusion. Finally, the boundary was expanded further to account for ozone

transport. Meteorological conditions and a limited amount of special study ozone data were considered in this final adjustment. The final boundary recommendation by the State covers all the urbanized area as defined by the U.S. Census Bureau. The boundary covers all of Pierce County, nearly all of King County, and the urbanized portion of Snohomish County. The boundary contains greater than 95 percent of the current and projected population, virtually all of the sources of oxides of nitrogen and volatile organic compounds in the three-county region, the monitoring sites, and areas that are likely to receive transported ozone. In this document, EPA is correcting the boundaries to conform to the State's recommendation.

Wisconsin

As described in the November 6, 1991 final rule, EPA generally relied on the years 1987-1989 for ozone designations and classifications. However, in some cases, EPA used complete 1988-1990 data if they were quality assured and publicly available in AIRS by February 13, 1991 and the State requested a lower classification for the nonattainment area. In the November 6, 1991 final rule, EPA announced the classification of Sheboygan County as serious based on 1987-1989 data. Based on correspondence with the State, and upon reviewing the record, EPA has determined that the 1988-1990 ozone concentration data for Sheboygan County were submitted before February 13, 1991 and justify a moderate classification based on the design value.

In addition, the State of Wisconsin requested that EPA classify the area as moderate. Therefore, Sheboygan County meets EPA's criteria for classification as a moderate area. In this document, EPA is correcting the classification to moderate.

Carbon Monoxide

Massachusetts

Several commenters questioned the use of 1986 data to classify the Boston nonattainment area as Moderate, and argued that the area should be treated as attainment on the basis of 1988-1989 data. EPA is continuing to review these comments. As a result, EPA is not, in this notice, revising the designation or classification of the Boston area, and EPA intends to respond to the commenters in a future action.

Other Actions

Ozone

New York

Upon enactment of the CAA Amendments of 1990, the existing nonattainment areas, including the New York-New Jersey-Long Island Consolidated Metropolitan Statistical Area (NYC CMSA), were reaffirmed as nonattainment for ozone by operation of law. In addition, on November 15, 1990, the NYC CMSA was classified as a severe ozone area with 17 years to attain the standard based on its calculated ozone design value of 0.201 part per million. Section 107(d)(4)(A)(iv)-(v) of the CAA requires that the boundary for a serious, severe, or extreme area become the entire CMSA unless the Governor of the respective State notifies EPA that more time is needed to study the boundaries. A finding concluding that a smaller boundary is more appropriate had to be completed and EPA had to concur in the finding by January 15, 1992, or the New York City nonattainment area would automatically become the entire CMSA. On December 28, 1990, New York State formally requested additional time to study the appropriate boundary for the NYC CMSA as it relates to the air quality designations for the Counties of Orange and Putnam. In a March 21, 1991 letter and in a June 4, 1991 letter, New York State again requested additional time to evaluate the boundaries of Orange and Putnam Counties. On January 15, 1992, New York State's Department of Environmental Conservation (NYSDEC) formally submitted a study (NYSDEC had previously submitted drafts of the study) to the EPA Region II Administrator discussing the designations and classifications of Orange and Putnam Counties. New York State made the following boundary recommendations in the study based on population densities, population growth, and air quality in the area:

Orange County—Towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury remain with the New York City nonattainment area and are classified as severe-17.

Orange County—Other 16 towns and cities are designated as attainment.

Putnam County— Entire County is designated as nonattainment and classified as marginal.

The primary reason for excluding portions of Orange County and all of Putnam County from the NYC CMSA was that the excluded areas do not contribute significantly to ozone violations in the NYC CMSA. The State reviewed population growth in Orange and Putnam Counties for the last 10 years and found that the seven Orange County towns listed above experienced high population growth rates of nearly 30 percent. These seven towns are located in the southeastern portion of the County immediately north of Rockland County along the Hudson Valley, and they are closest to the rest of the CMSA. By way of contrast, population grew much slower in the remaining portions of Orange County and in all of Putnam County. The towns in Putnam County experienced only a 3-percent population growth.

The study also examined the attainment status of these and surrounding areas. Although there is no permanent ozone monitoring station in either Orange or Putnam County, a properly sited, temporary EPA monitoring station in West Point, Orange County, measured ozone concentrations in the severe classification. These violations are believed to be the result of transported ozone from the NYC CMSA. Based on the high population growth rate in the southern part of Orange County, its proximity to the rest of the NYC CMSA severe nonattainment area, and the measured violations at the West Point monitor, New York State recommended that the southern seven towns of Orange County be designated nonattainment and classified as severe, thus being part of the NYC CMSA nonattainment area.

Similarly, based on the small population growth in the northern portion of Orange County, New York State recommended that the northern portion of Orange County be excluded from the NYC CMSA and designated attainment. The State recommended that Putnam County be grouped with Dutchess County and classified as a marginal nonattainment area. The State concluded that the Putnam County classification should be marginal, based on the fact that the County will be surrounded by nonattainment areas, most of which are classified severe, and that the population density of Putnam County (362 people per square mile) is comparable to Dutchess County (321 people per square mile), a county immediately to the north of Putnam County which is classified as a marginal nonattainment area.

It should be noted that New York is located entirely within the Northeast Ozone Transport Region, and all areas of the State are subject to certain controls regardless of their attainment status. On January 15, 1992, the Administrator agreed with the State's finding that northern Orange County and Putnam County do not significantly contribute to ozone violations in the NYC CMSA nonattainment area. In a January 15, 1992, letter to the NYSDEC Commissioner, the Administrator

approved the State's request to exclude portions of the NYC CMSA.

By letter to the U.S. EPA Administrator dated May 21, 1992, a commenter objected to the exclusion from the NYC CSMA nonattainment area of the northeastern portion of Orange County on grounds that the total population, population density, prior population growth, commuting patterns, and growth projections indicate that sources in this area do contribute to the nonattainment problem. By letter to the U.S. EPA General Counsel dated July 23, 1992, this commenter extended its objection to the exclusion from the NYC CSMA nonattainment area of all of Orange County as well as Putnam County.

Due to the facts that these comments were submitted recently, and that EPA must coordinate its analysis with the State, EPA has not, to date, been able to complete its evaluation of these comments. Accordingly, EPA plans to proceed with the designation and classification of Orange and Putnam Counties as described above; however, EPA will continue to review the comments received to date, and will entertain any additional comments on this action that are received by December 30, 1992, for the purpose of correcting errors in the determination that the northern portion of Orange County and all of Putnam County should be excluded from the NYC CMSA nonattainment area. Following this period, EPA, in consultation with the State, will come to closure on the boundaries issue, and will provided the appropriate notification.

Florida and Ohio

As of November 6, 1991, the EPA and the States of Florida and Ohio were still discussing expanding the ozone boundaries of the Tampa, Florida, MSA and the Parkersburg, West Virginia - Marietta, Ohio, MSA to include, respectively, Pasco County, Florida, and Washington County, Ohio (see 56 FR 56701). At enactment of the CAA Amendments of 1990, both counties were designated unclassifiable/attainment by operation of law. The EPA and these States were reviewing these designations under the process set out in section 107(d)(4)(A) of the CAA to determine whether these designations should be confirmed or reversed. The EPA has completed its review and concurs with the States of Florida and Ohio that Pasco County and Washington County, respectively, remain attainment.

Carbon Monoxide

Utah

The November 6, 1991 notice reaffirmed the designation of the City of Provo as nonattainment for CO (56 FR 56846). However, the listed designation of Unclassifiable/Attainment for the remainder of Utah County did not reflect EPA action under section 107(d)(4)(A). At that time, the State and EPA were reviewing whether to confirm or revise that designation, and EPA committed to publish a subsequent Federal Register document to that effect. During the designation process, EPA received numerous comments both in support of expanding the existing boundary and in opposition to expansion. The nature of this issue, coupled with the many comments received from the public, made it apparent to EPA that more information was needed in order to adequately define the boundaries. With receipt of the Governor's commitments to carry out a comprehensive analysis in developing the SIP (due in November 1992), EPA agrees with the State that the SIP development process is the appropriate vehicle in which to obtain this additional information.

Therefore, EPA reaffirms the existing designation of Unclassifiable/Attainment for the portion of Utah County outside of the Provo City limits, fulfilling EPA's responsibility under section 107(d)(4)(A).

All comments and official correspondence between the State of Utah and EPA on the subject of the Provo nonattainment boundaries for CO are available for public review in EPA Air Docket A-90-42.

Effective Date of Designations, Classifications, and Boundaries for Ozone and CO Nonattainment Areas

For ozone and CO areas, corrections and other revisions made by this document will take effect December 30, 1992. As explained in more detail in the Technical Support Document, the effective date of the designations, classifications, and boundaries of ozone and CO areas established in the tables in the regulatory text, as may be corrected or revised by this document, may differ, depending on the area and the particular requirement. More specifically, for the portions of ozone and CO nonattainment areas that were designated nonattainment prior to the date of enactment of the amended CAA, the relevant effective date is November 15, 1990 (the date of enactment).

For areas that were designated attainment preenactment but are part of a larger area which contains preenactment nonattainment portions, the effective date of the designation to nonattainment is November 15, 1990, for the following purposes only: (1) the 5-percent classification adjustment under section 181(a)(4) (ozone) or section 186(a)(3) (CO); (2) the C/MSA boundary adjustment under section 107(d)(4)(A)(iv)-(v); and (3) determining the scope of a "covered area" under section 211(k)(10)(d) and opt-in under section 211(k)(6) for the reformulated gasoline requirement. For all other purposes the effective designation date is January 6, 1992 (except for a nonattainment portion of Orange County, NY, and for Putnam County, NY, for which the effective date is January 15, 1992). These other purposes include the applicability of new source review provisions and other substantive State or Federal pollution control requirements.

For current nonattainment areas designated attainment preenactment and not containing any preenactment nonattainment portions, the effective date for all purposes is January 6, 1992.

Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 17, 1992.

William K. Reilly,
Administrator.

PART 81—[AMENDED]

Therefore, 40 CFR part 81 is amended as follows:

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7407, 7501-7515, 7601.

2. In § 81.300, by adding new paragraph (d) to read as follows:

§ 81.300 Scope.

* * * * *

(d) For ozone and carbon monoxide (CO) areas the effective date(s) of air quality area designations and classifications are described as follows:

(1) For the portions of ozone and CO nonattainment areas that were designated nonattainment prior to the date of enactment of the Clean Air Act Amendments of 1990 (preenactment), the effective date is November 15, 1990.

(2) For the portions of nonattainment areas that were designated attainment prior to November 15, 1990, and included as part of an area designated nonattainment prior to November 15, 1990, the effective date of the designation to nonattainment is November 15, 1990 for:

(i) Purposes of determining whether the portion of the nonattainment area is

eligible for the 5-percent classification adjustment under section 181(a)(4) (ozone) or section 186(a)(3) (CO);

(ii) Triggering the process for determining the C/MSA boundary adjustment under section 107(d)(4)(A)(iv)-(v);

(iii) Determining the scope of a "covered area" under section 211(k)(10)(D) and opt-in under section 211(k)(6) for the reformulated gasoline requirement.

For all other purposes the effective designation date is January 6, 1992 (except for the nonattainment portion of Orange Co., NY, and for Putnam County, NY, for which the effective date is January 15, 1992).

(3) For nonattainment areas designated attainment preenactment, and not included as part of any nonattainment area that was designated nonattainment preenactment, the effective date for all purposes is the date of the designation.

3. Section 81.302 is amended in the table for "Alaska-PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.302 Alaska.

* * * * *

Alaska—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

4. Section 81.303 is amended in the table for "Arizona—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.303 Arizona.

* * * * *

Arizona—PM-10 Nonattainment Areas

Designated area	Designation		Classification	
	Date	Type	Date	Type
* *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

5. Section 81.305 is amended in the table for "California—Carbon Monoxide" by revising the entries "San Diego Area" and "San Diego Air Basin (Remainder of)" and by amending the table under "California—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.305 California.

* * * * *

California—Carbon Monoxide

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* *	*	* * * *		
San Diego Area				
San Diego County (part)		Nonattainment		Moderate ≤ 12.7 ppm
The Western Section of Air Pollution Control District of San Diego County is defined as all that portion of San Diego County, State of California, lying westerly of the following described line:				
1. Beginning at the Northwest of Township 9 South, Range 1 West, San Bernardino Base and Meridian;				
2. thence running Southerly along the West line of said township to the south line therof;				
3. thence Easterly along said South line to the range line between Range 1 West and Range 1 East;				
4. thence Southerly along said range line to the township line between Township 11 South and 12 South;				
5. thence Easterly along said township line to the range line between Range 1 East and Range 2 East;				

—Continued

California—Carbon Monoxide

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
6. thence Southerly along said range line to the International boundary between the United States of America and Mexico.				
* * *	*	* * * * *		
San Diego Air Basin (Remainder of)				
San Diego County (part)				
Remainder of County		Unclassifiable/Attainment		
* * *	*	* * * * *		

[1]This date is November 15, 1990, unless otherwise noted.

* * * * * *

California—~~PM-10~~ Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * * *

6. Section 81.306 is amended in the table for "Colorado—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.306 Colorado.

* * * * * *

Colorado—~~PM-10~~ Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * * *

7. Section 81.307 is amended by amending the table for "Connecticut—Carbon Monoxide" by revising the entry "New Haven-Meriden-Waterbury Area" and by amending the table for "Connecticut—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.307 Connecticut.

* * * * * *

Connecticut—Carbon Monoxide

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	* * * * *		
New Haven - Meriden - Waterbury Area				
Fairfield County (part)				
Shelton City		Nonattainment		Not classified
Litchfield County (part)		Nonattainment		Not classified
Bethlehem Town, Thomaston Town, Watertown, Woodbury Town				
New Haven County		Nonattainment		Not classified
* * *	*	* * * * *		

[1]This date is November 15, 1990, unless otherwise noted.

* * * * *

Connecticut—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

§ 81.310 [Amended].

8. Section 81.310 *Florida* is amended in the table for "Florida—Ozone" under the main entry "Rest of State" in the subentry "Pasco County" by removing the superscript footnote indicator "2" and by removing footnote 2 at the end of the table.

9. Section 81.311 is amended by revising the table "Georgia—Lead" to read as follows:

§ 81.311 Georgia.

* * * * *

Georgia—Lead

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Muscogee County (part) That portion of the county which includes a circle with a radius of 2.3 kilometers with the GNB, Inc., lead smelting and battery production facility in the center	1/8/92	Nonattainment		
Rest of State Not Designated				

* * * * *

10. Section 81.313 is amended in the table for "Idaho—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, as follows:

§ 81.313 Idaho.

* * * * *

Idaho—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

11. Section 81.314 is amended in the table for "Illinois—Ozone " by revising under the entry "Chicago-Gary-Lake County Area" the subentry "Gooselake Township" and under the entry "Grundy County (part)" the subentry "All townships except Aux Sable and Gooselake" and by amending the table "Illinois—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.314 Illinois.

* * * * *

Illinois—Ozone

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Chicago-Gary-Lake County Area				
* * *	*	* * * *		
Grundy County (part)				
Aux Sable Township		Nonattainment		Severe-17
Goose Lake Township		Nonattainment		Severe-17
* * *	*	* * * *		
Grundy County (part)				

—Continued

Illinois—Ozone

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
All townships except Aux Sable and Goose Lake		Unclassifiable/attainment		

[1]This date is November 15, 1990 unless otherwise noted.

Illinois—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Rest of State	11/15/90	Unclassifiable		

12. Section 81.315 is amended in the table for "Indiana—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.315 Indiana.

Indiana—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Rest of State	11/15/90	Unclassifiable		

13. Section 81.320 is amended in the table for "Maine—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.320 Maine.

Maine—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Rest of State	11/15/90	Unclassifiable		

14. Section 81.323 is amended in the table for "Michigan—Carbon Monoxide" by amending the entry "AQCR 082 Elkhart-Benton Harbor Interstate" to include "South Bend"; in the table "Michigan—Ozone" by revising the entry for "Muskegon Area" and removing the footnote 2 indicator to the entry "Serious" and by removing the footnote 2 from the end of the table; and by amending the table for "Michigan—PM-10" by removing the word "initial" in the heading of the table and by adding a new entry at the end of the table, to read as follows:

§ 81.323 Michigan.

Michigan—Carbon Monoxide

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 082 South Bend-Elkhart-Benton Harbor Interstate		Unclassifiable/Attainment		

—Continued

Michigan—Carbon Monoxide

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* *	*	* * * * *		

[1]This date is November 15, 1990, unless otherwise noted.

Michigan—Ozone

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* *	*	* * * * *		
Muskegon Area Muskegon County		Nonattainment		Moderate
* *	*	* * * * *		

[1]This date is November 15, 1990, unless otherwise noted.

* * * * *

Michigan—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* *	*	* * * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

15. Section 81.324 is amended in the table for "Minnesota—Carbon Monoxide" by amending under the entry "Rest of State" the subentries "Benton County", "Sherberne County", and "Stearns County" and adding a new footnote 2 and by amending the table for "Minnesota—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.324 Minnesota.

* * * * *

Minnesota—Carbon Monoxide

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* *	*	* * * * *		
Rest of State		Unclassifiable/Attainment		
* *	*	* * * * *		
Benton County [2]				
* *	*	* * * * *		
Sherburne County [2]				
* *	*	* * * * *		
Stearns County [2]				
* *	*	* * * * *		

[1]This date is November 15, 1990, unless otherwise noted.

[2]The City of St. Cloud, which comprises portions of Benton, Sherburne, and Stearns Counties, was designated nonattainment for CO under the preamended Act. See 43 FR 8962 (March 3, 1978), 40 CFR part 81. As such, the St. Cloud area retained its designation of nonattainment upon enactment of the CAAA on November 15, 1990. CAA section 107(d)(1)(C), 42 U.S.C. 7407(d)(1)(C). However, EPA expects to imminently publish a direct-final notice in the FEDERAL REGISTER redesignating the City of St. Cloud from nonattainment to attainment for CO. If EPA receives notification within 30 days of the direct-final action that a party wishes to comment adversely on the redesignation, EPA will withdraw the direct-final action and issue a proposed rule redesignating St. Cloud to attainment. Based on the comments the Agency receives and the underlying facts, EPA then will decide whether to issue a final redesignation to attainment. If EPA determines in the final notice to retain St. Cloud's nonattainment designation, this table will be revised at that time. If EPA does not receive notification of any adverse comments, then St. Cloud will be redesignated to attainment 60 days from publication of the direct-final redesignation action, and the attainment designation indicated in this notice for those portions of Benton, Sherburne, and Stearns Counties that comprise the City of St. Cloud will stand. However, until such time as the redesignation to attainment becomes final pursuant to EPA's action on the redesignation request, the attainment listing for those portions of Benton, Sherburne, and Stearns Counties that comprise the City of St. Cloud has no force or effect.

Minnesota—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

16. Section 81.327 is amended in the table for "Montana—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.327 Montana.

* * * * *

Montana—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

17. Section 81.329 is amended in the table for "Nevada—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.329 Nevada.

* * * * *

Nevada—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

18. Section 81.332 is amended in the table for "New Mexico—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.332 New Mexico.

* * * * *

New Mexico—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

19. Section 81.333 is amended in the table for "New York—Ozone" by amending the entry "New York-Northern New Jersey-Long Island Area" by revising under it the subentry for "Orange County" and removing the subentry "Putnam County"; amending the entry for "Poughkeepsie Area" by adding in alphabetical order a subentry for "Putnam County"; by revising the entry "AQCR 161 Hudson Valley Intrastate (Remainder of)"; by removing footnote 2 to the table and designating it as "reserved," at the end of the table; and by adding new footnote 3, to read as follows:

§ 81.333 New York.

* * * * *

New York—Ozone

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
New York-Northern New Jersey-Long Island Area				
* * * * * * *				
Orange County (Part)		Nonattainment		Severe-17
Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, Woodbury				
* * * * * * *				
Poughkeepsie Area				
Dutchess County	1/6/92	Nonattainment	1/6/92	Marginal
Putnam County[3]	1/6/92	Nonattainment	1/6/92	Marginal
* * * * * * *				
AQCR 161 Hudson Valley Intrastate (Remainder of)		Unclassifiable/Attainment		
Columbia County				
Fulton County				
Orange County (part)[3]				
Entire county except: Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, Woodbury				
Schoharie County				
Ulster County				
* * * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.
[2] [Reserved]
[3] EPA is continuing to review comments concerning correction of the designation and classification for this portion of Orange County and for Putnam County. The designation and classification of these areas may or may not be revised pending this review.

* * * * *

§ 81.334 [Corrected]

20. Section 81.334 *North Carolina* is corrected in the table for "North Carolina—Ozone" by changing under the entry "Rest of State" the subentry "uncombe County" to read "Buncombe County."

21. Section 81.336 is amended in the table for "Ohio—Ozone" by amending the "Washington County" entry to include the term "Unclassifiable/Attainment" in the Description column, by removing the superscript footnote designation "2" for "Washington County" and by removing footnote 2 at the end of the table; and by amending the table for "Ohio—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.336 Ohio.

* * * * *

Ohio—Ozone

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
Washington County		Unclassifiable/Attainment		
* * * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

Ohio—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * * * * * *				
Rest of State	11/15/90	Unclassifiable		

* * * * *

22. Section 81.338 is amended in the tables for "Oregon—Carbon Monoxide" by revising entries for "Medford-Ashland Urban Growth Boundary," "City of Salem," "Marion County (part) area outside the city of Salem," Polk County (part) area outside of Salem," and "Jackson County (part) area outside Medford-Ashland Urban growth boundary"; amending the table for "Oregon—Ozone" by revising entries for

"City of Salem," "Marion County (part) area outside the city of Salem," and "Polk County (part) area outside the city of Salem"; and amending the table for "Oregon—PM–10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.338 Oregon.

* * * * *

Oregon—Carbon Monoxide

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* *	*	* * * * *		
Medford Area				
Jackson County (part)		Nonattainment		Moderate ≤ 12.7 ppm
Medford Urban Growth Boundary				
* *	*	* * * * *		
Salem Area				
Salem Area Transportation Study				
Marion County (part)		Nonattainment		Not classified
Polk County (part)		Nonattainment		Not classified
* *	*	* * * * *		
AQCR 194 Remainder of Southwest Oregon		Unclassifiable/Attainment		
Coos County				
Curry County				
Douglas County				
Jackson County (part)				
area outside Medford Urban growth boundary				
Josephine County (part)				
area outside of Central Business District				

[1] This date is November 15, 1990, unless otherwise noted.

Oregon—Ozone

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* *	*	* * * * *		
Salem Area				
Salem Area Transportation Study				
Marion County (part)		Nonattainment		Incomplete Data
Polk County (part)		Nonattainment		Incomplete Data
* *	*	* * * * *		
Marion County (part)				
area outside the Salem Area Transportation Study				
Multnomah County (part)				
Remainder of county				
Polk County (part)				
area outside the Salem Area Transportation Study				
* *	*	* * * * *		

[1] This date is November 15, 1990, unless otherwise noted.

*

Oregon—PM–10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* *	*	* * * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

23. Section 81.339 is amended in the table for "Pennsylvania—PM–10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.339 Pennsylvania.

* * * * *

Pennsylvania—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

24. Section 81.344 is amended in the table for "Texas—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.344 Texas.

* * * * *

Texas—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

25. Section 81.345 is amended in the table for "Utah-Carbon Monoxide" by amending under "Rest of State" under "Utah County (part)" the entry "Remainder of Utah County" by removing the footnote designation "2" and by deleting footnote 2 at the end of the table and by amending the table for "Utah—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.345 Utah.

* * * * *

Utah—Carbon Monoxide

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	* * * *	*	
Utah County (part)				
Remainder of Utah County				
* * *	*	* * * *	*	

[1]This date is November 15, 1990, unless otherwise noted.

* * * * *

Utah—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

26. Section 81.347 is amended by amending the table for "Virginia—Carbon Monoxide" by combining the two entries "AQCR 047 National Capital Interstate (Part)" and "AQCR 047 National Capital Interstate (Remainder of)" into one entry; by combining the two entries "AQCR 223 Hampton Roads (Part)" and "AQCR 223 Hampton Roads (Remainder of)" into one entry and revising the name of AQCR 223; by combining the two entries "AQCR 225 State Capital Intrastate (Part)" and "AQCR 225 State Capital Interstate (Remainder of)" into one entry; by removing under the entry "AQCR 223 Hampton Roads (Remainder of)" the entry "Nansemond County"; by amending the table "Virginia Ozone" by revising the entries "Norfolk-Virginia Beach-Newport News" and "AQCR 207 SW VA-Tennessee Interstate-(Remainder of)"; by removing under the entry "AQCR 223 Hampton Roads Intrastate (Remainder of)" the entry "Nansemond County"; and by removing

under the entry "Richmond-Petersburg Area" the name "Petersburg" to read as follows:

§ 81.347 Virginia.

* * * * *

Virginia—Carbon Monoxide

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * *				
AQCR 047 National Capital Interstate		Unclassifiable/Attainment		
Fairfax				
Fairfax County				
Falls Church				
Loudoun County				
Manassas				
Manassas Park				
Prince William County				
* * * * * *				
AQCR 223 Hampton Roads Intrastate		Unclassifiable/Attainment		
Chesapeake				
Franklin				
Hampton				
Isle Of Wight County				
James City County				
Newport News				
Norfolk				
Poquoson				
Portsmouth				
Southampton County				
Suffolk				
Virginia Beach				
Williamsburg				
York County				
* * * * * * *				
AQCR 225 State Capital Intrastate		Unclassifiable/Attainment		
City of Richmond				
Charles City County				
Chesterfield County				
Colonial Heights				
Dinwiddie County				
Emporia				
Goochland County				
Greensville County				
Hanover County				
Henrico County				
Hopewell				
New Kent County				
Petersburg				
Powhatan County				
Prince George County				
Surry County				
Sussex County				
* * * * * * *				

[1]This date is November 15, 1990, unless otherwise noted.

Virginia—Ozone

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Norfolk-Virginia Beach-Newport News (Hampton Roads) Area				
Chesapeake	1/6/92	Nonattainment	1/6/92	Marginal
Hampton	1/6/92	Nonattainment	1/6/92	Marginal
James City County	1/6/92	Nonattainment	1/6/92	Marginal
Newport News	1/6/92	Nonattainment	1/6/92	Marginal
Norfolk	1/6/92	Nonattainment	1/6/92	Marginal
Poquoson	1/6/92	Nonattainment	1/6/92	Marginal
Portsmouth	1/6/92	Nonattainment	1/6/92	Marginal
Suffolk	1/6/92	Nonattainment	1/6/92	Marginal
Virginia Beach	1/6/92	Nonattainment	1/6/92	Marginal
Williamsburg	1/6/92	Nonattainment	1/6/92	Marginal
York County	1/6/92	Nonattainment	1/6/92	Marginal
Richmond Area				
* * * * * *				
AQCR 207 Eastern Tennessee - SW Virginia Interstate (Remainder of).		Unclassifiable/Attainment		

—Continued

Virginia—Ozone

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
AQCR 223 Hampton Roads Intrastate (Remainder of)		Unclassifiable/Attainment		
Franklin				
Isle of Wight County				
Southhampton County				
* * * * * * *				

[1]This date is November 15, 1990, unless otherwise noted.

* * * * *

27. Section 81.348 is amended by amending the table for "Washington—Ozone" by revising the entries for "Seattle-Tacoma Area" and "AQCR 229 Puget Sound Intrastate (Remainder of)" and by amending the table "Washington—PM–10" by removing the word "initial"from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.348 Washington.

* * * * *

Washington—Ozone

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
Seattle - Tacoma Area				
The following boundary includes all of Pierce County, all of King County except a small portion in the northeast corner and the western portion of Snohomish County: Starting at the mouth of the Nisqually River extend northwesterly to the southernmost point of the west county line of Pierce County, thence north along the county line to the southernmost point of the west county line of King County; thence northerly along the county line to the southernmost point of the west county line of Snohomish County; thence northerly along the county line to the intersection with SR 532; thence easterly along SR 532 to the intersection with SR 9 at Bryant; thence continuing easterly approximately 1.5 miles to the point at which SR 9 is crossed by the existing electrical trnasmission line; thence southeasterly along the transmission line aproximately 6 miles to the point of the crossing of the south fork of the Stillaguamish River; thence continuing in a southeasterly direction in a meander line following the bed of the River to the city of Granite Falls; thence south-southeasterly along the road connecting Granite Falls and the city of Monroe a distance of approximately 6 miles to the northernmost point of Lake Rossiger; thence southerly along a meander line following the middle of the Lake to the beginning of Woods Creek; thence southerly along a meander line following the bed of the Creek approximately 6 miles to the point the Creek is crossed by an existing electrical transmission line; thence southerly along the transmission line approximately 1 mile to its crossing SR 2; thence southeasterly to the intersection with the east count line of King county; thence south along the county line to the northernmost point of the east county line of Pierce County; thence along the county line to the point of beginning at the mouth of the Nisqually River.				
King County (part)	1/6/92	Nonattainment	1/6/92	Marginal
Pierce County	1/6/92	Nonattainment	1/6/92	Marginal
Snohomish County (part)	1/6/92	Nonattainment	1/6/92	Marginal
* * * * * * *				
AQCR 229 Puget Sound Intrastate (Remainder of)		Unclassifiable/Attainment		
King County (Part)				
Remainder of County				
Kitsap County				
Snohomish County (Part)				
Remainer of County				
* * * * * * *				

[1]This date is November 15, 1990, unless otherwise noted.

Washington—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * * * *

28. Section 81.349 is amended in the table for "West Virginia—Carbon Monoxide" by adding new footnote 2 and by amending the table for "West Virginia—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.349 West Virginia.

* * * * *

West Virginia—Carbon Monoxide

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	* * * * *		
Brooke County[2]				
* * *	*	* * * * *		
Hancock County[2]				
* * *	*	* * * * *		

[1]This date is November 15, 1990, unless otherwise noted.

[2]The listed designation does not reflect EPA action under section 107(d)(4)(A). At the date of enactment of the Clean Air Act Amendments, Jefferson County, Ohio; Brooke County, West Virginia; and Hancock County, West Virginia, were designated Unclassifiable/Attainment by operation of law under section 107(d)(1)(C) of the Clean Air Act. However, these States and EPA are reviewing whether to confirm or reverse that designation under the process set out under section 107(d)(4)(A) and will publish a separate notice to that effect.

West Virginia—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * * * *

29. Section 81.350 is amended in the tables for "Wisconsin—Ozone" by revising the entry for "Sheboygan Area" to read as follows:

§ 81.350 Wisconsin.

* * * * * * *

Wisconsin—Ozone

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	* * * * *		
Sheboygan Area				
Sheboygan County		Nonattainment		Moderate
* * *	*	* * * * *		

[1]This date is November 15, 1990, unless otherwise noted.

* * * * * * *

30. Section 81.351 is amended in the table for "Wyoming—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.351 Wyoming.

* * * * * * *

Wyoming—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of State	11/15/90	Unclassifiable		

* * * * *

31. Section 81.355 is amended in the table for "Puerto Rico—PM-10" by removing the word "initial" from the heading of the table and by adding an entry at the end of the table, to read as follows:

§ 81.355 Puerto Rico.

* * * * *

Puerto Rico—PM-10 Nonattainment Areas

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* * * *		
Rest of Commonwealth	11/15/90	Unclassifiable		

* * * * *

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federal register

Monday
November 30, 1992

Part IX

Office of Personnel Management

5 CFR Part 771

Agency Administrative Grievance System; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 771

RIN 3206-AD96

Agency Administrative Grievance System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is publishing final revisions to regulations on the agency administrative grievance system (AGS). Revisions to the regulations were proposed following completion of a study by OPM of grievance systems established under this authority and completion of a review by OPM of Government-wide policies on the subject. The final rule clarifies the scope and coverage of the AGS and simplifies the procedural requirements of the regulations while, at the same time, continuing to afford agencies considerable discretion in establishing and administering their grievance systems. The rule describes the responsibilities and obligations of both the employee and the agency in resolving workplace disputes in a prompt and fair manner.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert, (202) 606-2920.

SUPPLEMENTARY INFORMATION: OPM published for comment in the **Federal Register** on September 26, 1991 (pages 48757-48762) proposed revisions to the regulations on this subject. Twenty-two comments and/or suggestions were received from agencies, five were received from individuals, and one from a union. The comments generally supported the changes proposed. On some topics, commenters suggested additional changes, and in other instances, either suggested no change from the current regulations or suggested some modification to the proposed changes. Comments and suggestions, along with the rationale for and explanation of revisions to the final regulations, are discussed below.

I. Background

In 1979, following enactment of the Civil Service Reform Act of 1978 (CSRA), OPM extensively revised its Governmentwide regulations on the AGS to afford agencies more discretion and latitude in establishing their systems by eliminating or modifying many of the prescriptions and proscriptions long associated with that system. The AGS is primarily available to those employees in the Federal workforce who are not members of collective bargaining units established under Chapter 71, of title 5 of the United States Code. Some time ago, OPM completed a study of agency administrative grievance systems to determine whether they conformed to regulatory requirements and the fundamental precepts that grievance systems be prompt, fair, and free from recrimination. The study found that the process was working reasonably well; however, some actual and potential problems with the system were identified. For example, the study found that some agency employees did not fully understand or trust the system and thereby tended not to use it to resolve concerns about their employment situations. The study also found some problems concerning the prompt consideration and resolution of grievances and that agencies seldom evaluated their systems to determine how well they were working. In addition, inquiries from agencies and employees indicated that some modifications of the regulations were needed.

As a consequence, OPM reviewed the policies in part 771 and concluded that with some changes the AGS could be a more effective component of the Federal Government's overall dispute resolution system. Therefore, OPM proposed a variety of changes to clarify coverage of the AGS, clarify the obligations and responsibilities of agencies and employees under the AGS, and meet the objective of improving employee confidence in the AGS. Some of the commenters on these proposals also noted deficiencies or flaws in the current system—primarily related to timeliness of grievance processing and system clarity.

In adopting final regulations on this subject, OPM continues to strongly encourage managers, supervisors, employees, and their representatives to make efforts to prevent and/or seek early, informal resolution of disputes. In this regard, informal and alternative means of dispute prevention and resolution (e.g., supervisory-employee counseling, mediation, and settlement), as noted in § 771.202(a) of the regulations, can work to facilitate prompt identification and discussion of problems and often lead to mutually satisfactory resolutions of issues without incurring the time and expense of grievances, appeals, or other formal means of dispute resolution. Several commenters also noted the usefulness of alternative dispute prevention and resolution mechanisms and some suggested adding regulatory provisions on the topic. While OPM has not required the use of alternative dispute resolution in the final regulations, OPM continues to encourage agencies to use the flexibilities in the AGS to design internal review processes appropriate to the issues in dispute. Finally, OPM notes that, whatever processes are used, agencies remain ultimately responsible for resolving disputes submitted to the AGS by their employees.

II. Definitions of Terms Used in the Regulations

OPM believes that clarification of the definitions of key terms used in the AGS will help reduce misunderstandings about the circumstances under which an employee may file a grievance. One commenter suggested that the definition in § 771.102 of "bargaining unit employee" be redefined so that a non-specialist could more clearly understand the coverage of the AGS. In this instance, however, OPM believes that it might be more misleading to make the definition less technical, since, as officially approved by the Federal Labor Relations Authority (FLRA), the types of individuals who are bargaining unit employees may vary considerably from unit to unit and from agency to agency. OPM has noted this fact in related FPM materials.

The proposed regulations sought to clarify the definition of "employee" in § 771.102 by stating that the term includes former employees when they can be provided remedies that are "consistent with law." While one commenter thought this was an improvement, another commenter thought the phrase was vague and might give rise to disputes. In this regard, OPM notes that the intent of the change is to insure that former employees have no greater entitlement to relief than current employees, i.e., no remedies can ever be provided that are not permissible under law. OPM also notes that in some instances former employees may not have access to the AGS, e.g., as discussed under employee coverage below, where former employees who are reinstatement and transfer eligibles applying for positions in agencies may not file grievances unless those agencies have extended coverage to such matters. In other cases, remedies might not be available simply because the individuals are no longer employees.

The definition of "grievance" in § 771.102 is clarified by cross-referencing this section to that section of the regulations, § 771.105(b), which describes subject matters that are not proper bases for grievances.

The definition of "grievance file" in § 771.102 is clarified by more thoroughly itemizing the types of materials contained in such files, e.g., to include the report of a fact-finder when fact-finding is used. One commenter suggested that "informal" fact-finder reports need not be included in grievance files when they are not relied upon or adopted by the agency. Another commenter stated that pre-established lists of file contents are unneeded and burdensome and that they should be stated in more general terms to contain only those facts and documentation which are relevant to the ultimate disposition of a grievance. OPM believes that it is important to include in grievance files all materials related to grievances, even when they may have been determined by agencies to be irrelevant and/or were not relied upon by agencies in making grievance decisions. When such materials are included, grievance files not only reflect the full scope of issues raised by grievants but also would contain materials related to what is often a key issue in grievances—relevance. Such information can be valuable to agencies in conducting reviews and evaluations on how well their grievance systems are working.

OPM also proposed to clarify the definition of "personal relief" which can be requested when an employee files a grievance by dropping the current regulation's requirement that such relief must directly benefit the grievant. In this regard, OPM noted that the raising of a direct and (implied) indirect benefits dichotomy contained in the current regulations was inherently confusing and detracted from the key policy that the relief must benefit the grievant personally. Of eight comments on this proposal, all but one suggested either modification of the proposed changes to this definition, no change to the current regulation, or providing additional guidance on the subject. Four commenters suggested using the word "personal" somewhere in the definition to better describe the scope of an appropriate remedy under the AGS. OPM has adopted this suggestion and has modified the definition to clarify that a remedy must be one that is "personally benefitting" to the grievant(s). This change is not intended to create a larger universe of remedies under the AGS but rather is intended only to more clearly define the current scope of personal relief. Finally, one commenter suggested that relief to a successful grievant include "substantial interest" on back pay such as "12 percent compounded daily" to encourage early settlements. OPM is without authority to define relief in such a manner. OPM notes, however, that the Back Pay Act was amended in 1987 to provide interest on back pay for employees who are affected by unjustified or unwarranted personnel actions. Thus, some interest currently can be a part of personal relief to grievants under the AGS.

One commenter suggested that the term "agency activity" used in the proposed changes to the regulations be added to those terms defined in § 771.102 because it is critical to determinations of who are acceptable fact-finders and other agency officials charged with responsibilities under the AGS. OPM has adopted this suggestion and added a definition for "agency activity" in § 771.102. This section defines agency activity as including organizational entities or geographical subdivisions of an agency. Examples of such organizational entities are the Department of Defense Dependent Schools activity within the Department of Defense and the Internal Revenue Service within the Department of Treasury. An example of a geographical subdivision of an agency might be a regional office of an agency such as the General Services Administration. Specifically, the final regulations provide agencies flexibility to permit heads of organizational entities and/or geographical subdivisions to function as if they were the heads of the parent agencies for purposes of grievance processing but not for purposes of making requests to OPM for exceptions to the regulations under §§ 771.104(b)(6), 771.104(c)(3), 771.105(a), and 771.105(b)(12) (discussed in Part III below). Moreover, OPM notes that this change in the Government-wide restrictions concerning heads of agencies in no way should be construed to mandate changes in agencies' current agency administrative grievance policies with respect to levels of fact-finders and agency officials having responsibilities under their grievance systems. On the contrary, those agencies that wish to retain their current policies, for example, that fact-finders and deciding officials may not be subordinate to any official involved in a grievance unless the head of the agency is involved, may do so. OPM believes that this added flexibility will permit agencies to fashion their grievance systems to fit better their individual needs and organizational structures so that workplace disputes can be resolved promptly and fairly. Use of this flexibility is also discussed in related FPM materials.

III. Coverage of the Regulations

Several changes have been made to the regulations in order to clarify which categories of employees and types of matters are covered/not covered by the agency administrative grievance system and in which areas agencies have discretion to extend coverage under their grievance systems. In addition, the regulations simplify the process of determining which types of employees and matters are covered by consolidating the discussion of coverage requirements in clearly designated subsections. Finally, the regulations permit heads of individual agencies to seek OPM approval of exceptions to coverage requirements pertaining to employees and/or matters under part 771. OPM will carefully consider any such request on an individual basis, taking into account an agency's unique mission, needs, objectives, circumstances, employee relations program, and rationale for seeking the exception. OPM has declined as superfluous one commenter's suggestion to add "or military department" to the phrase "heads of individual agencies" where used in §§ 771.104(b)(6), 771.104(c)(3), 771.105(a), and 771.105(b)(12) discussed below concerning these requests to OPM.

A. Agency Coverage

OPM has simplified the description of agencies covered by the regulations by identifying both covered agencies and excluded agencies in one consolidated section, 771.103. OPM has excluded the Administrative Office of the United States Courts from coverage of the AGS because the Administrative Office of the United States Courts Personnel Act of 1990, Public Law 101–474, created a separate personnel management system for that organization. In addition, two commenters suggested that, since the Panama Canal Commission operates under a separate employment system established by the Panama Canal Act of 1979, Public Law 96–70, the Commission should also be excluded. OPM has adopted this suggestion and excluded the Panama Canal Commission from coverage of the regulations.

One commenter suggested that since the Department of Defense is an executive agency noted under 5 U.S.C. 105 and since military departments are part of the Department of Defense, it is unnecessary to specifically mention military departments in § 771.103 of the regulations. The practice of separately identifying military departments when defining "agencies" under civil service regulations was begun by OPM's

predecessor agency, the Civil Service Commission, when it amended its regulations on May 6, 1960. OPM also notes that on September 6, 1966, Congress amended title 5 of the United States Code by adding section 102, Military Departments, to avoid the necessity for defining "military departments" each time it was used in title 5. OPM believes that dropping the reference to military departments in the regulations may create the misimpression that such departments are not covered. Accordingly, OPM has not adopted this suggestion.

B. Employee Coverage

Both covered and non-covered types of employees are likewise identified in one consolidated section, 771.104. The regulations clarify that although the AGS is primarily a system for the resolution of disputes involving current nonbargaining unit employees, there are circumstances when coverage is extended to members of bargaining units. The regulations clearly identify these circumstances, i.e., when a matter cannot be grieved under a negotiated grievance procedure (NGP) because (1) no NGP is in effect or (2) an applicable NGP excludes the matter at issue. Matters may be excluded from an NGP by operation of law or by operation of an agreement of the agency and the exclusive bargaining representative. Coverage of bargaining unit employees in such circumstances would be mandatory unless the parties agreed otherwise. In this regard, while the parties could agree under chapter 71 of title 5, United States Code, to address bargaining unit employee access to the AGS, the parties could not bargain about the content of the AGS since to do so would be to establish conditions of employment for nonbargaining unit employees—the employees for which the AGS was created. The parties could, for example, agree to not permit bargaining unit employee access to the AGS on a subject matter that the parties had agreed to exclude from an NGP. This coverage of bargaining unit employees represents a change from both the current and proposed regulations on part 771 and reflects the view of two commenters who stated that current case law of the Federal Labor Relations Authority mandates that bargaining unit employees have access to the AGS for matters not covered by a negotiated grievance procedure and that in some circumstances it would be an unfair labor practice to deny bargaining unit employees access to the AGS on those matters.

One commenter on § 771.104 recommended that it be clarified by noting that bargaining unit employee access to the AGS is limited by the subject-matter exclusions set forth in § 771.105(b). OPM agrees that this change would help avoid misunderstandings about the scope of bargaining unit employee access and has amended § 771.104 accordingly.

Two commenters noted that Congress has modified the statutory references to medical personnel who are not covered by the AGS as noted in § 771.104(b)(4). Accordingly, OPM has amended this section to refer to appointments under both Chapters 73 and 74 of title 38, United States Code. The specific statutory citations concerned are noted in related FPM materials.

In keeping with the policy that the AGS is primarily a system for current employees, OPM has narrowed the provision in the current regulations that permits coverage of applicants for employment. In § 771.104(c)(2) of the regulations, OPM has limited the permissive coverage of applicants to only reinstatement and transfer eligibles who have applied for jobs advertised under a merit promotion program. While individuals in this category might not be current employees of the agency advertising the job, they may be current (or former) employees of other agencies OPM has not adopted one commenter's suggestion that this category be limited further by deleting coverage of reinstatement eligibles. While this change would help meet one of the objectives of the current changes, i.e., to make it more a system only for current employees, OPM believes that transfer and reinstatement eligibles are in analogous situations when being considered under merit promotion programs and are generally left with no recourse if dissatisfied with the application of the process to them. This section permits agencies the discretion to consider complaints from these individuals. OPM has also not adopted another commenter's suggestion that this section be clarified to preclude possible grievances by applicants about an agency's decision to establish an area of consideration, e.g., whether to permit reinstatement and transfer eligibles to apply. Such a restriction is unnecessary in that an agency has flexibility under the regulations to determine the scope of grievances, if any, that may be filed by such individuals.

C. Subject-Matter Coverage

Discussion of subject-matter coverage is also consolidated in one section, 771.105, to facilitate understanding of coverage. OPM here has determined that a limited number of matters critical to management's needs to function efficiently should continue to be mandatorily excluded from coverage of the AGS. Included in this category are the content of agency policies, decisions on employee selections and promotions, actions to separate or terminate employees serving in probationary or trial periods, pay decisions, and the content of employee performance elements and standards. In addition, OPM has included in this category agency decisions concerning recruitment bonuses, relocation bonuses, retention allowances, and supervisory differentials. An agency may, however, request that OPM approve matter(s) or aspects of matter(s) in this category for inclusion in that agency's AGS.

With regard to agency policies, one commenter stated that the use of the adjective "established" in § 771.105(b)(1) rather than the adjective "published" which is used in the current regulations when describing the types of agency regulations and policy that are not grievable is ambiguous and likely to cause confusion. The use of the term "established" was used in lieu of "published" to reflect the fact that agency policies may not always be "published," e.g., formulated and officially printed in some manner and distributed throughout the agency. The fact that those policies have not been "published" should not entitle an employee to grieve the content of those policies. Accordingly, OPM has not adopted this suggestion.

Section 771.105(b)(2) of the regulations describes the relationship between the AGS and other dispute resolution forums and generally follows the principle that, if a matter is reviewable in another forum, that same matter is not covered by the AGS. Several commenters suggested modifications and/or additions to this section. In this regard, one commenter suggested that the "may grieve" be changed to "is entitled to grieve" to reflect more clearly the identification of an entitlement. OPM has adopted this suggestion. Another commenter suggested that the phrase "employee is entitled to file an appeal" be amended to read "employee is or was entitled to file an appeal" in order to insure against processing a grievance on a matter simply because an appeal was not processed because it was untimely or had some other technical deficiency. OPM agrees and has adopted this suggestion to amend § 771.105(b)(2) in this manner.

Three commenters recommended that the Federal Labor Relations Authority (FLRA) be added to the list of agencies that review disputes by employees.

Since employees may seek FLRA review of certain matters, e.g., unfair labor practice complaints under 5 CFR 2423.3, OPM agrees that the AGS should clearly reflect that those matters are not proper subjects of grievances under the AGS. Accordingly, OPM has adopted this recommendation and added FLRA to § 771.105(b)(2).

One commenter recommended that the General Accounting Office (GAO) be added to § 771.105(b)(2) since that organization may receive challenges to agency decisions and may grant binding remedies. While this is true, OPM has declined to add GAO because to do so would preclude employees from using the AGS to resolve any dispute that might involve a pay issue if a decision on that issue could be reviewed ultimately by GAO. OPM believes this would unnecessarily limit the usefulness of the AGS, since grievances often involve pay issues, e.g., disputes concerning leave benefits and challenges to disciplinary suspensions. While duplicative review could occur, most disputes about such issues would likely be resolved within the agency.

Another commenter noted that there are organizations in addition to the ones listed in § 771.105(b)(2) that have authority to grant remedies—such as the GAO and the Office of Workers' Compensation Programs—and, therefore, this section should be modified to list MSPB, OPM, and EEOC only as examples of such organizations. OPM believes that the list of forums should be strictly limited to those involving matters which clearly are beyond the scope of an agency's authority to resolve under applicable law. In other cases, such as where GAO could be involved, the AGS could be an effective forum to resolve at least some aspect of matters reviewable in those forums. Two commenters noted that one of these forums is the Office of the Special Counsel (OSC), which also is the first step in an Individual Right of Action appeal which may be taken to MSPB. OPM has not included the OSC on this list for the same reason that GAO was not included, i.e., to do so would prevent AGS review of a wide range of matters that might be resolved under the AGS. Moreover, once an employee chooses to seek relief from the OSC, for example, the agency should not then be required to process a grievance unless it wishes to do so as discussed under § 771.105(c)(3) below.

One commenter observed that § 771.105(b)(2) of the proposed regulations referred to a "matter" which can be grieved or appealed as opposed to use of the term "decision" in the same context under the current regulations and asked that the intent of this change be explained. The intent here is not to modify the scope of current AGS coverage but rather to (1) acknowledge that a workplace dispute may occur in circumstances where no agency "decision" is made and (2) eliminate potential disputes as to what constitutes a "decision."

One commenter on § 771.105(b)(3) concerning nonselection for promotion suggested that the section be amended to add the underlined material contained in the phrase "properly ranked and/or certified candidates." In this regard, the commenter noted that in some cases, e.g., when there are small numbers of qualified applicants for a position, candidates may not need to be "properly ranked." OPM disagrees. While agencies are not required to formally rate and rank small numbers of candidates, they must establish job-related criteria to distinguish well qualified candidates from those who meet only minimal qualification requirements and to select from among the best qualified candidates. Another commenter stated that the scope of this exclusion is unclear and appears to limit grievances only to complaints about the certification or ranking processes. OPM notes that this exclusion is intended only to preserve the right of an agency to select or not select employees for promotion.

Also in this category, OPM has clarified in § 771.105(b)(5) that the failure of a Senior Executive Service (SES) appointee to be recertified and the conditional recertification of an SES career appointee are not grievable matters. One commenter suggested that a removal or any disciplinary action against a Schedule C or noncareer SES employee also be excluded from the AGS since such employees serve at the pleasure of the agency. While not separately identified in the regulations, the removals of these employees are separations already excluded from coverage by § 771.105(c)(2) of the regulations. This is one of the areas where agencies have the discretion to extend coverage under their grievance systems as noted below. While not changing the regulations, OPM has noted in related FPM materials that such categories of employees are encompassed by § 771.105(c).

As background for § 771.105(b)(6) of the regulations, OPM notes that an agency's review of employee performance or conduct during probationary or trial periods amounts to an extension of the examining process wherein agencies bear significant responsibility for making critical decisions to retain or not retain employees based on the demonstrated skills, abilities, and other factors relating to job performance and/or conduct. In this regard, 5 CFR part 315 states that "(t)he agency shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate his services during this period if he fails to demonstrate fully his qualifications for continued employment." Consistent with the basic purpose of these appointments and case law issued by the courts (which has consistently held that probationary and trial period employees in the competitive and excepted service do not have rights to seek review of agency decisions to terminate their employment because of performance or conduct deficiencies), OPM has excluded from AGS coverage actions taken by agencies to separate or terminate such employees. With regard to separations or terminations after the completion of a probationary or trial period, the regulations continue to afford agencies discretion to permit affected employees access to the AGS to the extent that they do not have third party appeal or grievance rights outside the agency.

Seven commenters on § 771.105(b)(6) supported the principle of excluding the separation of employees in probationary or trial periods from coverage under the AGS. Four of the seven commenters focused on the failure of employees to complete in a satisfactory manner supervisory or managerial probation. OPM notes that the proposed section was intended to preclude grievances on agency decisions to end any type of employee probation or trial period including a supervisory or managerial probationary period. OPM also notes that, consistent with this intention, the proposed regulations eliminated this area as one of several in which agencies had discretionary authority to permit grievances under their agency administrative grievance systems. Two commenters suggested that the section be modified to reflect the circumstance when an employee fails to complete satisfactorily supervisory or managerial probation and is returned to his or her former position (as opposed to being separated from the agency). OPM has adopted this suggestion.

One commenter on § 771.105(b)(7) of the regulations concerning elements and standards suggested that the section be expanded to include work objectives. OPM has adopted this suggestion. In this regard, OPM notes that the Performance Management and Recognition System Amendments of 1991, Public Law 102-22,

provided that agencies may utilize written statements of work objectives in lieu of, or in addition to, critical elements and performance standards for PMRS employees. Governmentwide regulations addressing this topic at 5 CFR parts 430, 432, and 540 were published by OPM in the **Federal Register** at 57 FR 23043 on June 1, 1992, and made effective on an interim basis. OPM considers unnecessary and has not adopted two other suggested modifications to this section—adding the words "critical and noncritical" and "performance" before "elements."

These subjects, however, are discussed in related FPM materials. Finally, OPM declines to adopt the suggestion by one commenter that the AGS be expanded to permit challenges to performance standards themselves.

One commenter on § 771.105(b)(10) concerning pay issues under part 540 of this chapter suggested adding a reference to 5 U.S.C. chapter 47 so that any OPM-approved demonstration projects under that statute providing unique pay benefits would also not be grievable. OPM considers this unnecessary and has not adopted this suggestion since each demonstration project can describe the extent to which title 5 matters apply or do not apply during the life of the project including the scope of the agency administrative grievance procedure. The proposed § 771.105(b)(10) excluded from the AGS grievances concerning decisions about pay issues such as recruitment bonuses, relocation bonuses, retention allowances, and supervisory differentials—all provided by the Federal Employees Pay Comparability Act of 1990 (FEPCA), Public Law 101–509. FEPCA also provided for critical position pay (codified at 5 U.S.C. 5377) and permitted OPM to approve waivers to the reduction in military pay or civilian salary in the employment of retired members of the uniformed services and civilian retirees. Because the intent (recruitment and retention incentives) of these FEPCA pay issues is similar to the intent of the pay issues specifically addressed in the proposed regulations, the final regulations are clarified to similarly exclude these additional matters from AGS coverage.

OPM has clarified in § 771.105(b)(11) of the regulations that the expirations of temporary appointments and promotions on pre-established dates are not subject to review under the AGS. This position is consistent with Governmentwide policy in parts 432 (Reduction in Grade and Removal Based on Unacceptable Performance) and 752 (Adverse Actions) which excludes the expiration of appointments/promotions actions from procedural and appellate coverage and recognizes that termination of appointments on their expiration dates involves a nondisciplinary action based on pre-established conditions of employment known and agreed to by the employees affected. One commenter suggested that the scope of the first part of this section be clarified by adding time-limited excepted appointments. OPM agrees that these appointments are covered by the section and has included the phrase "time-limited excepted appointment" in the final regulations at § 771.105(b)(11). Upon further reflection, OPM likewise believes that terminations of temporary promotions *prior* to their expiration dates should not be covered by the AGS *provided* the employees were informed in advance of the temporary nature of the promotion actions (e.g., that they could be terminated at any time) and the employees were returned to their former positions from which promoted or to different positions of equivalent grade and pay. This policy is consistent with the 1985 decision of the Court of Appeals for the Federal Circuit in *Phipps* versus *Department of Health and Human Services*, 767 F.2d 895, which held that agencies are not required to follow adverse action procedures when terminating temporary promotions provided the agencies had informed affected employees in advance that their promotions were temporary.

One commenter took strong exception to § 771.105(b)(12) of the regulations concerning the authority given to agency heads to seek OPM approval of the exclusion of additional subject matter from their agencies' grievance systems. OPM expects few requests and will weigh each request that it does receive very carefully. Further, OPM does not agree with the commenter's speculation that the additional flexibility provided by the section might be viewed by employees as "an attempt to eliminate whole categories of 'troublesome' grievances within an agency." That is not OPM's intent nor would OPM act favorably on a request that would create such a result.

OPM believes that some decisions regarding which matters should be covered by the AGS are best left to the discretion of individual agencies given their missions, needs, and employee relations programs. Accordingly, OPM has provided agency discretion in § 771.105(c)(1) of the regulations to decide whether to extend coverage on matters in dispute which relate to the geographic reassignment of employees (current policy does not afford such discretion). OPM has not adopted one commenter's recommendation that directed reassignments of employees because of lack of work or funds be excluded from AGS coverage. This commenter also recommended that the separations of employees on temporary or term appointments prior to the date specified also be excluded from the AGS. Such actions are already excluded as a separation under § 771.105(c)(2), but may be the subject to a grievance under the AGS at the agency's discretion. This section excludes from AGS coverage actions separating or terminating employees in situations not otherwise specifically excluded from coverage under the AGS. These separations and terminations can be subject to the AGS at the discretion of the agency.

Section 771.105(c)(3) of the regulations provides an agency the discretion to process a grievance under its AGS involving matters meeting the definition of a grievance but on which the employee has filed a complaint or other challenge in another review, reconsideration, or dispute resolution process other than the AGS within the agency. One commenter suggested that this section be revised to require an employee to make an election of forum, rather than to permit simultaneous processing of a matter in two forums. OPM has not adopted this suggestion but notes that an agency is free to establish such a requirement within its own AGS if it wishes—the agency is not required to simultaneously process a matter in two forums. The section only provides agencies with the added flexibility to do so if it deems it appropriate in a given circumstance. An example of such a circumstance might be the continued processing of a grievance over a performance appraisal at the same time the grievant is pursuing a challenge to an action such as a within-grade increase denial based on that appraisal. Another commenter noted that Performance Management and Recognition System (PMRS) employee performance appraisals are subject to a statutory reconsideration process which, under OPM's regulations at 5 CFR 430.407(e), must be accomplished under procedures in accordance with part 771. The commenter concluded that, as proposed, § 771.105(c)(3) is therefore in error because it literally states that any matter under "reconsideration" is not subject to part 771. OPM agrees with this conclusion and has adopted the recommendation to modify this section. Accordingly, § 771.105(c)(3) is amended to note that the reconsideration of a PMRS employee's performance

appraisal is an exception to the general rule that "reconsiderations" are not subject to the AGS. Another commenter asked that the relationship between the AGS and other complaint forums such as the Inspector General and Office of Special Counsel be clearly stated. In this regard, OPM notes that the thrust of this section is concerned with situations where an employee has already taken a matter to another forum such as the Inspector General. Under this section, in such cases the agency may process a grievance on the same matter, but is not obligated to do so.

In each of these discretionary subject-matter areas, an agency is free to decide to what extent each matter is covered by its AGS, i.e., all of a matter or just an aspect of it. If the agency does not exercise this discretion, the matter is not grievable.

One commenter suggested that the coverage of the AGS be expanded to include any matter of concern to the employee and that if a matter is more appropriately resolved in another forum, then the grievance should be referred by the agency to that forum. While OPM agrees that the thrust of the AGS is to resolve employee complaints, OPM believes that permitting all disputes to be filed under the AGS would not simplify the process and would increase paperwork and resolution times. Accordingly, OPM has declined to adopt this suggestion. OPM notes that employees may consult their servicing personnel or administrative offices or other knowledgeable officials as to the appropriate forums for resolution of their disputes. Finally, OPM declines to adopt a commenter's suggestion that the AGS be established so that its coverage "approximates the scope of grievance procedures available to represented employees." This would not be feasible because the scope of coverage under a negotiated grievance procedure (NGP), as opposed to the AGS, is determined by the parties to a collective bargaining agreement containing an NGP, i.e., agency and exclusive bargaining agent, and may vary considerably from agency to agency.

IV. Establishing Agency Procedures Under the Regulations

Under the final regulations, agencies continue to have a great deal of flexibility to establish AGS procedures best suited to resolving the disputes at issue. Thus, under the regulations, a single, uniform AGS could be established for the entire agency or the agency could establish different procedures for different types of matters, as long as each procedure complied with the basic procedural and coverage requirements in part 771. OPM believes that prudent exercise of discretion by agencies in establishing procedures will help achieve the objective of having grievance systems that work fairly and efficiently to resolve disputes.

One commenter on § 771.201 of the regulations concerning the establishment and publication of agency administrative grievance systems suggested that a special computer software package be developed to help explain the system and its coverage. OPM agrees that such an initiative has potential to help employees better understand the system and that a better-understood system will facilitate its proper use to resolve workplace disputes. OPM is exploring the feasibility of developing such a package.

OPM has made the following limited changes in the procedural requirements for establishing and administering agency administrative grievance systems:

A. Prompt Consideration

The requirement for the prompt consideration of grievances is clarified at § 771.202(b) of the regulations so that each agency's grievance system must include either reasonable overall time frames for processing grievances or time frames assigned to each individual step in the grievance process, or both—as determined appropriate by the agency. OPM believes that establishing time frames in this manner will contribute to more efficient and timely processing of grievances and will help enhance employee perceptions of the AGS as a fair and responsive means for resolving workplace disputes. OPM does not agree with one commenter's statement that the wide range and complexity of grievable matters under the AGS makes such time frames "overly burdensome" and "essentially unenforceable," nor does OPM agree that such time frames would "only cause contentious disputes between grievants and managers." Furthermore, OPM does not agree that realistic time frames are impossible to develop. Another commenter noted that grievances should be completed from beginning to end within 90 days and that if it takes longer, "the process becomes the problem." OPM agrees that an untimely process undermines the usefulness of a dispute resolution system but declines to endorse (or mandate) specific maximum processing time frames. OPM notes that agencies have the flexibility to impose specific time frames for both the employee and agency officials in order to insure efficient and timely processing of grievances.

B. Fact-Finding, Hearings, and Other Means of Gathering and Assessing Dispute-Related Information

Employee perceptions of the efficacy and fairness of the AGS can be enhanced by the manner in which the AGS utilizes fact-finding hearings, and other means of gathering and assessing information pertaining to the dispute at hand. In this regard, the final regulations have retained the flexibility for agencies to utilize various means to gather and assess information. OPM believes that agencies are best suited to determine whether, when, and in what manner fact-finding and other information gathering and assessment means should be utilized. In this regard, OPM has clarified that hearings and other means of gathering and assessing information may be used, but are not required, as part of the fact-finding process.

In addition, OPM has clarified at § 771.202(c) that fact-finders or other persons who are conducting a hearing or utilizing other means for obtaining and assessing dispute-related information cannot be subordinate to an agency official "involved" in a grievance unless that official is the head of the agency activity concerned. As suggested by one commenter, OPM has adjusted the language used in this section to be more consistent with § 771.202(f) with respect to both provisions' uses of the word "involvement." OPM believes that the context of the word "involvement" in these sections is self-evident and OPM has not additionally defined the term as suggested by one commenter. The term, however, is discussed in related FPM materials. As indicated above, OPM has clarified that agencies would not be obligated to obtain "outside" fact-finders when a grievance is filed against the head of the agency or the agency activity concerned. Four commenters recommended that the AGS require the use of outside fact-finders either in all cases, whenever requested by grievants, or whenever a grievance is filed against the head of an agency activity. OPM has declined to adopt this recommendation because it believes that such a requirement would improperly restrict agencies' flexibility under the AGS. Furthermore, to require fact-finding in every instance would be to impose a significant, and in some cases, an unnecessary cost.

One commenter recommended that § 771.202(c) be clarified so it is clear that when a grievance is filed against the head of an agency (as with the head of an agency activity), the agency is not obligated to utilize an "outside" fact-finder. OPM notes that this was the

intent of the proposed regulations and thus has adopted the recommendation and has clarified the final rule by including a reference to the "head of the agency" as well as the "head of the agency activity" at the end of that section. A comparable change was made to § 771.202(h) of the regulation to reflect the possible involvement of the head of the agency vis a vis the head of the agency activity. OPM notes that the significance of "agency activity" was discussed above under the definitions portion of the Supplementary Information. OPM has declined to adopt the suggestion of another commenter to distinguish between "informal" and "formal" fact-finding. OPM believes such a distinction is best left to agencies' discretion to address as the need may arise under their individual grievance systems.

C. Grievance Decisions

OPM has retained the current requirement that an agency issue a written decision whenever it receives a written grievance from its employees. In addition, OPM believes that employees' perceptions of the AGS's fairness can be enhanced if decisions on whether or not to grant personal relief are not made by individuals against whom the grievance is filed or who have been involved in making or influencing a decision regarding the matter(s) being grieved or the grievance itself. Accordingly, OPM has clarified the regulations at § 771.202(h) to require that final written decisions must be made by an individual who is at a higher organizational level than anyone involved in the grievance (unless the individual involved is the head of the agency or the agency activity concerned) and who has not previously been involved in making or influencing a decision regarding the matter(s) being grieved or the grievance itself. In this regard, the proposed regulations also state that the decision-making official must be at a higher level than "any employee having a direct interest in the outcome of the grievance." OPM now believes the concept contained in this proposed additional restriction is superfluous as it is subsumed under the general prohibition against using an official as a decision-maker who had previously been involved in the matter and/or grievance. Accordingly, it has been deleted from the final rule. As with § 771.202(c) above concerning fact-finders, an agency activity includes an organizational entity or geographical subdivision of an agency.

One commenter suggested that §§ 771.202(f), 771.202(g), and 771.202(h) of the regulations be modified to distinguish between informal and formal steps of an agency's AGS when considering the appropriate levels of decision-making officials under the AGS whenever written grievances are filed. While the regulations encourage the informal resolution of grievances, they do not prescribe specific types or levels of process that agencies must include in their grievance systems. Accordingly, OPM believes that it would impinge on agency flexibility to address varying levels of agency responsibilities under the AGS in this manner. In addition, prescribing varying levels of responsibilities may undermine employee perceptions of the fairness of their agencies' systems. OPM has thus not adopted this suggestion or the request of another commenter to grant an exception to the requirement of this section that decisions on written grievances always be made by higher-level officials than were involved at earlier stages of grievances. Likewise, OPM has declined to restrict this requirement to "final" decisions only. OPM disagrees that the absence of such an additional restriction would discourage informal resolution of grievances.

One commenter on § 771.202(g) of the regulations suggested that the required content of written grievance decisions be expanded to include at least the findings concerning the reasons for the decisions. The commenter observed that the current regulations require a written decision to include a report of findings. OPM notes that the proposed change in this section was intended to simplify agencies' obligations with respect to written decisions but at the same time insure that the decisions contain sufficient information to advise the grievants as to why the agency did or did not grant personal relief requested. The current regulations' reference to report of findings was sometimes misunderstood and unevenly applied by agencies. OPM believes the simplified regulation as proposed, i.e., to require decisions to include the "reasons for granting or not granting the personal relief requested" is clear on its face and less likely to be misunderstood and applied inconsistently. Accordingly, OPM has not adopted this suggestion or a similar suggestion of another commenter. OPM notes that any "findings," whether they be contained in an official report of a fact-finder or in some other vehicle, must be contained in grievance files established and made available to the grievant and/or his or her representative. Finally, OPM notes that agencies have the flexibility under the AGS to include additional information in their written decisions beyond the minimum requirements of the regulations.

D. Grievance Files

Current regulations require establishing a grievance file only when fact-finding is used. However, OPM believes that files should be established whenever a written grievance is filed, whether or not fact-finding is utilized. This will help ensure that obligations under the Privacy Act calling for agency-specific systems of records covering grievance matters are met, that files are available as resource material for enhancing the fair resolution of individual grievances, and that data is available for the effective review and evaluation of AGS's. Maintenance of appropriate grievance files should also enhance employees' perceptions of fairness and openness regarding the AGS. Accordingly, the regulations provide that grievance files be established in all cases where written grievances are filed by employees. While agencies may choose to establish files in all cases—written or unwritten grievances—OPM believes that a requirement to establish files in all cases, including those where grievances are informally raised, may impose an undue burden on some agencies and may undermine efforts to resolve informally employee-employer disputes. Additional discussion of grievance files was provided above in the definitions portion of the Supplementary Information.

E. Cancellation/Suspension of Grievance

OPM believes that grievance processing and dispute resolution can be expedited by the timely elimination of duplicative or overlapping grievances, grievances filed over unauthorized matters, grievances not specifying appropriate personal relief, and grievances not actively pursued by the grievant within established time frames and procedures. To help accomplish this, OPM has replaced § 771.303 of the current regulations concerning general employee obligations to comply with established AGS procedures, time frames, etc. with a new section, 771.203, which clarifies the specific conditions under which agencies may cancel or temporarily suspend processing of inappropriate grievances. Elimination of duplicative and unauthorized grievances should enhance the timely and effective resolution of appropriate disputes. Four commenters preferred either to retain the former section concerning the obligations of grievants in addition to

the new section on cancellation/suspension or to retain the former section in lieu of the new section. Two commenters felt that the new section's discussion of cancellation/suspension actions by the agency was negative in tone and detracted from the current regulation's positive depiction of the obligations of grievants to properly pursue their grievances under the AGS. As indicated above, the objective of this proposed change was to make the AGS work better by eliminating inappropriate grievances. In addition, the proposed change was intended to enable the agency as well as the employee to understand better and more easily the extent of their respective responsibilities. In this regard, OPM does not share one commenter's concern that the language of the section is overly complex.

One commenter suggested deletion of the word "formal" in § 771.203(f) of the regulations to reflect the fact that an employee filing a complaint in another forum may not always be filing a "formal" complaint—as in the case of an EEO complaint where the first step of the process involves an informal interview with an EEO counselor. While OPM agrees that some other dispute resolution forums may not clearly differentiate between informal and formal stages, the intent of the regulations is to permit the agency to cancel or suspend a grievance whenever an employee initiates review of the same matter in another forum whether or not the technical process to do so in that forum is characterized as a "formal" filing.

One commenter suggested that the regulations establish time limits on the length of time that a grievance or a portion of a grievance can be maintained in a "suspended" status. OPM agrees that specific time frames here would be helpful in assuring both the employee and the agency that grievances will be considered "promptly" as required by the regulations. OPM believes, however, that agencies are in the best position to establish any such limitations consistent, of course, with the purpose of the AGS that disputes be resolved on a timely basis. Another commenter suggested that the regulations should include the phrase "for good cause" to reflect an agency's discretion to decide when a request by an employee to suspend processing of a grievance is reasonable. Again, OPM believes that the agency is in the best position to judge how it will exercise discretion under the regulations. In this regard, OPM notes that the opening paragraph of this section provides that an agency "may" cancel or suspend a grievance under the circumstances described in the section.

Two commenters suggested that the death of employee and the separation of an employee be added to this section as grounds for canceling a grievance. OPM has declined to adopt this suggestion since it would be inconsistent with the definition of "employee" under the AGS, i.e., an "employee" includes a former employee if a remedy can be granted that is consistent with law. Agencies have the flexibility, however, to include such provisions in their agency systems so long as the provisions reflect the fact that a grievance of former employees cannot be canceled if a remedy consistent with law can be provided.

Finally, one commenter recommended that the regulations clarify that matters previously raised in grievances by an employee may not be the subject of a new grievance by that employee. OPM agrees that such a policy would help preserve agency resources and accordingly has amended § 771.105(f) to permit the cancellation of that part of a grievance that was the subject of a previous grievance by the same individual under part 771.

V. Review of Grievance Systems by Agencies and OPM

OPM has added a new § 771.204 concerning the obligation of agencies to evaluate their agency administrative grievance systems periodically. In this regard, the OPM study of AGS's found that most systems had not been evaluated in the last five years and that the lack of periodic evaluation may have contributed, in some cases, to problems with timeliness or perceptions of fairness. OPM believes that such reviews and evaluations are important because they can determine how well grievance systems are working, point to needed changes, and help ensure agency accountability in exercising their considerable discretion in establishing and administering AGS's.

As stated in § 771.205 of the regulations, OPM also will continue to monitor AGS's under OPM's general oversight responsibilities for improving personnel management in the Federal sector. In response to a question raised by one commenter, OPM notes that the changes to the language used in this section do not indicate that OPM intends to begin reviewing the processing of individual grievances. The changes do, however, reflect OPM's belief that, to the extent the processing of an individual grievance indicates some systemic deficiency with an agency's AGS, OPM may well look at the processing of individual grievances in this context (the current rule could have been construed to necessarily prohibit such a review).

VI. Miscellaneous Comments/Suggestions

One commenter suggested that grievances should be handled by an independent agency with a "mandate for fairness to the employee and the agency." OPM notes that such a matter would be one for Congress to consider.

One commenter suggested that the regulations clarify that the payment for the services of a representative is the employee's responsibility whether or not the employee wins. OPM agrees that such expenses are solely the responsibility of the employee and do not involve any obligation on the part of the agency except to the extent that (1) the agency may be asked for reasonable official time to be used by an agency employee who also serves as a grievant's representative and/or (2) the agency may be asked to pay attorney fees for the representative in those cases where back pay is awarded and the representative otherwise meets the requirements for attorney fees as provided in part 550 of title 5 of the Code of Federal Regulations. Accordingly, OPM has declined to adopt this suggestion.

One commenter recommended that § 771.202(d)(4) of the regulations concerning the right of grievants to communicate with certain officials in the agency about their grievances be explained by adding to that section "to ascertain information about the administrative grievance system and/or the matter being grieved. Contacts may be made on official time if the employee is otherwise on duty when such contacts are made." OPM agrees that this is an acceptable explanation, but not necessarily the only acceptable explanation, of grievants' rights in this regard. Therefore and in keeping with OPM's intent to provide as much flexibility to agencies as possible under the AGS (including the flexibility to decide when official time can be used), OPM declines to amend the final regulation in this manner. OPM notes, however, that a discussion of this subject is contained in related FPM materials. The essence of the commenter's recommendation is contained in that discussion.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 771

Administrative practice and procedure; Government employees.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is revising part 771 of title 5 of the Code of Federal Regulations to read as follows:

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

Subpart A—General

Sec.
771.101 Purpose.
771.102 Definitions.
771.103 Agency coverage.
771.104 Employee coverage.
771.105 Grievance coverage.

Subpart B—Establishment and Administration of the Agency Administrative Grievance System

771.201 Establishment and publication.
771.202 Criteria.
771.203 Cancellation/suspension of grievances.
771.204 Review by the agency.
771.205 Review by the Office of Personnel Management.

Authority: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1943–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 1964–1969 Comp., p. 306.

Subpart A—General

§ 771.101 Purpose.

The purpose of the agency administrative grievance system is to provide a fair, equitable, and timely forum for internal review and resolution of disputes on employment-related matters arising within Federal agencies. This part sets forth requirements for the establishment and administration of agency administrative grievance systems.

§ 771.102 Definitions.

In this part:

Agency activity includes an organizational entity or geographical subdivision of an agency.

Bargaining unit employee means an employee included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations Authority.

Employee, as defined by section 2105 of title 5, United States Code, means a current employee of an agency but does not include those employees excluded by § 771.104(b) of this subpart. A former employee of an agency is an employee under this subpart provided the employee can be given a remedy consistent with law.

Grievance means a request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction not excluded by § 771.105(b) of this subpart which is subject to the control of agency management and relates to the employment of the employee(s).

Grievance file means a separate file which contains all documents or copies of documents related to the grievance, including but not limited to, the written grievance filed by the employee(s), any statements of witnesses, records or copies thereof, the report of a hearing if one is held, the report of a fact-finder when fact-finding is used, statements made by the parties to the grievance, and the agency's decision.

Personal relief means a specific remedy personally benefitting the grievant(s) and may not include disciplinary action or other action affecting another employee.

§ 771.103 Agency coverage.

(a) *Agencies covered.* This part applies to the executive agencies and military departments as defined by sections 102 and 105 of title 5, United States Code, and to those organizational units of the legislative and judicial branches having positions in the competitive service.

(b) *Agencies excluded.* This part does not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, the Defense Intelligence Agency, the National Security Agency, the Nuclear Regulatory Commission, the Tennessee Valley Authority, the Postal Rate Commission, the U.S. Postal Service, the Administrative Office of the United States Courts, and the Panama Canal Commission.

§ 771.104 Employee coverage.

(a) *Required employee coverage.* This part covers:

(1) Nonbargaining unit employees unless they are excluded by operation of paragraph (b) of this section; and

(2) Bargaining unit employees under the following circumstances, except to the extent the parties agree otherwise and subject to the exclusions set forth in § 771.105(b) of this subpart:

(i) Where no negotiated grievance procedure is in effect, or

(ii) Where a negotiated grievance procedure excludes the matter at issue;

(b) *Employees excluded.* This part does not apply to the following employees:

(1) Noncitizens appointed under Civil Service Rule VIII, § 8.3 of this title;

(2) Aliens appointed under section 1471(5) of title 22, United States Code;

(3) Individuals paid from funds as defined in section 2105(c) of title 5 or section 4202(5) of title 38, United States Code;

(4) Physicians, dentists, nurses, or other employees appointed under Chapters 73 and 74 of title 38, United States Code;

(5) Members of the Foreign Service of the United States covered under the Foreign Service Grievance System as defined by the Foreign Service Act of 1980; or

(6) Other categories of employees as recommended by the head of the agency concerned and approved by the Office of Personnel Management.

(c) *Discretionary coverage.* Subject to the exclusions set forth in § 771.105(b) of this subpart, an agency may extend coverage of this part to:

(1) Reinstatement and transfer eligibles who have applied for a position under a merit promotion program; and

(2) Employees excluded by paragraph (b) of this section when recommended by the head of the agency concerned and approved by the Office of Personnel Management (when in accordance with law).

§ 771.105 Grievance coverage.

(a) *Matters covered.* Except as provided in paragraphs (b) and (c) of this section, this part applies to any matter of concern or dissatisfaction (grievance) relating to the employment of an employee which is subject to the control of agency management, including any matter on which an employee alleges that coercion, reprisal, or retaliation has been practiced against him or her for filing a grievance under this part. Subject to the approval of OPM, and consistent with law, the head of an agency may request that matters excluded by paragraph (b) of this section be covered by that agency's administrative grievance system.

(b) *Matters excluded.* This part does not apply to the following matters:

(1) The content of established agency regulations and policy;

(2) A matter which the employee is or was entitled to grieve under a negotiated grievance procedure established under section 7121 of title 5, United States Code, or in which the employee is entitled to file an appeal or other formal challenge for which the following organizations have authority

to grant a remedy: The U.S. Merit Systems Protection Board, the U.S. Office of Personnel Management, the Federal Labor Relations Authority, or the Equal Employment Opportunity Commission;

(3) Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion;

(4) A preliminary warning notice of an action which, if effected, would be covered under the grievance system or excluded by paragraph (b)(2) of this section;

(5) The performance evaluation of a Senior Executive Service (SES) appointee under subchapter II of chapter 43 of title 5, United States Code; the reassignment of an SES appointee following the appointee's receipt of an unsatisfactory rating under section 4314 of title 5, United States Code; the return of an SES career appointee to the General Schedule or another pay system during the one year period of probation or for less than fully successful executive performance under section 3592 of title 5, United States Code, or for failure to be recertified under section 3393a of title 5, United States Code; the conditional recertification of an SES career appointee under section 3393a of title 5, United States Code; or the termination of an SES career appointee during probation for unacceptable performance under subpart D of part 359 of this title;

(6) A termination of a probationer in accordance with subpart H of part 315 of this title; a return of an employee serving supervisory or managerial probation to a nonsupervisory or nonmanagerial position in accordance with subpart I of part 315 of this title; or a separation or termination of an employee during a trial period;

(7) The substance of elements and performance standards and/or statements of work objectives;

(8) The granting of, failure to grant, or the amount of an award granted under part 430, subpart E; the granting of, failure to grant, or the amount of an award granted under part 451; the adoption of or failure to adopt an employee suggestion or invention under part 451; the granting of or failure to grant an award of the rank of meritorious or distinguished executive to an SES career appointee under section 4507 of title 5, United States Code, and part 451, subpart B, of this chapter; the granting of, failure to grant, or the amount of a performance award for an SES career appointee under section 5384 of title 5, United States Code, and part 534, subpart D, of this chapter; or the receipt of or failure to receive an additional step increase under section 5336 of title 5, United States Code;

(9) A decision to grant or not to grant a general pay increase, merit increase, or performance award under the Performance Management and Recognition System; a decision to grant or not to grant a Senior Executive Service pay rate increase; a decision to grant or not to grant a pay rate increase under section 5376 of title 5, United States Code, and part 534, subpart E; or a decision on the granting of or failure to grant cash awards or honorary recognition under 5 U.S.C. chapter 54 and part 540 of this chapter;

(10) The payment of, failure to pay, or the amount of a recruitment bonus, a relocation bonus, a retention allowance, or a supervisory differential under part 575 of this title; the payment of, failure to pay, or the amount of critical position pay under section 5377 of title 5, United States Code; or the failure to request or grant an exception to the dual compensation restrictions under part 553 of this title;

(11) The termination or expiration of a time-limited excepted appointment, a temporary or term appointment or promotion, or a Senior Executive Service limited emergency or limited term appointment, on the date specified as a condition of employment at the time the appointment or promotion was made; or the termination of a temporary or term promotion at any other time provided the employee was informed in advance of the temporary nature of the promotion and the employee was returned to his or her former position from which temporarily promoted or to a different position of equivalent grade and pay; and

(12) Other matters as recommended by the head of the agency involved and approved by the Office of Personnel Management.

(c) *Discretionary matters.* This part does not apply to the following matters unless the agency extends coverage to any aspect of them:#

(1) An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which:

(i) Assigns the employee from one geographical location to another; or

(ii) Returns an employee from an overseas assignment;

(2) A separation or termination action not covered by paragraph (b) of this section; and

(3) A matter meeting the definition of a grievance but in which the employee files a complaint or other challenge under another review procedure, reconsideration (except the reconsideration of a performance appraisal of an employee under the Performance Management Recognition System), or dispute resolution process within the agency.

Subpart B—Establishment and Administration of the Agency Administrative Grievance System

§ 771.201 Establishment and publication.

(a) *Establishment.* Each agency covered by this part shall establish and administer an agency grievance system in accordance with the criteria in § 771.202 of this subpart.

(b) *Publication.* Each agency shall publish and make available to employees copies of its administrative grievance procedure.

§ 771.202 Criteria.

The following criteria shall govern the establishment and administration of an agency administrative grievance system:

(a) Provisions for informal and voluntary resolution of employment-related disputes to the extent deemed appropriate by the agency using such means as counseling, mediation, or settlement;

(b) Prompt consideration of individual grievances, including setting of reasonable time frames for overall processing of a grievance and/or for each step in the grievance procedure;

(c) Procedures appropriate for the matter being grieved which provide the employee a reasonable opportunity to present a grievance and receive fair consideration of the matter grieved, including (at the agency's discretion) fact-finding, hearings, and other means of obtaining and assessing information pertaining to the dispute at hand. A person acting as a fact-finder, presiding officer at a hearing, or other official responsible for obtaining and/or assessing dispute-related information must be one who has not been involved in making or influencing a decision regarding the matter(s) being grieved or the grievance itself, and is not subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in the matter being grieved or the grievance itself, unless the official is the head of the agency or the agency activity.

(d) Assurance to the grievant of:

(1) Freedom from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance;

(2) The right to be accompanied, represented, and advised by a representative of his or her own choosing, except that an agency may disallow the choice of an individual as a

representative which would result in a conflict of interest or position, which would conflict with the priority needs of the agency, or which would give rise to unreasonable costs to the Government;

(3) A reasonable amount of official time to present the grievance if the employee is otherwise in a duty status; and

(4) The right to communicate with the servicing personnel office or its equivalent.

(e) Assurance to the grievant's representative of:

(1) Freedom from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance; and

(2) A reasonable amount of official time to present the grievance if the representative is an employee of the agency and is otherwise in a duty status.

(f) Establishment of a grievance file whenever a written grievance is filed. Upon request, the grievance file shall be made available to the grievant and/or his or her representative for review.

(g) Issuance of a written decision by an agency official whenever a written grievance is filed. The written decision shall give the reasons for granting or not granting the personal relief requested.

(h) Issuance of a written decision shall be by an agency official at a higher level than any agency employee involved in making or influencing a decision regarding the matter(s) being grieved or the grievance itself or any agency employee having a direct interest in the outcome of the grievance, except when the official involved is the head of the agency or the agency activity.

§ 771.203 Cancellation/suspension of grievances.

An agency, as authorized below, may cancel or temporarily suspend processing of a grievance or a portion of a grievance:

(a) At the grievant's request (cancel the grievance or suspend processing the grievance as requested);

(b) If a grievant is an employee excluded from coverage by operation of § 771.104 of this part or if the matter(s) at issue is excluded from coverage by operation of § 771.105 of this part (cancel the grievance if the employee is excluded, cancel the portion of the grievance containing excluded matters);

(c) For failure of the grievant to provide sufficient detail to identify clearly the matter being grieved or specify the personal relief requested (cancel the grievance or suspend processing the grievance until the deficiency is corrected);

(d) Where the grievant requests that disciplinary or other detrimental action be taken against another employee (cancel the improper portion of the grievance);

(e) For failure of the grievant to comply with the appropriate time frames and procedures provided in the agency's grievance system (cancel the grievance if time frames are not met or, if other procedural deficiency(s), cancel the grievance or suspend processing the grievance until the deficiency is corrected); or

(f) When the grievant has previously filed or later files a formal appeal, complaint, or other challenge on the same matter under this part or under another formal dispute resolution process identified in §§ 771.105(b)(2) or 771.105(c)(3) of this part (cancel that portion of the grievance pending or resolved in another process).

§ 771.204 Review by the agency.

An agency shall periodically evaluate its administrative grievance system to ensure that it is meeting the purpose and requirements of this part.

§ 771.205 Review by the Office of Personnel Management.

The Office of Personnel Management shall review from time to time agency administrative grievance systems established and administered under this part to determine whether the systems meet the purpose and requirements of this part. The Office shall require corrective action to bring a system which fails to meet the purpose and requirements into conformity. The Office does not act on a request to review a decision on an individual grievance.

[FR Doc. 92-28917 Filed 11-27-92; 8:45 am]
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federal register

Monday
November 30, 1992

Part X

Department of Education

34 CFR Parts 76 et al.

Amendments to Certain Administrative Hearing Requirements to Permit Filing by Facsimile; Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 76, 81, 86, 218, 221, 222, 300, 361, and 581

Amendments to Certain Administrative Hearing Requirements To Permit Filing by Facsimile

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary publishes final regulations revising the Department's existing regulations to assist members of the public by providing that certain filings in Department administrative proceedings, which generally must be submitted by mail or hand delivery, may also be submitted by facsimile.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. These regulations are intended to apply prospectively only, to filings made after the effective date of the regulations. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Bethany Lorenz, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 401-2884. Individuals with hearing impairments may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Department's existing regulations governing administrative hearings provide that filings to the Department must be submitted by hand delivery or by mail (in a few cases, express, overnight, or certified mail is specified), or are silent as to method of filing. In recognition of the increasing reliability and convenience of facsimile technology, these regulations reflect the Department's effort to accommodate the public by revising the existing regulations to permit the submission of certain filings in Department administrative proceedings by facsimile. The regulations change the existing regulations only regarding filings that the Department reasonably can accept by facsimile, given its existing facsimile technology and resources.

Specifically, the Department's existing regulations are amended to permit documents required in certain administrative hearings to be filed by facsimile, as well as by hand-delivery or mail. The existing regulations also are amended to provide that a document submitted by facsimile is filed on the date the facsimile transmission is sent, that parties who file documents by facsimile are responsible for confirming that a complete and legible document is received by the Department, and that the applicable administrative law judge, hearing officer or other designated Department official may require a follow-up hard copy of documents filed by facsimile (except that a follow-up hard copy is required for all documents filed with the Office of Administrative Law Judges (OALJ) under part 81 because the OALJ requires an original hard copy for its files). Finally, these final regulations state that the Secretary discourages facsimile transmission of documents more than five pages in length.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since these changes are technical amendments to rules of agency procedure, no public comment is required under 5 U.S.C. 553(b)(A). Therefore, the Secretary has determined that publication of a proposed rule is not required.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority in the United States.

List of Subjects

34 CFR Part 76

Education Department, Grant programs-education, Grant administration, Intergovernmental relations, State-administered programs.

34 CFR Part 81

Administrative practice and procedure, Enforcement, General Education Provisions Act.

34 CFR Part 86

Administrative practice and procedure, Colleges and universities, Drug abuse, Elementary and secondary education.

34 CFR Part 218

Administrative practice and procedure, Elementary and secondary education, Federally affected areas, Grant programs—education, School construction.

34 CFR Part 221

Administrative practice and procedure, Elementary and secondary education, Federally affected areas, Grant programs—education, School construction.

34 CFR Part 222

Administrative practice and procedure, Education of handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing.

34 CFR Part 300

Administrative practice and procedure, Education of handicapped, Equal educational opportunity, Grant programs—education.

34 CFR Part 361

Administrative practice and procedure, Grant programs—education, Vocational rehabilitation.

34 CFR Part 581

Administrative practice and procedure, Bilingual education, Grant programs—education.

Dated: November 12, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends parts 76, 81, 86, 218, 221, 222, 300, 361, and 581 of title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

2. Section 76.670 is amended by revising the heading; designating the existing text as paragraph (a); and adding a new paragraph (b) to read as follows:

§ 76.670 Applicability and filing requirements.

* * * * *

(b) *Filing requirements.*

(1) Any written submission under §§ 76.671 through 76.675 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(2) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(3) The filing date for a written submission is the date the document is—

(i) Hand-delivered;

(ii) Mailed; or

(iii) Sent by facsimile transmission.

(4) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(5) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

3. The authority citation for part 81 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 1234–1234(i), 3474(a), unless otherwise noted.

4. Section 81.11 is amended by adding a second sentence to paragraph (c) to read as follows:

§ 81.11 Motions.

* * * * *

(c) * * * If agreed upon by the parties, service of the motion may be made upon the other party by facsimile transmission.

* * * * *

5. Section 81.12 is amended by revising paragraphs (a) and (d), adding a second sentence to paragraph (b), and adding new paragraphs (e) and (f) to read as follows:

§ 81.12 Filing requirements.

(a) Any written submission to an ALJ or the OALJ under this part must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) * * * If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

* * * * *

(d)(1) The filing date for a written submission to an ALJ or the OALJ is the date the document is—

(i) Hand-delivered;

(ii) Mailed; or

(iii) Sent by facsimile transmission.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next business day.

(e) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(f) If a document is filed by facsimile transmission, a follow-up hard copy must be filed by hand-delivery or by mail within a reasonable period of time.

6. Section 81.32 is amended by revising paragraphs (b), (c), and (e) to read as follows:

§ 81.32 Petition for review of an initial decision.

* * * * *

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision. The party shall file its petition by hand-delivery, by overnight or express mail, or by facsimile transmission.

(c) If a party files a petition for review, the party shall serve a copy of the petition on the other party on the filing date by hand-delivery or by overnight or express mail. If agreed upon by the parties, service of a copy of the petition may be made upon the other party by facsimile transmission.

* * * * *

(e) (1) A party may respond to a petition for review by filing a statement of its views on the issues raised in the petition with the OALJ not later than 15 days after the date it receives the petition. The party shall file its response by hand-delivery, by overnight or express mail, or by facsimile transmission. The OALJ sends the statement to the Secretary.

(2) A party shall serve a copy of its statement of views on the other party on the filing date by hand-delivery or by overnight or express mail. If agreed upon by the parties, service of a copy of the response may be made upon the other party by facsimile transmission.

PART 86—DRUG-FREE SCHOOLS AND CAMPUSES

7. The authority citation for part 86 continues to read as follows:

Authority: 20 U.S.C. 1145g, 3224a.

8. Section 86.405 is revised to read as follows:

§ 86.405 What are the requirements for filing written submissions?

(a) Any written submission under this subpart must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) If a party files a brief or other document, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail. If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(c) Any written submission must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d) (1) The filing date for a written submission is the date the document is—

(i) Hand-delivered;

(ii) Mailed; or

(iii) Sent by facsimile transmission.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next Federal business day.

(e) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(f) If a document is filed by facsimile transmission, the Secretary or the designated Department official, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(Authority: 20 U.S.C. 1145g, 3224a)

PART 218—HEARINGS IN CONNECTION WITH SCHOOL CONSTRUCTION AND FINANCIAL ASSISTANCE IN FEDERALLY IMPACTED AREAS

9. The authority citation for part 218 continues to read as follows:

Authority: Secs. 208, 7, 64 Stat. 975, 1107, secs. 101, 201, 209, 1, 9, 64 Stat. 967, 1100, sec. 301, 67 Stat. 522; 20 U.S.C. 631–645, 236–242, 244.

§§ 218.3 through 218.10 [Redesignated as §§ 218.4 through 218.11]

10. Sections 218.3 through 218.10 are redesignated as §§ 218.4 through 218.11, respectively.

11. A new § 218.3 is added to read as follows:

§ 218.3 Filing requirements.

(a) Any written submission under this part must be filed by hand-delivery, by mail, or by facsimile transmission. The

Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(c) The filing date for a written submission under this part is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(d) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(e) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(Authority: Secs. 208, 7, 64 Stat. 975, 1107, secs. 101, 201, 209, 1, 9, 64 Stat. 967, 1100, sec. 301, 67 Stat. 522; 20 U.S.C. 631–645, 236–242, 244)

§ 218.4 [Amended]

12. Redesignated § 218.4 is amended by adding ", c/o Director, Impact Aid Program, 400 Maryland Avenue, SW., Washington, DC 20202–6244," after the word "Secretary".

§ 218.8 [Amended]

13. Redesignated § 218.8 is amended by removing "§ 218.5" in paragraph (a) and adding, in its place, "§ 218.6".

§ 218.10 [Amended]

14. Redesignated § 218.10 is amended by removing "§ 218.8" and adding, in its place, "§ 218.9".

PART 221—ASSISTANCE FOR SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES

15. The authority citation for part 221 is revised to read as follows:

Authority: 20 U.S.C. 631–647, unless otherwise noted.

§ 221.81 [Amended]

16. Section 221.81 is amended by removing and reserving paragraph (b).

§ 221.82 [Amended]

17. Section 221.82 is amended by removing paragraph (b)(3).

18. A new § 221.83 is added to read as follows:

§ 221.83 Filing requirements.

(a) Any written submission under this subpart must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(c) The filing date for a written submission under this part is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(d) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(e) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(Authority: 20 U.S.C. 636(c), 641(a), 3474)

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

19. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 236–241–1 and 242–244, unless otherwise noted.

20. Section 222.69 is amended by redesignating paragraphs (f), (g), and (h) as (g), (h), and (i), respectively, removing "(f)(1)(ii)" in redesignated paragraph (g)(2), and adding, in its place, "(g)(1)(ii)", removing "(h)(2)" in redesignated paragraph (i)(4), and adding, in its place, "(i)(2)", and adding a new paragraph (f) to read as follows:

§ 222.69 Notice and opportunity for hearing.

* * * * *

(f) *Filing requirements.*

(1) Any written submission under this section must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer then five pages.

(2) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(3) The filing date for a written submission under this section is the date the document is—

(i) Hand-delivered;

(ii) Mailed; or

(iii) Sent by facsimile transmission.

(4) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(5) If a document is filed by facsimile transmission, the Secretary, the hearing officer, or the panel, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

* * * * *

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

21. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

22. Section 300.486 is redesignated as § 300.487 and a new § 300.486 is added to read as follows:

§ 300.486 Filing requirements.

(a) Any written submission under § 300.482–300.485 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 1413(d)(3)(A))

23. Section 300.586 is redesignated as § 300.587 and a new § 300.586 is added to read as follows:

§ 300.586 Filing requirements.

(a) Any written submission under §§ 300.582–300.585 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary, the Hearing Official, or the Panel, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 1413(c))

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

24. The authority citation for part 361 continues to read as follows:

Authority: 29 U.S.C. 711(c), unless otherwise noted.

25. Section 361.170 is amended by revising paragraph (d) to read as follows:

§ 361.170 General provisions.

* * * * *

(d) *How to file and serve papers.*

(1) Anyone who wishes to submit papers for the docket shall file them with the Rehabilitation Services Administration Hearing Clerk in accordance with the filing requirements in § 361.171(b).

(2) Anyone who wishes papers to be part of the record shall also serve copies on the parties and file proof of this service with the Rehabilitation Services Administration Hearing Clerk. Service on a party's designated attorney is the same as service on the party.

(3) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

* * * * *

26. Section 361.171 is amended by redesignating paragraphs (b) and (c) as (c) and (d), respectively, and adding a new paragraph (b) to read as follows:

§ 361.171 How to request a hearing.

* * * * *

(b) *Filing.*

(1) Any written submission under this subpart must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(2) The filing date under paragraph (b)(1) of this section is the date the document is—

(i) Hand-delivered;

(ii) Mailed; or

(iii) Sent by facsimile transmission.

(3) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(4) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(5) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

* * * * *

PART 581—EMERGENCY IMMIGRANT EDUCATION PROGRAM

27. The authority citation for part 581 continues to read as follows:

Authority: 20 U.S.C. 3122–3130, unless otherwise noted.

28. A new § 581.59 is added to subpart F to read as follows:

§ 581.59 What are the filing requirements?

(a) Any written submission under this subpart must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 3129(b))

[FR Doc. 92-28886 Filed 11-27-92; 8:45 am]

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Monday
November 30, 1992

Federal Register

Part XI

The President

Proclamation 6511—National American Indian Heritage Month, 1992

Federal Register
Vol. 57, No. 230
Monday, November 30, 1992

Presidential Documents

Title 3—

The President

Proclamation 6511 of November 25, 1992

National American Indian Heritage Month, 1992

By the President of the United States of America

A Proclamation

Since January, millions of Americans have been observing 1992 as the Year of the American Indian. Individuals of all ages and all walks of life have been taking part in cultural events, educational programs, and other activities that are designed to celebrate the unique art, history, and folklore of America's earliest inhabitants and their descendants. The observance of November as National American Indian Heritage Month provides an opportunity for all citizens to join in honoring America's native peoples.

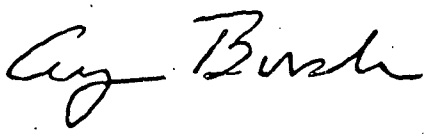
The American Indian heritage is a rich array of many different cultural legacies—each as unique as the tribes themselves. From the skilled horsemen whose families and tribes roamed the Great West to the hardy peoples who hunted and fished in the forests and waters of Alaska, each tribe of Native Americans has enjoyed its own history, customs, and beliefs. Yet all have shared a deep reverence for the land itself and for the traditions of their forebears. That sense of environmental stewardship and tribal pride has inspired generation after generation, and today all Americans continue to learn a great deal from individuals of Indian ancestry.

As we celebrate the many contributions that Native Americans and their descendants have made to the United States, we also reaffirm the unique government-to-government relationship that exists between Indian tribes and the Federal Government. This long-standing relationship has developed over the years into a vibrant, mutually beneficial partnership—one made ever stronger as past inequities and conflicts have been resolved. In recent years, the Federal Government has worked together with tribal leaders toward our shared goals of equal opportunity and socioeconomic advancement for American Indians, as well as toward the preservation of their ancient cultural identities. The "Native American Languages Act of 1992," which I signed into law last month, is but one example of joint efforts to enhance the well-being of America's native peoples.

In honor of the unique cultural legacy of each of America's native peoples, the Congress, by Senate Joint Resolution 172, has designated November 1992 as "National American Indian Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 1992 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, and local levels, to observe this month with appropriate programs, ceremonies, and activities.

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



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LIST OF PUBLIC LAWS

Note: The list of Public Laws for the second session of the 102d Congress has been completed and will resume when bills are enacted into law during the first session of the 103rd Congress, which convenes on January 5, 1993.

A cumulative list of Public Laws for the second session of the 102d Congress was published in Part II of the **Federal Register** on November 23, 1992.

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
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700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-017-00017-5)	17.00	Jan. 1, 1992
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500–899	(869–013–00107–9)	27.00	July 1, 1991
900–1899	(869–017–00108–2)	16.00	July 1, 1992
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

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