4-15-91
Vol. 56 No. 72
Pages 15033-15270

federal register

Monday
April 15, 1991

Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

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.

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm

WHERE: 51 Southwest First Avenue
Room 914
Miami, FL

RESERVATIONS: 1-800-347-1997

CHICAGO, IL

WHEN: April 25, at 9:00 am

WHERE: 219 S. Dearborn Street
Conference Room 1220
Chicago, IL

RESERVATIONS: 1-800-366-2998

WASHINGTON, DC

WHEN: May 2, at 9:00 am

WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC

RESERVATIONS: 202-523-5240

WASHINGTON, DC

WHEN: May 23, at 9:00 am

WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC

RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 90-251]

Viruses, Serums, Toxins, and Analogous Products; Sampling of Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations pertaining to sampling of autogenous biologics as follows: (1) Producers are no longer required to submit serial samples of autogenous biologics when the serial does not exceed 50 containers; and (2) for autogenous biologics serials that exceed 50 containers, the number of samples required per serial is reduced from 12 to 10. Producers are still required to select and maintain reserve samples of autogenous biologics for all serials regardless of size.

This rule eliminates unnecessary submission of autogenous biologics samples, reducing the burden on producers.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR 113.3(b)(10) pertain to the number of samples of an autogenous biologic serial that a producer must select and submit to the National Veterinary Services Laboratories (NVSL). In response to a request from industry, we reviewed the need for submitting samples from small serials of autogenous biologics.

On October 22, 1990, we published a proposed rule in the **Federal Register** [55 FR 42577-42578, Docket No. 90-163] that would reduce the number of required sample submissions from 12 to 10 for serials with more than 50 containers and from 2 to 0 for smaller serials. Our proposal invited the submission of written comments, which were required to be received on or before December 21, 1990.

We received two comments, one of which supported the proposed rule as written. The other comment supported reducing the number of required sample submissions from 12 to 10 for serials with more than 50 containers, but objected to the elimination of the sample submission requirement for smaller serials. This objection was based upon two concerns. First, "If NVSL receives a complaint on that serial, it has no authenticated sample available for examination or testing." Second, "Elimination of the requirement to submit samples from every serial of federally licensed biologic produced in a licensed facility would create 2 classes of federally licensed product; those which must have samples submitted and those which would not" whereas "It was the desire of Congress to have uniform standards for all veterinary biologics."

The rationale for not accepting this comment is as follows: (1) Regardless of serial size, reserve serial samples for each licensed autogenous biologic are collected by a designated sampler and retained by the licensee. If a complaint is received, these samples may be obtained by NVSL for testing. (2) There already exist USDA-licensed biologics for which no serial sample submission is required. These are allergenic extract prescription products, product code 9531.00. Such products are prepared in accordance with a veterinarian's prescription for an individual animal. Thus, this rule does not create a lack of uniformity, but rather eliminates the requirement for sample submission from another product category where there is undue regulatory burden when small serials are produced.

Small serials of autogenous biologics are intended for use in the herd or flock from which the seed organism was isolated, unless specifically authorized by the Administrator for use in adjacent or nonadjacent herds in accordance with 9 CFR 113.113. This usually involves a limited number of animals in a limited area. As provided in § 113.3(c) of the regulations, the producer is required to retain reserve samples in case the serial needs to be tested because of adverse reactions or other problems. This applies to all serials regardless of the number of containers, and is not affected by this rule. Furthermore, all producing establishments are subject to inspection. We conclude that it is appropriate to amend the regulations pertaining to the number of samples of autogenous biologics that must be sent to the National Veterinary Services Laboratories.

This rule eliminates the requirement to submit samples for a serial not exceeding 50 containers, and reduces the number of samples for a serial exceeding 50 containers from 12 to 10. This reduction in required sample submissions will not adversely affect the product inspection activities of the veterinary biologics program. For the reasons set forth in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule eliminates the requirement for a producer to submit samples of an autogenous biologics serial if the serial includes no more than 50 containers. For an autogenous biologics serial with more than 50 containers, it reduces the number of submitted samples from 12 to 10. Thus, any economic effect will be to

reduce the cost of producing autogenous biologics.

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.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, the Administrator of the Animal and Plant Health Inspection Service finds good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The Administrator has determined that this rule should become effective upon publication because this rule relieves undue burden. The rule eliminates the requirement to submit serial samples of autogenous biologics for serials of no more than 50 containers, and reduces the number of submitted samples from 12 to 10 for larger serials.

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.*).

Executive Order 12372

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

List of Subjects in 9 CFR Part 113

Animal biologics.

Accordingly, we are amending 9 CFR part 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.15, and 371.2(d).

2. Section 113.3, paragraph (b)(10) is revised to read as follows:

§ 113.3 Sampling of biological products.

* * * * *

(b) * * *

(10) *Autogenous biologics.* Ten samples shall be selected from each serial of autogenous biologic that exceeds 50 containers. No samples, other than those required by paragraph (c) of this section, are required for a serial of autogenous biologic with 50 or fewer containers.

* * * * *

Done in Washington, DC, this 9th day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–8721 Filed 4–12–91; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Participation; Purchase, Sale, and Pledge of Eligible Obligations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final amendment.

This final amendment clarifies that loans purchased under § 701.23(b)(1)(i) and subsequently refinanced are not subject to the 5% of unimpaired capital and surplus limitation of section 107(13) of the FCU Act (12 U.S.C. 1757(13)).

SUMMARY: This change was proposed pursuant to its regulatory review program.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, at the above address or telephone (202) 682–9630.

SUPPLEMENTARY INFORMATION

A. Background

Pursuant to its regulatory review program, the NCUA Board proposed to amend § 701.22 ("Loan Participation") and § 701.23 ("Purchase, Sale, and Pledge of Eligible Obligations") of the NCUA's Regulations. The proposed amendments would have broadened the loan participation and purchase, sale, and pledge authority.

Since the time that the proposed amendments were issued, NCUA has become aware of several credit union transactions involving loan participations and the acquisition of eligible obligations of other depository institutions that were operationally questionable. Furthermore, recent events in several northeastern states have reinforced NCUA's concerns in this area. Recent examinations of some credit unions have uncovered a lack of due diligence in their involvement in loan participations. There is some evidence of credit unions relying on the competence of the primary underwriter and failing to perform an independent analysis on the merits of the participation. The failure of credit unions to perform an independent analysis contributed to participation loan losses that have been spread among various credit unions. Further, the comments received indicate that there is not strong sentiment among credit unions that an expansion of these authorities is needed. A broadening of the rules under these circumstances is inadvisable and unnecessary.

The NCUA Board is satisfied that the current rule allows prudent and reasonable loan participations. Accordingly, the NCUA Board has decided to adopt only one proposed amendment which clarifies that loans purchased under § 701.23(b)(1)(i) and subsequently refinanced are not subject to the 5% of unimpaired capital and surplus limitation of Section 107(13) of the FCU Act (12 U.S.C. 1757(13)). The remaining proposed amendments are not adopted.

B. Comments

The NCUA Board issued a proposed rule on January 11, 1990, with a ninety-day comment period (55 FR 1827, 1/19/90). Thirteen public comment letters were received. One was from a state credit union regulator, two were from national credit union trade associations, four were from state credit union leagues and one was from a national savings and loan trade association. Four comments were received from federal credit unions and one was from an attorney who represents credit unions. All of the commenters, except the state credit union regulator, agreed in general with the proposed amendments.

C. Discussion

Regulatory Interpretation of the Term "Participation Loan"—Proposal to Delete Requirement that Loan Participation Agreement Precede Loan Disbursement—Proposed §§ 701.22(a)(1) and (b)(2).

The authority of FCU's to engage in loan participations is set forth in section 107(5)(E) of the FCU Act (12 U.S.C. 1757(5)(E)). Until issuance of the proposed rule, NCUA has interpreted the term "participation loan" to mean arrangements made prior to disbursements of the loan proceeds. In the preamble to the proposed rule, the Board stated that this interpretation may be too restrictive and proposed deleting it. Eight commenters specifically addressed this proposed change and all agree with it. The reasons given in support of the change were that it would provide added flexibility to credit unions, specifically for credit unions with liquidity problems, and that the

current restriction puts credit unions at a competitive disadvantage. One commenter noted that this change will blur the distinction between loan participations and loan purchases and sales.

After further deliberation and review, the NCUA Board believes that removal of this restriction may contribute to safety and soundness problems. The Board believes any benefit arising from an increase in flexibility, especially for those credit unions with liquidity problems, is offset by an increase in risk to the credit union. There are two basic safety and soundness concerns with the proposed change. FCUs may have a decreased interest in properly underwriting a loan if they know they can later reduce their risk by selling participation interests in it. Alternatively, FCUs interested in obtaining a participation after the loan is made may not properly investigate the loan and may instead rely on the original participants to have properly underwritten the loan. FCUs may jump in without a proper due diligence review. Recent problems with credit unions in Rhode Island and other northeastern states have corroborated these concerns. Accordingly, the NCUA Board declines to adopt the proposed change and will continue to require a written commitment to participate in a loan precede final disbursement.

Application of Statutory Limitations to Open-End Loans—Proposed §§ 701.22(c) and 701.232 (b)(3)

Section 107(5)(E) of the FCU Act (12 U.S.C. 1757(5)(E)) requires an FCU that is an originating lender to retain an interest of at least 10 per centum of the face amount of each loan ("the 10% limitation"). This limitation is also set forth in § 701.22(c) of NCUA's Regulations.

Section 107(13) of the FCU Act (12 U.S.C. 1757(13)) limits the aggregate of the unpaid balances of loans purchased to 5% of unimpaired capital and surplus ("the 5% limitation"). The limitation is set forth in § 701.23(b)(3) of NCUA's Regulations. The regulation excepts certain types of loans from the 5% limitation.

Although the NCUA Board realized that these limitations are difficult to apply to open-end loans, it nevertheless requested comments on how the limitations should be applied to them. Six commenters addressed this issue. Three stated that the limitations should apply to the total line of credit because that is the credit union's contingent liability. One stated that the limitation should apply to only the outstanding balance of the line of credit. One commenter believes that Congress did not intend for these limitations to apply to lines of credit and that such application would cause an accounting nightmare. This commenter believes that open-end loans should be excluded from the limitations. Since the 10% and 5% limitations are in the FCU Act, they cannot be waived or excluded by the NCUA Board. The last commenter stated that FCUs should be prohibited from engaging in open-end participations.

The NCUA Board is not swayed by the comments that the operational problems can be resolved. No suggestion has adequately overcome the accounting problems perceived by the NCUA Board. Moreover, there is no demonstration that such participations are safe and beneficial for FCUs. To a lesser degree, similar problems arise in the purchase, sale or pledge of open-end loans. Therefore, it is the position of the NCUA Board that, due to these concerns, participations in or purchase, sale or pledge of open-end loans should be discouraged. NCUA will continue to monitor any participations in or purchase, sale or pledge of open-end loans and will take appropriate action if problems arise. However, if credit unions engage in participations or purchase, sale or pledge of open-end loans, the NCUA Board believes that the 10% and 5% limitations apply to the total line of credit and not just the outstanding balance.

Definitions of Financial Organization and Credit Union Organization—Proposed § 701.22(a)(2)

The present participation regulation allows FCUs to participate in loans with certain defined entities (credit union organizations, financial organizations and other credit unions). The Board requested comment on the current definition of financial organization (federally chartered or insured financial institutions, not to include insurance and finance companies, retirement and investment funds) and also proposed to change credit union organization to credit union service organization as an eligible entity, making the definition consistent with § 701.27 of NCUA's Rules and Regulations. This proposed change would provide FCU's with the additional authority to engage in loan participations with organizations that principally provide services to credit unions as well as credit union members, as opposed to organizations that provide services only to credit unions.

Six commenters specifically addressed this issue. Two commenters agreed that insurance companies should not be included in the definition of financial organization while one commenter believes that the definition is too narrow and that insurance companies should be included within the definition. One commenter stated that the Board should give some flexibility to the definition by allowing the Board to approve additional entities on a case-by-case basis. Two commenters noted their agreement with the change from credit union organizations to credit union service organizations.

After further review of the legislative history, the NCUA Board remains convinced that insurance companies are not within the definition of financial organization for purposes of engaging in participation loans with FCUs. House Report 95–23 (February 22, 1977) (*see* 1977 U.S. Code Cong. & Ad. News 105), which was issued when Congress authorized loan participation, defines financial organization as "any federally chartered or federally insured financial institution." Insurance companies do not fit this definition. Further, the Board believes there is no demonstrated need for any expansion of this authority. Therefore, the limitation on FCUs engaging in participations with only credit union organizations, financial organizations and credit unions will remain.

Sixty Days to Refinance—Proposed § 701.23(b)(1)(i)

The Board requested comment on the requirement that eligible obligations of members purchased by an FCU be refinanced within 60 days unless they are loans that the FCU is empowered to grant. Six commenters addressed this issue. Two commenters agreed with the 60-day requirement. One commenter suggested 90 days and another suggested six months. One commenter suggested that a longer period be provided to credit unions that document it is needed, while another commenter suggested that the requirement be deleted.

The NCUA Board believes that there has been no demonstration that the 60-day requirement is a burden to FCUs and needs to be extended. The 60-day time frame is flexible, prudent and provides sufficient time for an FCU to process and document the refinanced loan.

Board of Directors or Investment Committee Approval for Loan Purchases—Proposed § 701.23(b)(2)

The Board proposed that the requirement for board of director or investment committee approval of purchase of member loans from any

source be deleted. Four commenters addressed this issue and they all agreed with the proposal.

Since the proposed change was published for comment, the NCUA Board proposed a separate amendment requiring all federally-insured credit unions to apply for and receive permission from the NCUA Board before either purchasing or acquiring loans or other investment assets or assuming or receiving assignment of any deposits, shares or liabilities of any credit union not insured by the NCUSIF, of any other depository institution, of any successor in interest to either such institution, or of any NCUSIF-insured credit union not in liquidation. Federal credit union purchases of real estate loans and student loans to facilitate packaging of a pool for the secondary market are not subject to the proposed approval process. (*See* 55 FR 49059, 11/26/90.) The November proposed amendment retains the requirement for board of director or investment committee approval for purchase of member loans, and thus conflicts with the previously proposed change.

The NCUA Board has determined to reconcile the conflict in favor of maintaining the requirement for board of director or investment committee approval for the purchase of member loans. The decision to engage in these transactions may have a significant effect on the operations of the FCU. Further, the NCUA Board believes it becomes even more important to retain the approval of the board of directors or investment committee if it is necessary to have the approval of the NCUA Board for these types of transactions. Therefore, the proposed amendment deleting this requirement is not adopted.

Refinanced Loans not Subject to 5% Limitation—Proposed § 701.23(b)(1)(i)

The proposed rule clarified that loans purchased under § 701.23(b)(1)(i) and subsequently refinanced are not subject to the 5% of unimpaired capital and surplus limitation of Section 107(13) of the FCU Act. The one comment received on this issue agreed with NCUA's clarification. This modification is adopted in the final rule.

Purchase of Real Estate Secured Loans of Nonmembers—Proposed § 701.23(b)(1)(iv)

No changes were proposed to this section although the NCUA Board did request comment on whether FCUs should be allowed greater flexibility to purchase mortgage loans made by other credit unions and any conditions that should apply to such purchases. Three comments were received on this issue and all three commenters indicated that credit unions do not need any further flexibility in purchasing mortgage loans. The NCUA Board believes no changes are necessary in this area.

Correction

A typographical error was made in § 701.22(b)(1) of the proposed amendments. No change from the present rule was proposed to this section. The proposed section stated that a federal credit union could not obtain an interest in a participation loan if the sum of that interest and any (other) indebtedness owing to the federal credit union by the borrower exceeds 20 per centum of the federal credit union's unimpaired capital and surplus. The percentage should be 10 according to 107(5)(A)(x) of the FCU Act. The correct percentage is contained in the current regulation.

Regulatory Requirements

Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirements contained in § 701.22 and § 701.23 of NCUA's Regulations (OMB No. 3133–0126 and OMB No. 3133–0127, respectively) all of which are contained in the existing regulation.

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final amendment does not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to federal credit unions.

List of Subjects in 12 CFR Part 701

Loan participation, Participation, Loans, Purchase, Sale and pledge of eligible obligations.

By the National Credit Union Administration Board on April 4, 1991.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR part 701 is amended as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and P. 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. 1861 and 42 U.S.C. 3601–3610.

§ 701.23 [AMENDED]

2. In § 701.23, paragraph (b)(3) is revised to read as follows:

§ 701.23 Purchase, sale, and pledge of eligible obligations.

* * * * *

(b) * * *

(3) The aggregate of the unpaid balance of eligible obligations purchased under paragraph (b) shall not exceed 5 percent of the unimpaired capital and surplus of the purchaser. Student loans purchased in accordance with paragraph (b)(1)(iii), real estate loans purchased in accordance with paragraph (b)(1)(iv), and eligible obligations purchased in accordance with paragraph (b)(1)(i) that are refinanced by the purchaser so that they are loans it is empowered to grant shall not be included in considering this 5 percent limitation.

[FR Doc. 91–8676 Filed 4–12–91; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 91–33]

Customs Regulations Amendments Relating to User Fees

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to reflect the changes to the Customs user fee statute (19 U.S.C. 58c) effected by section 111 of the Customs and Trade Act of 1990, as amended by section 10001 of the Omnibus Budget Reconciliation Act of 1990. These changes include a new fee structure to cover the costs of processing imported merchandise, consisting of an ad valorem rate with maximum and minimum fees in the case of merchandise subject to formal entry or release procedures, a surcharge on merchandise that is formally entered or released through manual procedures, and flat-rate fees for informal entry or release except for certain user fee facilities to which lump sum payments

apply. Other changes include the addition of a conditional exemption from the fees for products of Israel, the inclusion of a limitation on the fee chargeable for U.S. agricultural products processed and packed in a foreign trade zone, the inclusion of a provision allowing daily aggregation of the ad valorem fee for temporary monthly entry programs, the inclusion of a provision treating the fees as Customs duties for administrative, enforcement, and judicial purposes, and a modification to the fee limitation applied to the arrival of railroad cars originating and terminating in the same country.

DATES: Interim rule effective April 15, 1991; comments must be received on or before June 14, 1991.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Harry Carnes, Office of Inspection and Control (202-566-8648); Legal Aspects: William Rosoff, Office of Regulations and Rulings (202-566-5856).

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, established a schedule of fees chargeable to users of various services provided by the Customs Service in connection with the processing of persons, aircraft, vehicles, railroad cars, vessels, broker permits, and mail arriving in the U.S. These statutory fees were codified at 10 U.S.C. 58c, and interim implementing Customs regulations were published on June 11, 1986 as T.D. 86-109, 51 FR 21152. The bulk of the interim regulatory provisions implementing those fees are set forth at 19 CFR 24.22.

Section 8101 of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, amended the 1985 Act by adding thereto subsections (a) (9) and (10) (19 U.S.C. 58c(a) (9) and (10)) to provide for the assessment of a merchandise processing user fee on formal entries of imported merchandise. This merchandise processing fee was set at 0.22 percent ad valorem for the fiscal year ending on September 30, 1987, and thereafter the fee was to be either 0.17 percent ad valorem or an ad valorem rate established by the Secretary of the Treasury under statutory guidelines; excluded from application of the fee were products provided for in schedule 8 of the tariff schedules (now chapter 98 of the Harmonized Tariff Schedule of the United States) and products of Caribbean Basin Initiative beneficiary countries, least developed developing countries, or U.S. insular possessions. On December 1, 1986, interim Customs regulations were published as T.D. 86-205, 51 FR 43188, to implement the merchandise processing fee; these interim regulations were set forth at 19 CFR 24.23. In addition, on December 23, 1988, T.D. 89-3 was published at 53 FR 51769 to amend the interim regulations to set forth the staged reductions of the merchandise processing fee applicable to products of Canada under the U.S.-Canada Free Trade Agreement.

On August 20, 1990, President Bush signed into law the Customs and Trade Act of 1990, Public Law 101-382 (the Act). Section 111 of the Act sets forth a number of significant changes with regard to Customs user fees. The principal change involves a complete restructuring of the ad valorem fee set forth in 19 U.S.C. 58c(a) (9) and (10) to conform it to the international obligations of the United States under Article VIII of the General Agreement on Tariffs and Trade (GATT). The restructured fee has the following three main elements:

1. An ad valorem fee of 0.17 percent applicable to merchandise that is formally entered or released, subject to a maximum fee of $400 and a minimum fee of $21.

2. A surcharge of $3 in the case of a formal manual entry or release of merchandise, to be added to the ad valorem fee.

3. In the case of informal entries or releases, specific, flat-rate fees of $2 if the entry or release is automated and not prepared by Customs, $5 if the entry or release is manual and not prepared by Customs, and $8 if the entry or release is prepared by Customs. Exceptions are made in the case of a centralized hub facility, an express consignment carrier facility or a user fee airport or other user fee facility, for which payment (equal to the annual reimbursement paid to Customs) is provided in lieu of these specific fees.

The Act also amends 19 U.S.C. 58c(b)(1)(B) to provide that, with effect from July 7, 1986, the pre-existing exemption from the railroad car arrival fee applies with reference to the movement (journey) of the railroad car; thus, the car, rather than the arriving train of which it is a part, must originate and terminate in the same country in order for the exemption to apply. In addition, the Act provides that, with effect from the date of enactment of the Act, any fee provided for under 19 U.S.C. 58c(a) shall be treated as a Customs duty (1) for purposes of applying the administrative and enforcement provisions of the Customs laws and regulations (including for purposes of computing penalties) except in the case of drawback or where otherwise provided in regulations, and (2) for purposes of determining the jurisdiction of any U.S. court or agency. Finally, the Act reinserts the exemption for least developed countries, provides for the daily aggregation of the ad valorem fee for temporary monthly entry programs in effect prior to July 1, 1989, sets forth a limitation on the merchandise fee chargeable for U.S. agricultural products processed and packed in a foreign trade zone, and provides a conditional exemption from the fees for products of Israel.

On November 5, 1990, President Bush signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 (the Budget Act). Section 10001 thereof made a number of changes to the user fee provisions of section 111 of the Act, including the following: (1) Revision of the definition of a manual entry or release, with effect from November 5, 1990; (2) provision for application of the specific, flat-rate informal fees, rather than the annual reimbursement sum, in the case of a small airport or other user fee facility which handled not more than 25,000 informal entries during the preceding fiscal year, with effect from October 1, 1990; and (3) provision for an adjustment of the ad valorem rate by the Secretary of the Treasury under public notice and Congressional review procedures.

In light of the significant amendments to the Customs user fee statute effected by the Act, as amended by the Budget Act, and in consideration of the fact that those amendments principally took effect on October 1 and November 5, 1990, it is necessary to promulgate implementing regulations at the earliest practicable date. Accordingly, Customs has determined that the implementing regulations should be published as an interim rule with opportunity for public comment. The regulatory amendments are discussed below.

Section 24.17

This section is being amended to set forth the reimbursement required under law to be paid to Customs for services rendered at centralized hub facilities, express consignment carrier facilities, and user fee ariports or other user fee facilities. These provisions thus describe the nature of the reimbursement which is the basis for the fee paid by these facilities in lieu of the informal fees.

Section 24.22

Paragraph (d)(5) is being revised to set forth the new terms of the railroad car arrival fee exemption.

Paragraph (j) is being added to set forth the provision in the Act regarding the treatment of user fees as a Customs duty for administrative, enforcement, and judicial purposes, which applies to the fees covered by § 24.22. For the sake of clarity, the statutory language has been somewhat simplified in the regulatory text.

Section 24.23

This section is being extensively revised to set forth the new fee structure for processing merchandise contained in the Act and the Budget Act. The section has also been retitled to reflect the restructuring of the fee.

Paragraph (a) sets forth definitions. The definitions of "centralized hub facility" and "express consignment carrier facility" include the descriptions of those facilities as contained in 19 CFR part 128. The definition of "manual" formal or informal entry or release reflects the amended Budget Act language, consistent with operational and administrative realities of Customs and the private sector. The definition of "small airport or other facility" is intended to give effect to the Budget Act provision regarding application of the flat-rate informal fees at facilities handling not more than 25,000 informal entries during the preceding year.

Paragraph (b) sets forth the basic terms of the restructured merchandise processing fee.

Paragraph (c) sets forth the exemptions and limitations which apply to the merchandise processing fees. In addition to the exemptions historically provided under the user fee statute and regulation, this paragraph includes an exemption for other cases in which Customs has not applied a merchandise processing fee. It also clarifies the statutory application of the fees to articles of HTSUS subheadings 9802.00.60 and 9802.00.80 and sets forth the provisions in the Act regarding Israeli products and regarding U.S. agricultural products processed and packed in a foreign trade zone.

Paragraph (d) sets forth the provision in the Act regarding the daily aggregation of the ad valorem fee for entries under existing temporary monthly entry programs.

Finally, paragraph (e) sets forth the provision in the Act regarding the treatment of the fees as a Customs duty for administrative, enforcement, and judicial purposes, which is equally applicable to the fees covered bv this section.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, 1301 Constitution Avenue NW., Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements

Because these regulations set forth requirements and procedures of which the public needs to be informed in order to pay the fees required under law, it is determined pursuant to 5 U.S.C. 553(b)(B) that notice and public procedures are impracticable, unnecessary, and contrary to the public interest. Furthermore, for the above reasons and because the regulations set forth requirements effective on October 1 and November 5, 1990, it is determined that good cause under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

Executive Order 12291

Because this document willl not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Taxes, Wages, User fees.

Amendments to the Regulations

For the reasons set forth above, part 24, Customs Regulations (19 CFR part 24) is amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citiation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701; Public Law 99–662, unless otherwise noted.

2. Section 24.17 is amended by adding paragraphs (a)(12)–(14) to read as follows:

§ 24.17 Other services of officers; reimbursable.

(a) * * *

(12) When a Customs officer or employee is assigned to a centralized hub facility for the purposes of processing express consignment shipments under part 128 of this chapter, the compensation (including overtime) and expenses of such officer or employee shall be reimbursed to the Government by the centralized hub facility.

(13) When a Customs officer or employee is assigned to an express consignment carrier facility for the purpose of processing express consignment shipments under Part 128 of this chapter, the cost (including overtime) of the inspectional services provided by such officer or employee shall be reimbursed to Customs by the express consignment carrier facility.

(14) When a Customs officer or employee is assigned to provide Customs services at an airport or other facility under 19 U.S.C. 58b, the facility shall reimburse to the Government an amount equal to the salary and expenses of such officer or employee (including overtime) plus any other expenses incurred in providing those Customs services at the facility.

* * * * *

3. Section 24.22 is amended by revising paragraph (d)(5) and adding paragraph (j) to read as follows:

§ 24.22 Fees for certain services.

* * * * *

(d) * * *

(5) *Exemptions.* No fee shall be collected under this paragraph for Customs services provided in connection with the arrival of any railroad car whose journey originates and terminates in the same country, provided that no passengers board or disembark from the train and no cargo is loaded or unloaded from the car while the car is within any country other than the country in which the car originates and terminates.

* * * * *

(j) *Treatment of fees as Customs duty.*—(1) *Administration and enforcement.* Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the Customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee provided for under this section, and with respect to any person liable for the payment of such fee, as if such fee is a Customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of Customs duty, whether or not any such duty is in fact due and payable, shall be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction.* For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section shall be treated as if such fee is a Customs duty.

4. Section 24.23 is revised to read as follows:

§ 24.23 Fees for processing merchandise.

(a) *Definitions.* The following definitions apply for the purposes of this section:

(1) *Centralized hub facility.* A "centralized hub facility" is a separate, unique, single purpose facility normally operating outside of Customs operating hours approved by the district director for entry filing, examination, and release of express consignment shipments, as provided for in part 128 of this chapter on July 30, 1990.

(2) *Entered or released.* Merchandise is "entered or released" if the merchandise is:

(i) Released under a special permit for immediate delivery under 19 U.S.C. 1448(b);

(ii) Entered or released from Customs custody under 19 U.S.C. 1484(a)(1)(A); or

(iii) Withdrawn from warehouse for consumption.

(3) *Express consignment carrier facility.* An "express consignment carrier facility" is a separate or shared specialized facility approved by the district director soley for the examination and release of express consigment shipments, as provided for in part 128 of this chapter on July 30, 1990.

(4) *Manual entry or release.* Any reference to a "manual" formal or informal entry or release shall not include:

(i) Any formal or informal entry or release filed by an importer or broker who is operational for cargo release through the Automated Broker Interface (ABI) of the Customs Automated Commercial System (ACS) at any port within the United States;

(ii) Any formal or informal entry or release filed at a port where cargo selectivity is not fully implemented if filed by an importer or broker who is operational for ABI entry summary; or

(iii) Any informal entry or any Line Release filed at a part where cargo selectivity is fully implemented if filed by an importer or broker who is operational for ABI entry summary.

(5) *Small airport or other facility.* A "small airport or other facility" is any airport or other facility which has been designated as a user fee facility under 19 U.S.C. 58b and at which more than 25,000 informal entries were processed during the proceding fiscal year.

(b) *Fees.*—(1) *Formal entry or release.*—(i) *Ad valorem fee.*—(A) *General.* Except as provided in paragraph (c) of this section, merchandise that is formally entered or released is subject to the payment to Customs of an ad valorem fee of 0.17 percent. The fee shall be due and payable to Customs by the importer of record of the merchandise at the time of presentation of the entry summary and shall be based on the value of the merchandise as determined under 19 U.S.C. 1401a.

(B) *Maximum and minimum fees.* Subject to the provisions of paragraphs (b)(1)(ii) and (d) of this section relating to the surcharge and to aggregation of the ad valorem fee resepctively, the ad valorem fee charged under paragraph (b)(1)(i)(A) of this section shall not exceed $400 and shall not be less than $21.

(ii) *Surcharge for manual entry or release.* In the case of any formal manual entry or release of merchandise, a surcharge of $3 shall be assessed and shall be in addition to any ad valorem fee charged under paragraphs (b)(1)(i)(A) and (B) of this section.

(2) *Informal entry or release.* (i) Except as provided in paragraphs (b)(2)(ii) and (c) of this section, merchandise that is informally entered or released is subject to the payment to Customs of a fee of:

(A) $2 if the entry or release is automated and not prepared by Customs personnel;

(B) $5 if the entry or release is manual and not prepared by Customs personnel; or

(C) $8 if the entry or release, whether automated or manual, is prepared by Customs personnel.

(ii) With respect to the processing of merchandise that is informally entered or released at a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the following payments shall be made in lieu of the specific fees provided for in paragraph (b)(2)(i) of this section:

(A) In the case of a centralized hub facility or small airport or other facility, payment by the facility in an amount equal to the reimbursement (including overtime) which the facility is required to make during the fiscal year under § 24.17 of this chapter; and

(B) In the case of an express consignment carrier facility, payment by the facility in an amount equal to the cost (including overtime) of the Customs inspectional services provided at the facility during the fiscal year for which Customs is reimbursed under § 24.17 of this chapter.

(c) *Exemptions and limitations.* (1) The ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply to:

(i) Except as provided in paragraph (c)(2) of this section, articles provided for in chapter 98, Harmonized Tariff Schedule of the United States (HTSUS; 19 U.S.C. 1202);

(ii) Products of insular possessions of the U.S. (General Note 3(a)(iv), HTSUS);

(iii) Products of beneficiary countries under the Caribbean Basin Economic Recovery Act (General Note 3(c)(v), HTSUS);

(iv) Products of least-developed beneficiary developing countries (General Note 3(c)(ii)(B), HTSUS); and

(v) Merchandise described in General Note 4, HTSUS, merchandise released under 19 U.S.C. 1321, and merchandise imported by mail.

(2) In the case of any article provided for in subheading 9802.00.60 or 9802.00.80, HTSUS:

(i) The surcharge and specific fees provided for under paragraphs (b)(1)(ii) and (b)(2)(i) of this section shall remain applicable; and

(ii) The ad valorem fee provided for under paragraph (b)(1)(i) of this section shall be assessed only on that portion of the cost or value of the article upon which duty is assessed under subheadings 9802.00.60 and 9802.00.80.

(3) In the case of goods originating in Canada within the meaning of General Note 3(c)(vii), HTSUS, the ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall be assessed according to the following schedule:

(i) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1990, the amount shall be 80 percent of the amount otherwise applicable on that date;

(ii) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1991, the amount shall be 60 percent of the amount otherwise applicable on that date;

(iii) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1992, the amount shall be 40 percent of the amount otherwise applicable on that date;

(iv) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1993, the amount shall be 20 percent of the amount otherwise applicable on that date; and

(v) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1994, no fee or surcharge shall be assessed.

(4) In the case of agricultural products of the U.S. that are processed and packed in a foreign trade zone, the ad valorem fee provided for under paragraph (b)(1)(i) of this section shall be applied only to the value of any material used to make the container for such merchandise, but only if that merchandise is subject to entry and the container is of a kind normally used for packing such merchandise.

(5) The ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply to products of Israel that are entered, or withdrawn from warehouse for consumption, on or after the effective date of a determination made under section 112 of the Customs and Trade Act of 1990.

(d) *Aggregation of ad valorem fee.* (1) Notwithstanding any other provision of this section, in the case of entries of merchandise made under any temporary monthly entry program established by Customs before July 1, 1989, for the purpose of testing entry processing improvements, the ad valorem fee charged under paragraph (b)(1)(i) of this section for each day's importations at an individual port shall be the lesser of the following, provided that those importations involve the same importer and exporter:

(i) $400; or

(ii) The amount determined by applying the ad valorem rate under paragraph (b)(1)(i)(A) of this section to the total value of such daily importations.

(2) The fees as determined under paragraph (d)(1) of this section shall be paid to Customs at the time of presentation of the monthly entry summary. Interest shall accrue on the fees paid monthly in accordance with section 6621 of the Internal Revenue Code of 1986.

(e) *Treatment of fees as Customs duty.*—(1) *Administration and enforcement.* Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the Customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee provided for under this section, and with respect to any person liable for the payment of such fee, as if such fee is a Customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of Customs duty, whether or not any such duty is in fact due and payable, shall be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction.* For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section shall be treated as if such fee is a Customs duty.

Approved: March 28, 1991.

Carol Hallett,

Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 91-8789 Filed 4-12-91; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Parts 31, 301, and 602

[T.D. 8344]

RIN 1545-AJ29

Penalty for Failure To Include Correct Information on Information Returns and Payee Statements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations on the penalty for failure to provide correct information on information returns and payee statements. Congress enacted this penalty in section 1501 of the Tax Reform Act of 1986 (Pub. L. 99-514). The penalty was subsequently revised by section 7711 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239). These regulations do not reflect any revisions under the 1989 Act. These regulations affect persons who are required to file information returns with the Internal Revenue Service and to furnish statements to payees.

DATES: These regulations are effective April 15, 1991 except § 301.6723-1A is effective January 1, 1987, as applicable to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1986, and before January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T) (202-377-9344, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0909. The estimated average annual burden per respondent, depending on individual circumstances, is 5 hours and 46 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations to be added to the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR part 31) and the Regulations on Procedure and Administration (26 CFR part 301) under section 6723 of the Internal Revenue Code of 1986. Section 6723 was added to the Internal Revenue Code by the Tax Reform Act of 1986 (Pub. L. 99-514).

On September 10, 1987, the **Federal Register** published a notice of proposed rulemaking (52 FR 34358) by cross reference to temporary regulations published the same day in the **Federal Register** (52 FR 34355) under section 6723 of the Internal Revenue Code. A

number of public comments were received concerning the regulations. A public hearing was not requested or held. After consideration of the written comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 6723 imposes a penalty on any person who files an information return (as defined in section 6724(d)(1) prior to its amendment by section 7711 of the Omnibus Reconciliation Act of 1989, hereafter "the 1989 Act"), or furnishes a payee statement (as defined in section 6724(d)(2) prior to its amendment by the 1989 Act), and fails to include all the required information or includes incorrect information. The amount of the penalty is $5 for each return or statement for which there is a failure to include correct information. However, the total penalty imposed on any person for all such failures during a calendar year is limited to $20,000.

The statute provides higher penalties for failures that are due to intentional disregard of the correct information reporting requirement, and these higher penalties are not subject to the $20,000 limit. Likewise, pursuant to section 6724 (prior to its amendment by the 1989 Act), the $20,000 limit does not apply with respect to interest or dividend returns or statements.

The final regulations provide that for purposes of the penalty for failure to include correct information, the information that is required to be included correctly on a return or statement is the information required by the applicable information reporting statute or by any administrative pronouncement issued thereunder (such as a regulation, revenue ruling, revenue procedure, or information reporting form).

The final regulations provide an exception from the penalty for inconsequential omissions and inaccuracies. To encourage the reporting of correct information, the final regulations also provide an exception for failures that are corrected within a specified time period. Further, the final regulations set forth the procedure to be followed in seeking a waiver for reasonable cause or due diligence. The final regulations provide rules regarding the circumstances in which a failure to include correct information on an information return will be treated as due to intentional disregard. These provisions are, to the extent applicable, consistent with the temporary and proposed regulations that were published in the **Federal Register** for February 21, 1991. Finally, the final regulations also provide rules for coordinating the penalty for failure to include correct information with other penalties, such as the section 6676 penalty for failure to supply identifying numbers (prior to its repeal by the 1989 Act).

Comments

The Service received several written comments regarding the proposed regulations. One commentator suggested changing the date for the original filing of information returns from the present requirements to October 1. Changing the original filing date of information returns is beyond the scope of these regulations. Therefore, this comment was not adopted.

Another commentator requested changing the March 1 date in proposed § 301.6723–1(c)(1)(iii) to October 1. This section provides that a payor who fails to include correct information on a payee statement will not be subject to a penalty if the payor corrects the failure by March 1. Because taxpayers need timely correct information in order to file income tax returns, this suggestion was not adopted.

The commentator also suggested deleting the 30-day requirements in proposed § 301.6723–1(c)(1) (i) and (ii) because these requirements are unnecessarily complex and encourage multiple submissions of corrected documents where errors or omissions are discovered at different times. Deleting the 30-day requirements would allow payors to submit all of their corrections on October 1. Processing efficiencies are reduced if all corrected information returns are submitted to the Service on October 1. Therefore, this suggestion was not adopted.

A commentator requested that the Service provide objective criteria in defining "intentional disregard" to ensure uniform application by Service personnel. According to the commentator, the definitions are too general and too vague to provide useful guidance to Internal Revenue Service agents. Because the Service is addressing this concern in regulations issued under sections 6721–6724 as revised by section 7711 of the 1989 Act (§§ 301.6721–1T through 301.6724–1T), the suggestion is not reflected in these regulations.

A commentator also requested guidance on the application of the penalty for failures occurring on composite-payee statements. A composite statement is one statement containing the required information on payee statements under section 6049 (Form 1099–INT or OID), under section 6042 (Form 1099–DIV), and 6044 (Form 1099–PART). The rules for preparing a composite statement are set forth in Rev. Proc. 90–44, 1990–2 C.B. 516. The issue is whether the penalty applies to composite statements in the same manner as it would if the statements had been provided separately to the payee. The Service also addresses this issue in the regulations issued under sections 6721–6724 as revised by section 7711 of the 1989 Act.

Regulatory Analyses

The Commissioner of Internal Revenue has determined that these final regulations are not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required because any economic or other consequences result directly from the statute. With respect to the Regulatory Flexibility Act, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because these regulations merely implement the statute, which imposes a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of these final regulations is Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Lotteries, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Withholding.

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31, 301, and 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 1. The authority for part 31 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

§ 31.6051-1 [Amended]

Par. 2. Section 31.6051-1 (i) is amended by removing the last sentence thereof and adding the following two sentences in its place: "For the penalties applicable to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989, see sections 6721-6724 as amended by section 7711 of the Omnibus Budget Reconciliation Act of 1989. See section 6723 (prior to its amendment by section 7711 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239, 103 Stat. 2106 (1989)) and § 31.6723-1A of this chapter (as issued thereunder) for provisions relating to the penalty for failure to include correct information on an information return or a payee statement and for the exceptions to the penalty, particularly the exception for timely correction, with respect to information returns and payee statements the due date for which, determined without regard to extensions, is after December 31, 1986, and before January 1, 1990."

§ 31.6051-2 [Amended]

Par. 3. Section 31.6051-2 (c) is amended by removing the last sentence thereof and adding the following two sentences in its place: "For the penalties applicable to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989, see sections 6721-6724 as amended by section 7711 of the Omnibus Budget Reconciliation Act of 1989 (Publ. L. 101-239, 103 Stat. 2106 (1989). See section 6723 (prior to its amendment by section 7211 of the Omnibus Reconciliation Act of 1989) and § 301.6723-1A of this chapter for provisions relating to the penalty for failure to include correct information on an information return or a payee statement and for the exceptions to the penalty, particularly the exception for timely correction, with respect to information returns and payee statements the due date for which, determined without regard to extensions, is after December 31, 1986, and before January 1, 1990."

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 5. An undesignated centerheading and § 301.6723-1A are added immediately following § 301.6724-1T to read as follows:

Regulations Applicable to Information Returns and Payee Statements the Due Date for Which (Without Regard to Extensions) Is After December 31, 1986, and Before January 1, 1990

§ 301.6723-1A Failure to include correct information.

(a) *General rule.* If any person files an information return (as defined in section 6724(d)(1)) or furnishes a payee statement (as defined in section 6724(d)(2)) the due date for which, determined without regard to extensions, is after December 31, 1986, and before January 1, 1990, and such person fails to include all of the information required to be shown on such return or statement or includes incorrect information, such person will be considered to have failed to include correct information. For this purpose, information required to be shown on a return or statement is the information required by the applicable information reporting statute or by any administrative pronouncement issued thereunder (such as a regulation, revenue ruling, revenue procedure, or information reporting form). Except as otherwise provided in this section, any person who fails to include correct information shall pay $5 for each return or statement with respect to which such failure occurs; however, the total amount imposed on any person for all such failures during any calendar year shall not exceed $20,000. See paragraph (e) of this section regarding the higher penalties for intentional disregard of the correct information reporting requirement and for interest and dividend returns and statements.

(b) *Exception for inconsequential omissions and inaccuracies*—(1) *Exception.* The penalty imposed by paragraph (a) of this section will not be assessed for any failure to include correct information on an information return if the failure does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. Similarly, the penalty imposed by paragraph (a) of this section will not be assessed for any failure to include correct information on a payee statement if the failure cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return.

(2) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example 1. A payor files a form 1099-MISC (relating to miscellaneous income) with the Internal Revenue Service and furnishes a corresponding statement to the payee. Both the form 1099-MISC and the payee statement are complete and correct, except that the word "Street" is misspelled in the payee's address. The error does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. In addition, the error cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return. Therefore, the penalty imposed by paragraph (a) of this section will not be assessed.

Example 2. Assume the same facts as in *Example 1*, except that the only error on the form 1099-MISC and the payee statement is that the payee's first name, "William," is misspelled as "Willaim." The penalty imposed by paragraph (a) of this section will not be assessed, for the reasons set forth in *Example 1*.

Example 3. Assume the same facts as in *Example 1*, except that the only error on the form 1099-MISC and the payee statement is that the payee's street address, 4821 Main Street, is incorrectly reported as 8421 Main Street. The penalty imposed by paragraph (a) of this section will not be assessed with respect to the form 1099-MISC if the error does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. However, the penalty will be assessed with respect to the payee statement because the error can reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return. See paragraph (d) of this section regarding waiver of the penalty for reasonable cause or due diligence.

(c) *Exception for corrected omissions and inaccuracies*—(1) *Exception.* The penalty imposed by paragraph (a) of this section generally will not be assessed for a failure to include correct information on an information return or payee statement if the person who filed the return or furnished the statement corrects the failure by the earliest of—

(i) The date that is 30 days after the date that the person discovers the failure; or

(ii) The date that is 30 days after the date of a written request, from the Internal Revenue Service to the person, for corrected information; or

(iii) October 1 (March 1 for payee statements) of the calendar year in which the return or statement is due.

(2) *Limitations on exception.* Notwithstanding paragraph (c)(1) of this section, timely correction of a failure to include correct information on a return or statement will not prevent assessment of the penalty for any failure that is part of a pattern of conduct, by the person who filed the return or furnished the statement, of repeatedly failing to include correct information. Further, correction of a failure to include correct information will not prevent assessment of the penalty for intentional disregard of the correct information reporting requirement. See paragraph (e)(1) of this section with respect to intentional disregard.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. In January 1987, Bank M prepares forms 1099–INT (relating to interest income) with respect to interest income earned by its depositors in calendar year 1986. M timely files the forms with the Internal Revenue Service and timely furnishes copies to its depositors. On March 16, 1987, M discovers that the amount of backup withholding tax (Federal income tax withheld) was inadvertently omitted from several of the forms and payee copies. Several days later M files corrected forms with the Service and furnishes corrected copies to the affected payees. The penalty for failure to include correct information will not be due with respect to the incomplete forms 1099–INT filed with the Internal Revenue Service, since they were corrected within 30 days after M discovered the omission and before October 1, 1987. However, the penalty will be due with respect to the incomplete copies furnished to the payees, since they were not corrected by March 1, 1987.

Example 2. In January 1987, Corporation N files forms 1099–DIV (relating to dividends and distributions) for calendar year 1986 and furnishes copies to its shareholders. A significant number of the forms and payee copies do not include the amount of backup withholding tax. On December 1, 1987, the Internal Revenue Service provides N with a written request for corrected information. On December 15, 1987, N files corrected forms with the Service and furnishes corrected copies to the payees. The penalty for failure to include correct information will be due with respect to the incomplete forms, since they were not corrected by October 1, 1987. In addition, the penalty will be due with respect to the incomplete copies furnished to the payees, since they were not corrected by March 1, 1987. However, N's correction of the forms is a fact to be considered, along with other facts, in determining whether the higher penalty for intentional failures will be imposed; see paragraph (e)(1)(ii)(B) of this section.

Example 3. In January 1987, Corporation O files forms 1099–DIV for calendar year 1986 and furnishes copies to its shareholders. O intentionally does not include the amount of backup withholding tax for any shareholder. Since the omissions represent an intentional disregard of the correct information reporting requirement, correction of the omissions will not prevent assessment of the penalty for intentional failure to include correct information.

(d) *Waiver for reasonable cause or due diligence*—(1) *Reasonable cause.* Except as provided in paragraph (d)(2) of this section (relating to interest or dividend returns or statements), the penalty imposed by paragraph (a) of this section will be waived for any failure to include correct information if it is established to the satisfaction of the district director or the director of the internal revenue service center that such failure was due to reasonable cause and not to willful neglect.

(2) *Due diligence.* Paragraph (d)(1) of this section will not apply in the case of any interest or dividend return or statement (as defined in section 6724(c)(5). However, in such a case, the penalty imposed by paragraph (a) of this section will be waived for any failure to include correct information if it is established to the satisfaction of the district director or the director of the internal revenue service center that the person otherwise liable for such penalty exercised due diligence in attempting to include such information. The requirement to exercise due diligence imposes a higher standard of conduct than required under the reasonable cause defense.

(3) *Procedure for seeking waiver.* Reasonable cause (or due diligence) may be established only by submitting a written statement that sets forth all the facts alleged as reasonable cause (or due diligence) and makes an affirmative showing of reasonable cause (or due diligence). The statement must be signed by the person required to file the information return or furnish the payee statement to which the penalty imposed by paragraph (a) of this section relates, and must contain a declaration that is is made under the penalties of perjury. See § 301.6061–1 for rules on the signing of returns.

(e) *Higher penalties in certain cases*—(1) *Intentional disregard of the correct information reporting requirement*—(i) *Application of section 6723(b).* If a person fails to include correct information on an information return and such failure is due to intentional disregard of the correct information reporting requirement, the penalty imposed by paragraph (a) of this section with respect to such return will be determined under section 6723(b). The penalty prescribed by section 6723(b) for such a return is $100 or, if greater, the amount equal to 10 percent (or, in some cases, 5 percent) of the aggregate amount of the items required to be reported correctly on the return. In the case of any penalty determined under section 6723(b), the $20,000 limitation of paragraph (a) of this section will not apply. In addition, such penalty will not be taken into account in applying the $20,000 limitation to penalties not determined under section 6723(b).

(ii) *Meaning of intentional disregard.* A failure to include correct information on an information return will be treated as due to intentional disregard of the correct information reporting requirement if the person who filed the return knowingly or willfully failed to include correct information at the time the return was filed. Whether a person knowingly or willfully failed to include correct information will be determined on the basis of all of the facts and circumstances in the particular case. Facts and circumstances to be considered for this purpose include, but are not limited to, the following—

(A) Whether the failure to include correct information is part of a pattern of conduct, by the person who filed the return, of repeatedly failing to include correct information on information returns;

(B) Whether the person who filed the return corrects the failure within 30 days after the date of any written request from the Internal Revenue Service for corrected information; and

(C) Whether the person who filed the return can reasonably be expected to have discovered the failure during the calendar year the return was due and, if so, whether timely correction was made.

(2) *Interest and dividend returns and statements.* In the case of any interest or dividend return or statement (as defined in section 6724(c)(5)), the $20,000 limitation of paragraph (a) of this section will not apply. In addition, any penalty imposed by paragraph (a) of this section with respect to such a return or statement—

(i) Will not be taken into account in applying the $20,000 limitation of paragraph (a) of this section with respect to other returns or statements, and

(ii) Will not be taken into account in applying the $100,000 limitations of sections 6721(a) and 6722(a) with respect to any return or statement.

(f) *Manner of payment*—(1) *In general.* Except as provided in paragraph (f)(2) of this section (relating to interest and

dividend returns and statements), any penalty imposed by paragraph (a) of this section shall be paid on notice and demand by the Internal Revenue Service and in the same manner as a tax liability is paid.

(2) *Self-assessment for interest and dividend returns and statements.* Any penalty imposed by paragraph (a) of this section with respect to an interest or dividend return or statement will be assessed and collected in the same manner as an excise tax imposed by subtitle D of the Internal Revenue Code, and the deficiency procedures of subchapter B of chapter 63 of the Code will not apply. In such a case, the penalty must be self-assessed and will be due and payable on April 1 of the calendar year following the calendar year for which the return or statement is required. The penalty should be remitted with a properly executed Form 8210 (Self-Assessed Penalties Return).

(g) *Coordination with other penalties*—(1) *Penalty for failure to supply identifying numbers.* Pursuant to section 6723(c), no penalty shall be imposed under paragraph (a) of this section with respect to any return or statement if a penalty is imposed under section 6676 (relating to the failure to supply identifying numbers) with respect to such return or statement.

(2) *Penalty for failure to file information returns or furnish payee statements.* No penalty shall be imposed under paragraph (a) of this section with respect to any return or statement if a penalty is imposed under section 6721 (relating to the failure to file certain information returns) or section 6722 (relating to the failure to furnish certain payee statements) with respect to such return or statement.

(3) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. Corporation P timely files Forms 1099–DIV (relating to dividends and distributions) for a calendar year and furnishes copies to its shareholders. Several of these forms and shareholder copies do not include correct taxpayer identification numbers (TINs), and Corporation P does not show that it exercised due diligence in attempting to include correct TINs; therefore, a penalty is imposed under section 6676(b) with respect to these several forms and shareholder copies. Since a penalty is imposed under section 6676, no penalty is imposed under paragraph (a) of this section with respect to the same several forms and shareholder copies.

Example 2. Corporation Q, a bank, fails to file certain required Forms 1099–INT (relating to interest income of its depositors) in a timely fashion. Corporation Q claims that it exercised due diligence in attempting to file the forms on time and that therefore no penalty under section 6721 or 6723 should apply. If the Internal Revenue Service finds that Corporation Q did not exercise due diligence and imposes the failure-to-file penalty under section 6721 with respect to the forms, no penalty will be imposed under paragraph (a) of this section.

Example 3. Corporation R files with the Internal Revenue Service a document purporting to be an information return. The document contains so many omissions and inaccuracies that its utility as an information return is minimized or eliminated. The Service imposes the failure-to-file penalty under section 6721 with respect to the document. Since the failure-to-file penalty is imposed, no penalty will be imposed under paragraph (a) of this section.

(h) *Effective date.* The rules contained in this section are effective January 1, 1987, as applicable to information returns and payee statements the due date for which, determined without regard to extensions, is after December 31, 1986, and before January 1, 1990. See section 7711 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106 (1989)) for the applicable penalty for certain failures related to information returns and payee statements the due date for which, without regard to extensions, is after December 31, 1989.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by removing the number "§ 301.6723–1T(d)" from the first column of the table and adding in its place the number "§ 301.6723–1A(d)".

Dated: February 25, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–8442 Filed 4–12–91; 8:45 am]

BILLING CODE 4830–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning April 1, 1991. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in February 1991 through April 1991. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Harold Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8850 ((202) 778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning April 1, 1991, the interest charged on the underpayment of taxes will be at a rate of 10 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the April 1 through June 30, 1991, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a

single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in February through April of 1991.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, appendix A and appendix B to part 2610 and appendix A to part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307 (1988), as amended by sec. 7881(h), Public Law 101-239, 103 Stat. 2106, 2242.

2. Appendix A to part 2610 as amended by adding a new entry for the quarter beginning April 1, 1991, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
April 1, 1991	June 30, 1991	10

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in February through April of 1991, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
* * * * *	
February 1991	6.62
March 1991	6.42
April 1991	6.63

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362-1364, 1367-68, as amended by secs. 9312, 9313, Public Law 100-203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning April 1, 1991, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
April 1, 1991	June 30, 1991	10

Issued in Washington, DC, this 10th day of April 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-8777 Filed 4-15-91; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2644

Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency.

The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from April 1, 1991, to June 30, 1991.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Harold Ashner, Assistant General Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202-778-8850 (202-778-8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBCG") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be changed by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 9 percent, which will be effective from April 1, 1991 through June 30, 1991. This rate represents a decrease of one percent in the rate in effect for the first quarter of 1991. This rate is based on the prime rate in effect on March 15, 1991.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1989 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

2. Appendix A is amended by adding to the end of the table therein a new entry as follows:

From	To	Date of quotation	Rate (percent)
•	•	•	•
04/01/91	06/30/91	03/15/91	9

Issued in Washington, DC, on this 10th day of April, 1991.

James B. Lockhart, III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-8776 Filed 4-12-91; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of May 1991.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The Authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_u
*			*			*			*				*			*
May 1991	.075	.07375	.0725	.07125	.07	.0675	.0675	.0675	.0675	.0675	.0625	.0625	.0625	.0625	.0625	.05875

Issued at Washington, DC, on this 10th day of April 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-8778 Filed 4-12-91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 299

Public Access to Records

AGENCY: National Security Agency/Central Security Service, DOD.

ACTION: Final rule.

SUMMARY: This final rule amends the National Security Agency/Central Security Service's (NSA/CSS) regulations governing the disclosure of information under the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). The effect of the rule is to implement recent amendments to the FOIA concerning fees and fee waivers. In addition, the rule makes technical changes to conform with DoD 5400.7-R (32 CFR part 286).

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: Vito T. Potenza, Assistant General Counsel (Administrative/Litigation), Office of General Counsel, National Security Agency, Fort George G. Meade, Maryland 20755-6000.

FOR FURTHER INFORMATION CONTACT: Robin Klugman, (301) 688-5015.

SUPPLEMENTARY INFORMATION: The proposed rule on revision to 32 CFR part 299 was published for public comment in the **Federal Register** on January 14, 1991, 56 FR 1375. No public comments were received. Consequently, the rule takes effect as proposed.

List of Subjects in 32 CFR Part 299

Freedom of Information.

Accordingly, title 32 chapter I, part 299 is amended as follows:

PART 299—PUBLIC ACCESS TO RECORDS

1. The authority citation for part 299 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. Section 299.1 is revised to read as follows:

§ 299.1 Purpose.

Pursuant to the requirements of the Freedom of Information Act as amended (5 U.S.C. 552), the following rules of procedure are established with respect to public access to the records of the National Security Agency/Central Security Service.

3. § 299.4(d) is revised to read as follows:

§ 299.4 Procedures for request of records.

* * * * *

(d) Fees. (1) *General.* As a component of the Department of Defense, the applicable published Departmental rules and schedules with respect to the schedule of fees chargeable and waiver of fees will also be the policy of NSA/CSS. See § 286.33 *et seq.*

(2) *Advance payments.* (i) Where a total fee to be assessed is estimated to exceed $250, advance payment of the estimated fee will be required before processing of the request, except where assurances of full payment are received from a requester with a history of prompt payment. Where a requester has previously failed to pay a fee within 30 days of the date of billing, the requester will be required to pay the full amount owned as well as make an advance payment of the full amount of any estimated fee before processing of the request continues.

(ii) For all other requests, advance payment, *i.e.*, a payment made before work is commenced, will not be required. Payment owed for work already completed is not an advance payment, however, responses will not be held pending receipt of fees from requesters with a history of prompt payment. Fees should be paid by certified check or postal money order forwarded to the Chief, Office of Policy, and made payable to the Treasurer of the United States.

4. § 299.5 is revised to read as follows:

§ 299.5 Appeals.

Any person denied access to records, or denied a fee waiver may, within 60 days after notification of such denial, file an appeal to the Freedom of Information Act Appeals Authority, National Security Agency/Central Security Service. Such an appeal shall be in writing addressed to the Freedom of Information Act Appeals Authority, National Security Agency/Central Security Service, Fort George G. Meade, Md. 20755-6000, shall reference the initial denial and shall contain in sufficient detail and particularity the grounds upon which the requester believes release of the information, or granting of the fee waiver is required. The Freedom of Information Act Appeals Authority shall respond to the appeal within 20 working days after receipt of the appeal.

Dated: April 9, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-8709 Filed 4-12-91; 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-47

[FPMR Amdt. H-180]

Utilization and Disposal of Real Property

AGENCY: Federal Property Resources Service, General Services Administration.

ACTION: Final rule.

SUMMARY: This rule amends the Federal Property Management Regulations to revise the procedures for reporting and disposing of certain excess Government-owned excess real property on which any hazardous substance was stored for one year or more, known to have been disposed of or released. The procedures are being revised to require the reporting agency to provide pertinent information to the disposal agency and to require the disposal agency to provide that information to recipients.

DATES: This regulation is effective April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Majorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, (202-501-0052).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

These revisions are being promulgated pursuant to requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) and the implementing Environmental Protection Agency regulations Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property (40 CFR part 373), as published in the Federal Register of April 16, 1990.

List of Subjects in 41 CFR Part 101-47

Surplus Government property, Government property management.

PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Accordingly, 41 CFR part 101-47 is amended as follows:

1. The authority citation for part 101-47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. The table of contents for part 101-47 is amended to add the following entry:

Sec. 101-47.304-14 Provisions relating to hazardous substance activity.

Subpart 101-47.2—Utilization of Excess Real Property

2.-3. Section 101-47.202-2 is amended by adding paragraph (b)(10) to read as follows:

§ 101-47.202-2 Report forms.

* * * * *

(b) * * *

(10) With respect to hazardous substance activity on the property:

(i) A statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity, as defined by regulations issued by the Environmental Protection Agency at 40 CFR part 373, took place on the property. Hazardous substance activity includes situations where any hazardous substance was stored for one year or more, known to have been released, or disposed of on the property. Agencies reporting such property shall review the regulations issued by the Environmental Protection Agency at 40 CFR part 373 for details on the information required.

(ii) If such activity took place, the reporting agency must include information on the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place. In addition to the specific information on the type and quantity of the hazardous substance, the reporting agency shall also advise the disposal agency if all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of the property was reported excess. If such action has not been taken, the reporting agency shall advise the disposal agency when such action will be completed.

(iii) If no such activity took place, the reporting agency must include a statement: "The (reporting agency) has determined, accordance with regulations issued by the Environmental Protection Agency at 40 CFR part 373, that there is no evidence to indicate that hazardous substance activity took place on the property during the time the property was owned by the United States."

4. Section 101-47.203-7 is amended by adding paragraph (h) to read as follows:

§ 101-47.203-7 Transfers.

* * * * *

(h) The transferor agency shall provide to the transferee agency all information held by the transferor concerning hazardous substance activity as outlined in § 101-47.202-2.

Subpart 101-47.3—Surplus Real Property Disposal

5. Section 101-47.304-14 is added as follows:

§ 101-47.304-14 Provisions relating to hazardous substance activity.

(a) Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with § 101-47.202-2(b)(10), the disposal agency shall incorporate such information into any Invitation for Bids/Offers to Purchase and include the following statements:

"Notice regarding hazardous substance activity:

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), 42 U.S.C. section 9620(h).

The (holding agency) advises that (provide information on the type and quantity of hazardous substances; the time at which storage, release, or disposal took place; and a description of the remedial action taken).

All remedial action necessary to protect human health and the environment with respect to the hazardous substance activity during the time the property was owned by the United States has been taken. Any additional remedial action found to be necessary shall be conducted by the United States."

(b) In the case where the purchaser is a potentially responsible party (PRP) with respect to the hazardous substance

activity, the above statements must be modified as appropriate to properly represent the liability of the PRP for any remedial action.

6. Section 101-47.307-2 is amended by adding paragraph (d) to read as follows:

§ 101-47.307-2 Conditions in disposal instruments.

* * * * *

(d) Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with § 101-47.202-2(b)(10), the disposal agency shall incorporate such information into any deed, lease, or other instrument executed pursuant to part 101-47. See the language contained in § 101-47.304-14. In the case where the purchaser is a potentially responsible party (PRP) with respect to the hazardous substance activity, the language must be modified as appropriate to properly represent the liability of the PRP for any remedial action.

Dated: March 14, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-8714 Filed 4-12-91; 8:45 am]

BILLING CODE 6820-96-M

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41 CFR Part 302-1

[FTR Amendment 16]

RIN 3090-AD76

Federal Travel Regulation; "Last Move Home" Benefits for Senior Executive Service Career Appointees Upon Retirement

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This amendment adopts as a final rule with certain clarifying and editorial changes, the interim rule published at 54 FR 29716, July 14, 1989. That interim rule authorized limited relocation allowances for a "last move home" under certain conditions for eligible Senior Excecutive Service (SES) career appointees to the place where they will reside upon separation from Federal service for retirement. The "last move home" benefit is intended to increase the mobility of SES career appointees nearing retirment.

EFFECTIVE DATE: The provisions of this amendment are effective September 22, 1988, and apply to eleigible SES career appointees who are separated from Federal service on or after September 22, 1988, for purposes of retirement.

FOR FURTHER INFORMATION CONTACT: Robert Clauson, Travel Mangement Division (FBT), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: .

Background

On July 14, 1989, the General Services Administration (GSA) published an interim rule with request for comments, which implemented "last move home" allowances for eligible SES career appointees upon separation from Fedderal service for retirement. GSA received comments from the Senior Executives Association and 11 Federal agencies. All respondents offered suggestions intended to improve the clarity of the regulation.

Discussion of Comments

At the suggestion of the Senior Executives Association, § 302-1.101, Eligibility Criteria, has been revised to more clearly specify who is eligible. The interim rule provided that to be eligible for "last move home" expenses, a separating career appointee at the time of the geographic transfer or reassignment must have been eligible to receive an annuity for optional retirement (e.g., was under the Civil Service Retirement System (CSRS) and was age 55 with 30 years of service) or must have been awithin 5 years of such eligibility (e.g., was under the CSRS and was age 50 with 25 years of service). The final rule has been revised to also include any separating career appointee who was eligible for discontinued service retirement (DSR) or early voluntary retirement udner an Office of Personnel Management (OPM) authorization, at the time of the transfer or reassignment (i.e., was age 50 with 20 years of service, or any age with 25 years of service) even if the individual was not within 5 years of optional retirement (e.g., was under the CSRS and was age 52 with 22 years of service, or was uiider the CSRS and was age 47 with 25 years of service). (Individuals who are geographically reassigned or transferred generally are eligible for DSR in lieu of taking the new assignment if they meet the DSR age and length of service requirements.)

The final rule does not, however, incorporate the suggestion that individual who were within 5 years of the age and service requirements for DSR at the time of transfer or reassignment (e.g., age 45 with 20 years of service) be covered since age and length of service are only two of the factors affecting DSR eligibility. On the date of a geographic reassignment or transfer, it is not possible to determine what future event (such as a reduction in force) affecting these individuals might bring about an involuntary separation which would permit DSR. If the regulations were expended to include individuals merely within 5 years of meeting the DSR age and service requirements at the time of the geographic move, individuals not meeting the statutory requirements would be included under the regulatory qualifying conditions.

The purpose of the "last move home" legislation is to encourage individuals who are contemplating retirement within the near future to accept a reassignment. As noted in the report of the Senate Committee on Appropriations (Report 100-387, 100th Congress, 2nd Session), "when asked by their agencies to relocate, senior executives with 25 years of Government service will frequently opt for a discontinued service retirement at a reduced annuity rather than leave the place where they are their families have settled. The prospect or uprooting and then shouldering the expense of returning in a relatively short time outweighs their desire to continue in Government service."

The language in the regulation additionally has been revised to clarify that individuals who transfer from other than an SES career appointment, including an appointment in a civil service position outside the SES (e.g., a GS/GM 15 position), to an SES career appointment are included.

Based on specific comments, the following sections have been clarified as follows: § 302-1.104 by expanding the listing of non-allowable expenses to be all inclusive; § 302-1.105 by more precisely qualifying "same general or metropolitan area"; and § 302-1.107 by adding a specific prohibition on the use of travel advances. Additionally, a number of editorial refinements have been incorporated throughout the final rule.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has

chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302-1

Government employees, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, the interim rule amending 41 CFR part 302-1, published at 54 FR 29716, July 14, 1989, is adopted as a final rule with the following changes:

PART 302-1—APPLICABILITY, GENERAL RULES, AND ELIGIBILITY CONDITIONS

1. The authority citation for part 302-1 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

Subpart A—New Appointees and Transferred Employees

§ 302-1.5 [Amended]

2. Section 302-1.5(b)(3) is amended by removing the reference "Part 302-1" and adding in its place the word "subpart".

§ 302-1.11 [Amended]

3. Section 302-1.11(c) is amended by removing the reference "Part 302-1" and adding in its place the word "subpart".

§ 302-1.13 [Amended]

4. Section 302-1.13(c)(2)(iii) is amended by removing the reference "Part 302-1" and adding in its place the word "subpart".

SUBPART B—SES CAREER APPOINTEES UPON SEPARATION FOR RETIREMENT

§ 302-1.100 [Amended]

5. Sections 302-1.100 (a) and (b) are amended by removing the word "regulation" where it appears and adding in its place the word "subpart".

6. Section 302-1.101 is revised to read as follows:

§ 302-1.101 Eligibility criteria.

An SES career appointee, as defined in § 302-1.100, is eligible, upon separation from Federal service, for those travel and transportation allowances specified in § 302-1.103 of this subpart, if such individual meets the following criteria:

(a) Was transferred or reassigned geographically at any time in the interest of the Government and at Government expense from one official station to another for permanent duty as a career appointee in the SES, including a transfer or reassignment:

(1) From an SES career appointment to another SES career appointment; or

(2) From other than an SES career appointment, including an appointment in a civil service position outside the SES, to an SES career appointment;

(b) At the time of the transfer or reassignment:

(1) Was eligible to receive an annuity for optional retirement under section 8336(a), (b), (c), (e), (f), or (j) of subchapter III of chapter 83 (Civil Service Retirement System (CSRS)) or under section 8412 of subchapter II of chapter 84 (Federal Employees Retirement System (FERS)) of title 5, U.S.C.; or

(2) Was within 5 years of eligibility to receive an annuity for optional retirement under one of the authorities in subparagraph (b)(1) of this section; or

(3) Was eligible to receive an annuity based on discontinued service retirement, or early voluntary retirement under an OPM authorization, under section 8336(d) of subchapter III of chapter 83 or under section 8414(b) of subchpater II of chapter 84 of title 5, U.S.C.;

(c) Is separated from Federal service on or after September 22, 1988;

(d) Is eligible to receive an annuity upon such separation under the provisions of subchapter III of chapter 83 (CSRS) or chapter 84 (FERS) of title 5, U.S.C., including an annuity based on optional retirement, discontinued service retirement, early voluntary retirement under an OPM authorization, or disabiality retirement; and

(e) Has not previously been authorized and received "last move home" benefits upon separation from Federal service for retirement.

7. Section 302-1.102 is revised to read as follows:

§ 302-1.102 Agency authorization or approval.

A career appointee who is eligible for moving expenses under this subpart shall submit a request to the designated agency official for authorization or approval of the moving expenses stating tentative moving dates and origin and destination locations of the planned move. Such requests shall be submitted in a format and timeframe as prescribed by agency policy and procedures.

8. Section 302-1.103 is revised to read as follows:

§ 302-1.103 Allowable expenses.

When the head of the agency concerned, or his/her designee, authorizes or approves, the travel and transportation expenses spcified in this section shall be paid for those individuals who are eligible for such expenses under § 302-1.101. Allowable expenses are as follows:

(a) Travel expenses including per diem under § 302-2.1 for the individual.

(b) Transportation expenses under § 302-2.2(a), but not per diem, for the individual's immediate family.

(c) Mileage allowance under § 302-2.3, to the extent travel is performed by privately owned automobile.

(d) Transportation and temporary storage of household goods under part 302-8 not to exceed 18,000 pounds net weight.

9. Section 302-1.104 is revised to read as follows:

§ 302-1.104 Expenses not allowable.

Items of expense not listed in § 302-1.103 which generally are authorized for reimbursement in the case of transferred employees; (e.g., per diem for family, cost of househunting trip, subsistence while occupying temporary quarters, miscellaneous expense allowance, residence sale and purchase expenses, leasebreaking expenses, nontemporary storage of household goods, relocation income tax allowance, and relocation services) are not authorized for separated SES career appointees upon retirement.

10. Section 302-1.105 is amended by revising paragraphs (a) and (c) to read as follows:

§ 302-1.105 Origin and destination.

(a) The expenses listed in § 302-1.103 may be paid from the official station where separation of the career appointee occurs to the place where the individual has elected to reside within the United States, the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, a United States territory or possession, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States under the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979)); or if the individual dies before the travel and transportation are completed, expenses may be paid to the place within the areas listed in this paragraph wheere the immediate family elects to reside even if different from the place elected by the separated career appointee.

* * * * *

(c) These provisions contemplate a move to a different georgraphical area. In the event the place where the individual has elected to reside is within the same general local or metropolitan area in which the official station or residence was located at the time of the career appointee's separation, the expenses authorized by this subpart

may not be paid unless the mileage criteria specified in § 302-1.7 for a short distance transfer are met.

11. Section 302-1.107 is revised to read as follows:

§ 302-1.107 Use of funds.

Travel advances will not be issued to cover any of the expenses authorized by this subpart. Transportation expenses should be paid through the use of U.S. Government Transportation Requests and U.S. Government Bills of Lading to the maximum extent possible to minimize travel and transportation costs and the need for individuals to use personal funds. However, individuals who have been authorized or approved to make their own moving arrangements may be reimbursed for their actual transportation expenses not to exceed applicable coach air fares for transportation of the individual and immediate family, or the applicable allowances under the commuted rate schedule for moving and storage of the household goods.

Dated: March 26, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-8711 Filed 4-12-91; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-201; RM-7185]

Radio Broadcasting Services; Fayetteville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 221C3 for Channel 221A at Fayetteville, Arkansas, and modifies the license of Station KKEG(FM) to specify operation on the higher powered channel, as requested by Demaree Media, Inc. See 55 FR 15247, April 23, 1990. Coordinates for Channel 221C3 at Fayetteville are 36-11-00 and 93-59-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 23, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-201, adopted March 27, 1991, and released April 10, 1991. 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

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by removing Channel 221A at Fayetteville and adding Channel 221C3.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-8797 Filed 4-12-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-126; RM-7198]

Radio Broadcasting Services; Livingston, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WLIV, Inc., licensee of Station WXKG(FM), substitutes Channel 240C3 for Channel 240A at Livingston, Tennessee, and modifies its license to specify operation on the higher powered channel. See 55 FR 10791, March 23, 1990. Channel 240C3 can be allotted to Livingston, Tennessee, in compliance with the Commission's minimum distance separation requirements at the petitioner's licensed site. The coordinates for Channel 240C3 are North Latitude 36-22-28 and West Longitude 85-18-20. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-126, adopted March 27, 1991, and released April 18, 1991. 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, 1714 21st Street NW., Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 240A and adding Channel 240C3 at Livingston.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-8798 Filed 4-12-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 910117-1017]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Correction

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

ACTION: Interim final rule; correction.

SUMMARY: This action corrects errors in an interim final rule that changed recordkeeping and reporting requirements for the groundfish fisheries of Alaska (56 FR 9636, March 7, 1991). These corrections are necessary to (1) Remove an unintended reporting requirement for shoreside processors which process groundfish from the Bering Sea and Aleutian Islands Area (BSAI); and (2) clarify that BSAI groundfish processors must report all fish weights on weekly production reports to at least the nearest 0.1 metric ton (mt).

DATES: Effective April 15, 1991.

ADDRESSES: Comments on this correction should be sent to Susan J. Salveson, NMFS, Alaska Regional Office, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Susan Salveson (Fisheries Management Biologist), NMFS, Alaska Regional Office, Fisheries Management Division, P.O. Box 21668, Juneau, Alaska 99802, telephone 907-586-7229.

SUPPLEMENTARY INFORMATION: NMFS is correcting BSAI reporting requirements that were implemented under an interim final rule published on March 7, 1991 (56 FR 9636). The interim final rule amended recordkeeping and reporting requirements, codified at 50 CFR 672.5 and 675.5, to improve management of groundfish fisheries in the Gulf of Alaska (GOA) and BSAI. NMFS intended to maintain consistency between BSAI and GOA recordkeeping and reporting requirements. However, the interim final rule implemented two changes to the BSAI regulations that were unintentional, inconsistent with GOA regulations, and inconsistent with the intent of the interim final rule expressed in the preamble to the interim final rule.

First, § 675.5(c)(1)(i) of the interim final rule implemented an unnecessary reporting requirement for BSAI shoreside processors to submit "check-in reports." This requirement was not included in the GOA reporting requirements and should not have been included in § 675.5(c)(1)(i) because the first weekly production report submitted by a shoreside processor after the beginning of a fishing year or after a check-out report suffices for a "check-in" report under § 675.5(c)(1).

Second, § 675.5(c)(2)(iii)(I) of the interim final rule did not clarify that processors who process BSAI groundfish must report all fish weights on weekly production reports to at least the nearest 0.1 mt. This requirement was explained in the preamble to the interim final rule and was implemented in GOA regulations at § 672.5(c)(2)(iii)(I). This notice of correction includes this requirement in § 675.5(c)(2)(iii)(I) of the interim final rule.

In order to correct errors in the interim final rule published in the **Federal Register** on March 7, 1991 (56 FR 9636), the following changes are made:

1. On page 9647, in the second column, paragraph § 675.5(c)(1)(i), lines 32-64 are corrected to read as follows:

(1) *Alaska groundfish check-in/check-out notices*—(i) *Requirement.* Before a processing vessel commences any fishing activity in or receives any groundfish from any Bering Sea and Aleutian Islands reporting area during any fishing year, the operator of the processing vessel must provide a check-in notice to the Regional Director. When any processing vessel completes any fishing activity or receipt of groundfish in any Bering Sea and Aleutian Islands reporting area during any fishing year, the operator of the processing vessel must provide a check-out notice to the Regional Director. When any shoreside processing facility completes receipt of groundfish from any Bering Sea and Aleutian Islands reporting area during any fishing year, the manager of the shoreside processing facility must provide a check-out notice to the Regional Director.

2. On page 9648, in the second column, paragraph § 675.5(c)(2)(iii)(I), add the following sentence to the end of line 13: "All weights in the Weekly Production Report must be reported to at least the nearest 0.1 mt."

Dated: April 9, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-8769 Filed 4-12-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 72
Monday, April 15, 1991

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed revision to regulation.

SUMMARY: On January 17, 1991, the NCUA Board (Board) approved a request for comment on proposed amendments to §701.21(h) regarding member business loans (See 56 FR 2723, 1/24/91). The comment period closed on March 25, 1991. This proposed rule is a revision of the January 17 proposal and reflects changes and amendments resulting from the comments received. The rule is again being issued as a proposal to give all interested parties an opportunity to comment on those amendments that were not part of the original proposal and also to allow for further comment on all aspects of the rule.

DATES: Comments must be received on or before June 14, 1991.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, David M. Marquis, Deputy Director or Timothy P. Hornbrook, Director, Department of Supervision, Office of Examination and Insurance, NCUA, at the above address, or telephone: (202) 682-9640.

SUPPLEMENTARY INFORMATION:

A. Background

These proposed changes have been recommended to the Board on the basis of the history of losses in this area and the experience and information obtained by field staff during the examination process. In summary, member business loans have resulted in extraordinary losses to federally insured credit unions, their members and the National Credit Union Share Insurance Fund (NCUSIF). At the same time, only a very small portion of credit unions are actively involved in making member businesss loans.

The call report information submitted by federally insured credit unions for the period ended December 31, 1990 indicates $1.4 billion in member business loans to 915 credit unions. There was an additional $199.8 million in agricultural loans outstanding, also considered a type of business lending. In total, federally insured credit unions reported $1.6 billion in member business loans. This is a total of .83 percent of total assets which represent an 8.7 percent increase from the prior year.

After a 60-day comment period, a total of 744 comments have been received. A total of 384 comments were received from credit union members. Federal credit unions provided 200 comments and 33 comments came from state-chartered credit unions. Two comments were from national credit union trade associations and ten came from state credit union leagues. Six comments were from state regulators and two comments were from city mayors. Three comments came from law firms. Comments were also received from a credit union sponsor, a farm lobby organization, a state representative and a state legislator.

Forty-one commenters generally supported the proposed regulation. Seven hundred and three commenters opposed one or more provisions of the proposed rule. Numerous commenters stated or implied that NCUA should improve the supervision and examination of credit unions rather than propose a new regulation.

The Board seeks to assure credit unions that it does not intend to prevent well-operated credit unions from continuing to serve their fields of membership. Likewise, there is no intent to proscribe or otherwise limit consumer-type loans to self-employed members. A number of comments tend to imply that increased supervision and education of both examiner staff and credit union staff would result in a lower level of loss and risk without the need to propose changes to the existing regulation. While not disagreeing with the need to provide adequate supervision and increased education, the Board is not convinced that these measures alone will accomplish the desired effect. A continued review of this area will monitor the effect of any final regulation adopted and determine whether restrictions or limits contained therein need to be modified or eliminated.

B. Major Changes From Prior Proposed Rule

Changes incorporated in the January 17 proposed amendment to § 701.21(h) remain unchanged in this current proposal except as noted below.

Definitions—Section 701.21(h)(1)(i). Three hundred and ninety-nine commenters opposed the "source of repayment" clause included in the proposed amendment to § 701.21(h)(1)(i). This was universally believed to limit the ability of credit unions to offer consumer-type loans to self-employed members. In fact, the proposed rule was not intended to include this group of members. This proposed revision was intended to trigger a review of the underlying business in cases where the income from a business would be used to repay a loan, regardless of purpose.

In view of the widespread confusion and ability to achieve similar results in a less burdensome manner, the "source of repayment" language has been deleted from this proposed amendment. The Board expects, however, that all loans be underwritten in accordance with sound lending policies. In cases where business income is used to support repayment of debt, credit unions are expected to verify and analyze the viability of that source of repayment regardless of the amount of purpose of the loan. Failure to perform such analysis shall be considered an unsafe and unsound lending practice by examiners.

Definitions—Section 701.21(h)(1)(i). A number of commenters were apparently unsure of whether mere investment in business or commercial ventures would fall under the general definition of a member business loan. Such investment may include, for example, an investment of a partial interest in a condominium project or similar venture. This type of investment is clearly included within the definition. In addition, examination findings indicate that a number of credit unions fail to properly recognize certain types of member business loans as such. For example, purchase of investment property, e.g., a rental property, is often

improperly classified as a consumer loan. Section 701.21(h)(1)(i) has been modified by adding "investment property or venture" to the definition. At the same time, the Board notes that mere investment in stock of a publicly held corporation would not be considered a member business loan.

Definitions—Section 701.21(h)(1)(i)(A). Eighty-eight commenters specifically requested that loans secured by residential real estate be exempt from the definition of a member business loan. In view of the comments received and upon further review, it does not appear that this type of security has resulted in significant losses, regardless of purpose. Accordingly, an exemption from the definition, for loans secured by a lien on a 1 to 4 family dwelling that is the member's primary residence, has been reinstated in this proposed rule.

Definitions—Section 701.21(h)(1)(i)(C). The minimum loan amount included within the definition of a member business loan was proposed to be lowered from $25,000 to $10,000. One hundred and fifty-six commenters opposed this reduction. After further review of this limit, it does not appear that lowering the amount to $10,000 will provide any significant reduction in losses to credit unions or the NCUSIF. In addition, as noted earlier, credit unions are expected to properly evaluate all requests for loans regardless of amount or purpose. Accordingly, the $25,000 minimum to trigger the requirements of this section is reinstated within this proposed rule. NCUA's call report forms will be revised, however, to collect data on all business-purpose loans, regardless of loan amount.

Definitions—Section 701.21(h)(1)(v). A definition of the "loan-to-value" (LTV) ratio has been added. This defintion was not included in the prior proposal. In view of its importance in other sections, and to clarify this term, this definition has been included. The LTV ratio is defined to mean the ratio of the amount of all funds borrowed from all sources secured by a specific item of collateral divided by the market value of the collateral. Market value, although not redefined in this section will be considered the same as defined in part 722 of these rules (Appraisals).

Experience Requirement—Section 701.21(h)(2)(i)(F). In the January 17 proposal, this provision appeared as §701.21(h)(2)(ii)(D). Forty-four commenters objected to this provision, while thirteen commenters approved. Those objecting indicated that the proposed definition would prove unworkable in practice. In repsonse to these comments, the specificity of the qualifications has been modified. Under the revised proposal, the credit union board of directors shall be responsible for determining the criteria to be used to measure the 2-year direct experience requirement. In addition, for clarity, this provision was incorporated into the section of the regulation addressing written loan policies.

Documentation Requirements—Section 701.21(h)(2)(i)(H). This proposal clarifies the term "income and expenses" by substitution of the term "income statement", which is more commonly used.

Other policies—Section 701.21(h)(2)(i)(A). The January 17 proposal, which contained both (A) and (B) subparts, has been combined into a new § 701.21(h)(2)(ii)(A). The revised section combines both LTV ratio criteria and lien position on security.

Although implicit within the existing rule, this proposed rule clarifies that member business loans shall be granted as secured credit. The Board believes that this change shall have little, if any, impact on credit unions as virtually all members business loans have been granted as secured credit.

Fifty-one comenters pointed out that, especially for self-employed members, a residence is the primary asset to be leveraged in order to finance a business venture. Using built-up equity in this property is crucial to these individuals. Limiting member business loans to first liens would severely limit the ability of credit unions to serve their self-employed members. In addition, a limitation to a first lien could have the effect of consolidating long-term debt with short-term financing in order to meet the first lien requirement of the rule. This is not a prudent lending practice. Accordingly, under circumstances as described below, the use of second liens is permissible.

At the same time, it is important to note that credit unions must verify the amount of equity available, through use of title searches, appraisals and similar means. Failure to verify equity simultaneous with granting the loan will be considered to unsafe and unsound lending practice. In addition, prudent lending practices require that borrowers contribute some equity to business loans. This ensures that borrowers maintain an active interest in the success of their businesses and therefore, responsibly manage these project.

The ability of a credit union to realize on collateral securing loans is dependent upon a number of factors. Collateral risk exists in cases where a market decline in the value of collateral exceeds the equity used to secure loans. For this reason, LTV ratios must reflect this risk and should be limited to a percentage of the current market value of the project. Further, use of subordinate lien positions exposes lenders to additional credit risk. This risk exists in cases where borrowers fail to meet the terms of another lender with a superior lien. Lenders are limited in the ability to monitor this risk, and, therefore, to assess the financial condition of the borrower. Finally, use of subordinate lien positions exposes lenders to a type of liquidty risk. This type of risk occurs when a lender must pay off superior liens in order to realize upon the value of the collateral (through default on any of the liens). In some cases, these superior interests are significant. At times, these interests have exceeded the ability of the credit union to fund them. Accordingly, use of lien positions other than first or second are not considered prudent lending practices for member business loans by credit unions.

For the above reasons, this section is proposed to be modified as follows:

—A second lien shall be acceptable, provided the LTV ratio does not exceed 70 percent;

—A first lien shall be acceptable, provided the LTV ratio does not exceed 80 percent;

—A first lien plus private mortgage or equivalent type insurance, provided by an insurer acceptable to the credit union, or insurance or guarantees by or subject to advance commitment to purchase by, an agency of the federal government or of a state or any of its political subdivisions, shall be acceptable, provided the LTV does not exceed 95 percent.

—No member business loans shall exceed an LTV of 95 percent.

Signature of Principal—Section 701.21(h)(2)(ii)(B). In the January 17 proposal, this section appeared as § 701.21(h)(2)(i)(C). This provision received a number of comments from credit unions which serve nonprofit corporations. These would include charitable organizations, churches, cooperatives and similar groups. State-chartered credit unions, in some cases, are authorized by state law to lend to these groups in excess of their shareholdings in the credit unions. Federal credit unions are prohibited from lending in excess of their shareholdings to other than natural person members under the standard Federal Credit Union Bylaws. Commenters noted that the corporate structure of such groups does not provide for a natural person who could act as the principal. These commenters

argue that, given the low level of losses with such groups, the provision for requiring the signature of a principal should not be imposed where the borrower is organized or incorporated as a nonprofit corporation. Note that this exception is only relevant to state-chartered credit unions whose state laws permit such activity. The Board seeks additional comments in this area prior to adopting a change from the January 17 proposal. In particular, information is requested concerning the types of loans which might be made, amounts and relative risk involved with this type of loan program.

Loans to One Borrower—Section 701.21(h)(2)(iii)(A). Forty-three commenters objected to this proposal. Many of these commenters expressed the belief that the existing limitation on loans to one borrower of 20 percent of reserves to acceptable. Twenty-three commenters approved of the proposed rule. The proposed rule lowered this amount to 10 percent of reserves, excluding the Allowance for Loan Losses account. This limitation effectively doubles the diversification of concentrations of credit to one borrower. Although the Board continues to believe that this diversification policy is appropriate, this proposed rule places a minimum amount of $75,000. Losses on loans below this threshold amount have been insignificant. Accordingly, the rule is being revised to continue to limit loans to one borrower to 10 percent of reserves or $75,000, whichever is higher. It should be noted that this provision does not amend the statutory requirement of the Federal Credit Union Act which limiting federal credit union loans to one borrower to ten percent of unimpaired capital and surplus.

In addition, this section is clarified to indicate that exceptions to the loans to one borrower rule shall be considered by the regional director responsible for the region where the credit union is headquartered. The existing rule states that the Board is responsible; the Board has subsequently delegated this responsibility to the regional directors. This revision merely clarifies this responsibility.

Aggregate Loan Limit—Section 701.21(h)(2)(iii)(B). The January 17 proposed rule limited the aggregate investment in member business loans to 100 percent of reserves. This proposed change elicited ninety-one comments. Seventy-nine comments opposed the proposed rule and indicated that this limit would have the effect of severely curtailing the ability of credit unions to serve their members. This message was particularly disturbing to those credit unions whose members are primarily self-employed or are small business persons. Agricultural credit unions and community credit unions are among the types of credit unions which would appear to be most affected. In addition, there is widespread concern that NCUA is attempting to indirectly curtail member business loans and/or the creidt unions involved in this activity. As a result, there is considerable doubt among commenters that exceptions to the aggregate limit will be impartially evaluated by regional directors.

As indicated earlier, the Board seeks to reassure credit unions that it is fully aware that member business loans have been an integral part of credit union lending programs since the early development of credit unions. At the same time, that lending activity has led, in some instances, to loans to finance high risk endeavors, at little or no risk to the borrower. This is fundamentally different from traditional loans to assist members in development family businesses and similar activities. This rule is intended to accommodate the latter, yet imposed certain limits and controls on the high risk activity seen in recent years which is the basis for most of the losses cited in the January 17 proposal.

This section is further modified to exclude from the calculation of the aggregate limit, portions of loans secured by shares in the credit union or deposits in other financial institutions or guaranteed by or subject to advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions. This is similar to the exclusions provided in the loans to one borrower limit. Its inclusion in this section is merely a clarification of policy.

Additionally, this section is proposed to be amended by including language similar to that of the preceding section (§ 701.21(h)(2)(iii)(A)) clarifying notification requirements and guidance on requests for exception to the limit.

Based on the above, the Board requests specific comments regarding the affect of requiring credit unions to request approval to exceed the limit of 100 percent of reserves in aggregate member business loans upon the operations of credit unions. Alternatives and recommendations are solicited.

Exceptions—Section 701.21(h)(2)(iii)(C). A number of commenters were concerned that regional directors would be biased towards nonapproval of requests for exceptions to either the loans to one borrower limit or the aggregate limit. In view of the central role that member business loans play for some credit unions, it is in the best interest of credit unions, their members and the NCUSIF that credit unions which demonstrate the ability to grant and administer such loans in a safe and sound manner continue this activity within parameters acceptable to all parties.

At the same time, recent losses due to member business loans invoke the necessity of requiring a review and approval process when the level of member business loans could result in unacceptable exposure to risks. This is especially true in credit unions which have demonstrated a poor track record in this type of lending or having exhibited problems in other areas of its operations, including failure to adequately analyze or monitor risk in its programs. It is important to note that the Board expects the regional directors to responsibly evaluate requests for exceptions and also expects credit unions to demonstrate through verifiable evidence, its ability to manage larger volumes of member business loans. Credit unions shall be required to apply to their respective regional director for approval to exceed the loans-to-one borrower limit or the aggregate limit. Information to be included in the reques is stated in the rule. In addition, a number of commenters were concerned that prompt action by regional directors would be necessary in order to prevent undue problems in credit unions awaiting waivers. The Board expects regional directors to respond to all requests for exception to the limits in a prompt and expeditious manner. Every effort will be made to provide a response within 30 days of receipt.

Section 701.21(h)(2)(iii)(C) has been clarified to specify what information regional directors shall consider in evaluating requests to exceed the individual or aggregate loan limits stated in the rule. This provision is provided to assist credit unions in understanding what information regional directors will be considering and, therefore, will help expedite this process. At a minimum, regional directors shall review the CAMEL composite rating for the previous 3 years. In addition, the regional directors will review the credit union's experience in making member business loans. Prior to exceeding either limit stated in § 701.21(h)(2)(iii)(A) or (B), credit unions seeking to exceed the limit shall document this experience by submitting the following member business loan information to the regional director:

—The history of loan losses;

—Loan delinquency;

—Volume and cyclical or seasonal variations;
—Diversification by type and purpose;
—Concentrations of credit to one borrower or group of associated borrowers in excess of 10 percent of reserved;
—Underwriting standards and practices;
—Written lending policies;
—Types of loans grouped by purpose and collateral; and
—Qualifications of personnel responsible for underwriting and administering member business loans.

Monitoring—Section 701.21(h)(2)(iii)(E). In view of the extraordinary exposure to loss and the speed with which such losses have been seen to consume credit union retained earnings, it is critical for NCUA regional directors to closely monitor the status of credit unions engaged in making member business loans. Closer supervision, through monitoring, is intended to provide an opportunity for earlier action by NCUA in preventing or reducing losses. A new section, § 701.21(h)(2)(iii)(E), has been added to the proposed rule. Credit unions which have outstanding member business loans in excess of 100 percent of reserves, shall be required to report the status of the member business loan portfolio on a monthly basis. Such reports shall provide a foundation for NCUA to evaluate the condition of the loan portfolio and its potential risk to the credit union's viability. Such evaluations may result in a reconsideration of exceptions to limits provided under § 701.21(h)(2)(iii) (A) or (B) if unsafe or unsound conditions are found to exist.

Monthly reports shall include information pertaining to the total number and amount of member business loans outstanding; member business loan delinquencies which exceed 10 days; allowance for losses or member business loans; status of all concentrations of credit in excess of 10 percent of reserves to one borrower or group of associated borrowers; all loans for construction, development or speculative purposes and any other information pertinent to the safety and soundness of the member business loan portfolio.

Maturity—Section 701.21(h)(2)(iii)(D). One hundred and four commenters opposed this provision. Further analysis has indicated that the proposed 60-month limit on member business loans was inappropriate and could, in some cases, increase the risk of such loans. In some cases, commenters noted that balloon loans which mature in 60 months are difficult to monitor and could expose the credit union to considerable risk in the interim. In addition, forcing lenders to call a loan at 60 months, and then refinance, will add needless costs to borrowers. The prevailing lending practices common to business lenders adequately resolve such issues.

Accordingly, this section is proposed to be revised by clarifying that member business loans shall be granted for terms which call for payment of principal and interest consistent with the purpose, security, creditworthiness of the borrower and sound lending practices. For example, operating loans typically rollover annually. To extend such loans beyond the expected use of the funds will be viewed as an unsafe and unsound lending practice. In any event, member business loans shall be limited to 12 years, the general loan maturity limit stated in the Federal Credit Union Act.

Construction, development and speculative real estate lending—Section 701.21(h)(3). This area elicited a small number of comments, which were divided in their views. In discussions, however, various groups and individuals have suggested that this type of lending be prohibited entirely. It is clear from information developed during recent examinations, and the views of commenters, that this segment of member business lending is significantly higher risk than any other. Although agreeing with the provision, some commenters requested additional clarification, by way of specific example, of types of loans intended to be covered by this section of the rule. Recent examples include loans to finance development of residential real estate projects (*e.g.*, condominiums, single family and multi-family), hotels and commercial real estate (*e.g.*, strip malls, office buildings). While this list is certainly not all-inclusive, this type of lending is generally characterized by projects which rely on anticipated future sale of the project or future cash flow of an uncompleted project in order to repay the debt. Since advance commitments to sell are rare, the value of the project is dependent upon the accuracy of appraisals and projections of the future value of estimated cash flows or market value. Both projections are highly subjective. Failure to accurately analyze such projects, or changes in underlying assumptions, cause this type of lending to be considered high risk. Accordingly, the limitations contained in the January 17 proposed rule, remain unchanged.

Summary

Member business lending is a specialized function which must be analyzed separately from consumer lending. This requires specialized experience and training apart from that traditionally gained through consumer lending. Both credit unions and regulators must understand this type of lending in order to properly evaluate loans and their inherent risk. All loans entail an evaluation and assumption of risk by the borrower. This risk cannot be eliminated short of curtailing this type of lending. Since this alternative is unacceptable, credit unions and regulators need to address the controls and limitations appropriate to maintain safe and sound lending programs while continuing to serve credit union members' needs. This regulation is intended to provide such controls and limitations. Credit unions, for their part, can address risk through appropriate actions regarding interest rates, collateral requirements, qualifications of borrowers and administering effective monitoring and collection programs.

Requirements for Insurance—Section 741.3. No change is being proposed to this section. State regulatory authorities and federally insured state-chartered credit unions are advised, however, that exemptions previously obtained by states under the existing regulations are no longer valid to the extent that existing state regulations are not substantially equivalent to the final regulations adopted by the NCUA Board. Such states must reapply for exemption as provided in this section.

C. Regulatory Procedures

Regulatory Flexibility Act

The Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions because the rule applies only to the federally insured credit unions which make member business loans. Approximately 27 federally insured credit unions with assets less than $1 million grant member business loans. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule, if made final, will increase the collection and recordkeeping requirements of the Paperwork Reduction Act. A separate request will be submitted to the Office of Management and Budget for approval prior to the effective date of this regulation.

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 policy making 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 issue of member business loans and their risks to federally insured credit unions are concerns of national scope. In order to enable NCUA and the NCUSIF to have an operable mechanism in place to ensure the safety and soundness of federally insured credit unions, this regulation is proposed. This regulation will apply to all federally insured credit unions. The NCUA Board believes that the protection of the NCUSIF warrants these new restrictions and that the increased restrictions in the proposed amendments will not unduly burden federally insured state-chartered credit unions. 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 amendments may supersede provisions of state law or regulations concerning member business loans which do not substantially meet the requirements of § 701.21(h).

List of Subjects in 12 CFR Part 701

Member business loans, Written loan policies, Conflicts of interest

By the National Credit Union Administration Board on April 4, 1991.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR part 701 is amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 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. 1861 and 42 U.S.C. 3601-3610.

2. In § 701.21, paragraph (h) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(h) Member Business Loans.

(1) Definitions.

(i) *Member business loan* means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agricultural purpose, except that the following shall not be considered member business loans for the purposes of this section:

(A) A loan or loans fully secured by a lien on a 1 to 4 family dwelling that is the member's primary residence.

(B) A loan that is fully secured by shares in the credit union or deposits in other financial institutions.

(C) A loan meeting the general definition of "member business loan" under (i) above, and, made to a borrower or an associated member (as defined in (iii)), which, when added to other such loans to the borrower or associated member, is less than $25,000.

(D) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the federal government or of a state or any of its political subdivisions.

(ii) *Reserves* means all reserves, including any undivided earnings or surplus but excluding the Allowance for Loan Losses account.

(iii) *Associated Member* means any member with a shared ownership, investment or other pecuniary interest in a business or commercial endeavor with the borrower.

(iv) *Immediate Family Member* means a spouse or other family member living in the same household.

(v) *Loan-to-valve* (LTV) ratio means the quotient of the aggregate amount of all sums borrowed from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

(2) Requirements. Member business loans, as defined in § 701.21(h)(1)(i), may be made by federal credit unions only in accordance with the applicable provisions of § 701.21 (a) through (g) above, to the extent that they are not inconsistent with this section, and the following additional requirements:

(i) Written Loan Policies. The board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:

(A) Types of business loans that will be made;

(B) The credit union's trade area for business loans;

(C) Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans, subject to the limitations of Section 701.21(h)(2)(iii) (B) and (C);

(D) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan;

(E) Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members, subject to § 701.21(h)(2)(iii)(A) below;

(F) Qualifications and experience of personnel involved in making and administering business loans with a minimum of 2-years direct experience with this type of lending.

(G) Analysis of the ability of the borrower to repay the loan;

(H) Documentation supporting each request for an extension of credit or an increase in an existing loan or line of credit shall (except where the board of directors finds that such documentation requirements are not generally available for a particular type of business loan and states the reasons for those findings in the credit union's written policies) include the following: balance sheet, cash flow analysis, income statement, tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns.

(I) Collateral requirements, including loan-to-value ratios; appraisal, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated.

(J) Appropriate interest rates and maturities of business loans.

(K) Loan monitoring, servicing and follow-up procedures, including collection procedures.

(L) Provision for periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans.

(M) Identification, by position, of those senior management employees prohibited by subsection (h)(3) from receiving member business loans.

(ii) Other Policies. The following minimum limits and policies shall also be established in writing and reviewed at least annually for loans granted under this section:

(A) Loans shall be granted on a fully secured basis by collateral as follows:

(*1*) Second lien for LTV ratios of up to 70 percent;

(*2*) First lien for LTV ratios of up to 80 percent;

(3) First lien plus private mortgage, or equivalent type, insurance provided by an insurer acceptable to the credit union or insurance or guarantees by or subject to advance commitment to purchase by, an agency of the federal government or of a state or any of its political subdivisions, for LTV ratios of up to 95 percent;

(4) No member business loans shall be granted which exceed an LTV of 95 percent.

(B) Loans shall not be granted without the personal liability and guarantees of the principals (natural person members);

(iii) Loan limits.

(A) Loans to One Borrower. Unless a greater amount is approved by the NCUA regional director, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 10% of the credit union's reserves, or $75,000, whichever is higher. If any portion of a member business loan is fully secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 10% limit. On or before the effective date, the federal credit union must notify the NCUA regional director, in writing, of any outstanding member business loans made prior to that date which exceed the 10% limit. Federal credit unions are prohibited from making any further advances beyond the 10% limit to borrowers whose aggregate business loans exceed the limit unless an exception has been approved by the regional director in accordance with § 701.21(h)(2)(iii)(C).

(B) Aggregate Loan Limit. Business loans as defined in this section, excluding any portion of a loan which is secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, and including any construction, development and speculative loans granted as provided under § 701.21(h)(3) of this part, shall not exceed 100% of a credit union's reserves. On or before the effective date, the federal credit union must notify the NCUA Regional Director, in writing, of any outstanding member business loans made prior to that date which exceed the 100% limit. Federal credit unions are prohibited from making any further advances beyond the 100% limit unless an exception has been approved by the regional director in accordance with § 701.21(h)(2)(iii)(C).

(C) Exceptions. Credit unions seeking an exception from the limits of § 701.21(h)(2)(iii) (A) or (B) must present the regional director with, at a minimum: the higher limit sought; an explanation of the need by the members to raise the limit and ability of the credit union to manage this activity; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. The analysis of credit union experience in making member business loans shall document the history of loan losses, loan delinquency, volume and cyclical or seasonal patterns, diversification, concentrations of credit to one borrower or group of associated borrowers in excess of 10 percent of reserves, underwriting standards and practices, types of loans grouped by purpose and collateral and qualifications of personnel responsible for underwriting and administering member business loans. Regional directors shall consider, in addition to the information submitted by the credit union, the historical CAMEL ratings.

(D) Maturity. Member business loans shall be granted for periods not to exceed 12 years, consistent with the purpose, security, creditworthiness of the borrower and sound lending policies.

(E) Monitoring Requirement. Credit unions with member business loans in excess of 100 percent reserves shall submit the following information regarding member business loans to their respective regional director on a monthly basis: the aggregate total of loans outstanding; the amount of loans delinquent in excess of 10 days; the balance of the allowance for member business loan losses; the aggregate total of all concentrations of credit to one borrower or group of associated borrowers in excess of 10 percent of reserves; the total of all construction, development or speculative loans; and any other information pertinent to the safe and sound condition of the member business loan portfolio.

(iv) Allowance for Loan Losses.

(A) The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.

(B) Loans classified shall be reserved as follows:

(1) Loss loans at 100% of outstanding amount;

(2) Doubtful loans at 50% of outstanding amounts; and

(3) Substandard loans at 10% of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

(3) Construction, development and speculative real estate lending.

Loans granted under this section to finance the construction or development of a commercial or residential building(s) shall be subject to the following additional provisions:

(i) The aggregate of all such loans shall not exceed 15 percent of reserves;

(ii) The borrower shall have a minimum of 35 percent equity interest in the project being financed;

(iii) Funds for such projects shall be released following on site inspections by independent, qualified personnel in accordance with a preapproved draw schedule.

(4) Prohibitions.

(i) Senior Management Employees. A federal credit union may not make member business loans to the following:

(A) Any member of the board of directors who is compensated as such.

(B) The credit union's chief executive officer (typically this individual holds the title of President or Treasury/Manager).

(C) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasury/Manager).

(D) The chief financial officer (Comptroller).

(E) Any associated member or immediate family member of (A)–(D) above.

(ii) "Equity Kicker/Joint Ventures." A federal credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(5) Recordkeeping. All loans, lines of credit, or letters of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agricultural purpose, shall be sepatately identified in the records of the credit union and reported as such in financial and statistical reports required by the National Credit Union Administration.

(6) Effective Date.

Section 701.21(h) is effective May 15, 1991. All member business loans made

on or after that date must be in full compliance with Section 701.21(h).

[FR Doc. 91-8675 Filed 4-12-91; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 910364-1064]

RIN 0651-AA47

Amendment to Interrogatory Practices

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes an amendment to § 2.120(d)(1) of the rules of practice in trademark cases, which limits the total number of interrogatories that may be served by one party upon another in a trademark interference, concurrent use, opposition, or cancellation proceeding. The proposed amendment shifts, from the responding party to the inquiring party, the burden of filing a motion to determine whether an assertion of an excessive number of interrogatories is well taken.

DATE: Written comments must be submitted on or before May 30, 1991 to ensure consideration.

ADDRESSES: Address written comments to Box 5, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Janet E. Rice.

Written comments will be available for public inspection in room 1008, Crystal Square 5, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Janet E. Rice by telephone at (703) 557-3551 or by mail marked to her attention and addressed to Box 5, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking published in the **Federal Register** on March 7, 1989, at 54 FR 9514, and in the Patent and Trademark Office Official Gazette of March 28, 1989, at 1100 O.G. 137, the PTO proposed amendments to a number of the rules of practice in trademark cases. One of the proposed amendments pertained to § 2.120(d), which then consisted of a single paragraph relating to document production. It was proposed that the section be amended to include a new paragraph (designated "(1)" limiting the number of interrogatories that might be served by one party upon another in a trademark interference, concurrent use, opposition, or cancellation proceeding.

In response to the notice of proposed rulemaking, the PTO received numerous written comments pertaining to proposed § 2.120(d)(1). One individual commented that a party served with excessive interrogatories might make its own count of the questions, answer as many as were allowed under the proposed rule, and not answer the remainder on the ground that supernumerary questions were not authorized. To remedy this problem, the individual suggested that if the proposed rule were adopted, it might be advisable to add "a provision prescribing that relief for an excessive number of interrogatories is a protective order rather than an incomplete response to the interrogatories."

This suggestion, among others, was adopted in the final rule notice published in the **Federal Register** on August 22, 1989, at 54 FR 34886, and in the Patent and Trademark Office Official Gazette of September 12, 1989, at 1106 O.G. 26. Thus, final § 2.120(d)(1) included, as its last sentence, the following provision: "If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and objections to the interrogatories, file a motion for a protective order, accompanied by a copy of the interrogatories which together are said to exceed the limitation."

In addition, the final rule notice indicated that the PTO would monitor the impact of § 2.120(d)(1) carefully and further amend the rule if necessary.

The effective date of the rule amendments specified in the final rule notice was November 16, 1989. Since that time, many attorneys have expressed the opinion, in public meetings relating to trademarks, that it is unfair for a party served with excessive interrogatories to have the burden of filing a motion for a protective order. These attorneys have suggested that the better practice would be to allow the responding party to simply object to the interrogatories on the ground of their excessive number, and leave the propounding party with the burden of filing a motion to compel, if it believes that the objection is not well taken.

Accordingly, § 2.120(d)(1) is proposed to be revised to substitute a motion to compel for the motion for a protective order.

Discussion of Specific Section Proposed To Be Changed

In this discussion, "Trademark Trial and Appeal Board" is abbreviated as "Board."

Section 2.120(d)(1) now provides, in part, that if a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in the paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and objections to the interrogatories, file a motion for a protective order, accompanied by a copy of the interrogatories which together are said to exceed the limitation. The paragraph is proposed to be revised to provide instead that if a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in the paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number. The paragraph is proposed to be further revised to add a requirement that if the party serving the interrogatories, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of interrogatories which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (e) of the section. Paragraph (e) governs motions to compel discovery in inter parties proceedings before the Board, and requires, inter alia, that a motion to compel be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement.

Environmental, Energy, and Other Considerations

The proposed rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed 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 the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The rule change includes no additional or increased fees. Substantive rights to use trademarks are not adversely affected.

The Patent and Trademark Office has determined that this proposed 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; individual industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, or 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 any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

Notice is hereby given that pursuant to the authority contained in section 41 of the Trademark Act of July 5, 1946, 15 U.S.C. 1123, as amended, the Patent and Trademark Office proposes to amend part 2 of Title 37 of the Code of Federal Regulations by revising § 2.120(d)(1) as set forth below. Additions are indicated by arrows (><) and removals by brackets ([]).

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 would continue to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.120 is proposed to be amended by revising paragraph (d)(1) to read as follows:

§ 2.120 Discovery.

* * * * *

(d) *Interrogatories; request for production.* (1) The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefor showing good cause, or upon stipulation of the parties. A motion for leave to serve additional interrogatories must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served. If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and >specific< objections to the interrogatories, [file a motion for a protective order, accompanied by a copy of the interrogatories which together are said to exceed the limitation.] >serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of interrogatories which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (e) of this section.<

* * * * *

Dated: April 8, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-8791 Filed 4-12-91; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-681-N]

RIN 0938-AE59

Medicare Program;

Prospective Payment System for Inpatient Hospital Capital-Related Costs—Optional Computation Sheet and Computer Program

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

ACTION: Proposed rule; availability of additional information.

SUMMARY: We recently proposed to revise the Medicare payment methodology for capital-related costs of inpatient hospital services. The purpose of this notice is to announce to interested individuals and organizations the availability of an optional computation sheet with instructions that would emable a prospective payment hospital to determine which of two proposed payment methodologies would apply during the 10-year transition period and to estimate its impact during the hospital's first cost reporting period beginning in Federal fiscal year 1992. In addition, this notice announces the availability of a computer program that would enable a hospital to estimate the overall impact of the proposed capital prospective payment system during the 10-year transition period.

DATES: The due date for coments as the proposed rule is April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Ed Rees (301) 966-4536.

SUPPLEMENTARY INFORMATION: We recently proposed to revise the Medicare payment methodology for capital-related costs of inpatient hospital services (February 28, 1991; 56 FR 8476). As required by section 1886(g)(1) of the Social Security Act (42 U.S.C. 1395ww(g)(1)), we would replace the current reasonable cost-based payment methodology for these capital-related costs witha prospective payment methodology, effective for cost reporting periods beginning on or after October 1, 1991. This proposed methodology would provide for a 10-year transition period from a blend of a Federal payment and a hospital-specific payment to a fully Federal payment rate.

We have provided hospitals paid under the prospective payment system for inpatient operating costs with an optional computation sheet and instructions to enable each hospital to determine which of two payment methodologies would apply to the hospital during the 10-year capital transition period. We have also provided these hospitals with an optional computer program to enable each hospital to estimate the overall impact on the hospital of the proposed capital prospective payment system during the 10-year transition period. Both the optional program and computer program were prepared for the convenience of hospitals. Hospitals are under no obligation either to complete

the worksheet or to use the computer program.

We are not presenting this package as the only useful vehicle for impact analysis and public comment. Hospitals may prefer to use other available instruments for determining the proposed rule's impact. For those hospitals that do use the computation sheets and program, we note that there is always a possibility of errors or inconsistencies and we ask that any discrepancies found in either the sheets or program that would result in inaccuracies should be brought to HCFA's attention.

The payment policies incorporated into the computation sheet and computer program are based on the proposed rule and are subject to revision based on public commet. The payment factors in the program are based on current actuarial projections and are subject to revision as more recent data become available. Although we have used the best available data in these packages, users should consider in their analysis the possibility that the final policies and payment factors may be different.

This optional computation sheet with instructions and computer program is available to all interested individuals and organizations without charge. The computer program can be used on any IBM compatible personal computer with 5¼ inch disk drive. We note that we are not publishing the optional computation sheet with instructions in the **Federal Register** because the complete package including reference tables is 45 pages.

The optional computation sheet and computer program can be obtained by contacting Ed Rees at (301) 966–4536.

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

Dated: March 26, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–8902 Filed 4–12–91; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO-610-4110-02-24 1A]

RIN 1004-AB24

Operator Self-Inspection of Oil and Gas Production Handling Facilities and Verification of Measurements Involving all Transactions by Oil and Gas Purchasers; Amendment of Onshore Oil and Gas Order No. 3—Site Security

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to propose rule and request for comments.

SUMMARY: The Bureau of Land Management (BLM) intends to amend Onshore Oil and Gas Order No. 3—Site Security. Amendment is needed to set forth minimum requirements for an operator self-inspection program, if automatic custody transfer (ACT) meters are not used, that would result in: verification of all oil sales by pre-sales measurement or by witnessing sales; comparison of purchaser run tickets to operator-measured volumes; identification, investigation, resolution, and reporting of measurement discrepancies to the BLM; maintenance by the operator of records of tank measurements conducted by the operator prior to sales; and routine operator inspection of production facilities each month to ensure adherence to the site security plan. Public comment is requested as to the optimum method of accomplishing these objectives.

DATES: Comments should be submitted by June 14, 1991. Comments received or postmarked after the above date may not be considered in deliberations on the proposal.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building 1849 C Street, NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sie Ling Chiang, (202) 653–2133, or Ray Thompson, (505) 988–6161.

SUPPLEMENTARY INFORMATION: A final rule issuing Onshore Oil and Gas Order No. 3, Site Security, was published on February 24, 1989 (54 FR 8056). Since publication of the Order, the ability of BLM to make an effective and accurate accounting of oil and gas production has been questioned. For this reason, the BLM has re-examined the requirements of Order No. 3. Strengthening provisions in the Order for run ticket verification and for self-inspection will significantly improve the BLM's ability to ensure proper production accountability.

The purpose of the existing requirement in Order No. 3 that operators sign all run tickets is to allow the operators time to verify their own sales quantities. The two days of additional time provided in the Order allows the operator to compare the run ticket with the operator's measurement, making it unnecessary for the operator to witness the actual delivery. However, BLM believes that the operator should be required to make on-the-ground verification instead of merely being allowed an opportunity to verify. Therefore, BLM intends to propose amending Order No. 3 to require operators or their representatives either to witness the sale of produced oil, or to measure and sample before and after the sale, and to report any unresolved differences to BLM.

The BLM requests the public to consider the following 3 options for operators to meet these requirements, to recommend the preferred option, or to suggest further alternatives:

Option 1. The operator would be required to prepare a pre-run ticket containing all the information required on the run ticket except the bottom gauge: All measurements required to establish the net volume in the tank (net standard barrels) prior to sales. The maximum allowable difference between operator's and purchaser's measurement would be established by the operator and would not be allowed to exceed the American Petroleum Institute (API) standards of reproducibility for the measurement of temperature, API gravity, sediment and water (S&W), and tape measurement. The pre-run ticket would contain the allowable limits of difference for the purchase. If the

purchaser's measurement exceeds the allowable limits (for temperature, gravity, S&W and tape measurement), the sale would not take place until the differences are resolved. After the sale is complete, the pre-run ticket would be completed by the operator to include the low gauge data. If the completed prerun ticket and the purchaser's completed run ticket fail to meet the allowable limits, the operator would be required to contact the purchaser within 24 hours and resolve the problem. In cases where the limits are exceeded, the operator would be required to document the findings and what action was taken.

Option 2. The operator would be required to measure and sample the tank contents prior to and after sales as outlined in Option 1. A log would be prepared consisting of all measurement data required to establish the net volume sold. The maximum allowable difference between operator's and purchaser's measurements would be established using API standards of reproducibility for the measurement of temperature, API gravity, S&W, and tape measurement. The data would be compared with purchaser's run ticket, and if any of the measurements exceeds the allowable limits, the operator would be required to contact the purchaser within 24 hours after sales and resolve the discrepancy. In cases where the limits are exceeded, the operator would be required to document the findings and what action was taken.

Option 3. The operator would be required to witness all measurement and testing conducted by the purchaser during the sale or transfer operation and certify that the operation was conducted in accordance with the requirements of this Order. When a sale is completed, the operator would be required to sign and date the run ticket and maintain a certification log clearly identifying each transaction. If the purchaser's procedures are not in compliance with this Order, the sale would not be allowed to take place. If the operator is unable to resolve the differences with the purchaser, the operator would be required to notify BLM of the volume differences and what action was taken.

All of the major and many independent oil companies already take oil volume measurements before contacting the purchaser. Therefore, the proposed requirement to do so should not have a significant economic impact on the majority of operators. Those for whom verification would be a new requirement would benefit by having a record of what quantity was actually in the storage tank and sold to the purchaser. If there are discrepancies in measurement, the operator records would document a claim.

As written, Order No. 3 also requires operators to establish an inspection program for the purpose of periodically measuring production volumes. The Order does not specify how often the operators are required to take measurements.

The BLM will propose specific minimum requirements and frequency for self-inspection through an amendment of Onshore Oil and Gas Order No. 3. The operator would be required to check the lease weekly for broken or missing seals on all appropriate valves and devices. The operator would be required to take tank gauges and record the volume of on hand oil inventories between sales at the lease 3 times during the monthly reporting period. Witnessing or measuring sales as required above would not count toward meeting this requirement.

A record of these inspections would be required to be maintained, including the measurement data, any deficiency found, and the date the inspections were conducted.

Onshore Oil and Gas Order No. 3 would also be amended by adding a requirement for the operator to establish and maintain for a minimum of 6 years a recordkeeping system that would be made available to the authorized officer within two business days upon request, and that would include documentation of all transactions when oil is removed or sold from the lease.

In addition to the options for measurement discussed earlier, public comment is requested on: (1) Whether or not the proposed requirements would adequately provide for verification of quantities of oil sold; (2) whether or not the requirements would deter and identify theft of oil and/or misreporting; and (3) other feasible options for consideration.

Dated: March 5, 1991.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 91-8765 Filed 4-12-91; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-93, RM-7661]

Radio Broadcasting Services; Ladysmith, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Flambeau Broadcasting Company proposing the substitution of Channel 226A for Channel 224A at Ladysmith, Wisconsin, and modification of the license for Station WLDY-FM accordingly. Concurrence by the Canadian government has been requested for Channel 226A at coordinates 45-28-05 and 91-05-00.

DATES: Comments must be filed on or before May 30, 1991, and reply comments on or before June 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Denise B. Moline, Broadcast Media Legal Services, P.O. Box 1667, Manassas Park, Virginia 22111 (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-93, adopted March 27, 1991, and released April 8, 1991. 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.

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.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-8799 Filed 4-12-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 910483-1083]

RIN 0648-AD49

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes a rule that would implement Amendment 16a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP). This proposed rule would: (1) Establish Pacific herring bycatch management measures for the groundfish trawl fisheries; (2) authorize the NMFS Regional Director, Alaska Region (Regional Director), to temporarily prohibit directed fishing for specified groundfish species in all or part of a Federal statistical area to reduce high bycatch rates of prohibited species; and (3) authorize the Regional Director to limit the amount of pollock that may be taken in the directed trawl fishery for pollock using other than pelagic trawl gear. These actions are necessary to promote management and conservation of groundfish and other fish resources. They are intended to further the goals and objectives contained in the FMP that govern these fisheries.

DATES: Comments are invited through May 28, 1991.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Individual copies of Amendment 16a and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fishery Management Biologist, NMFS, (907)586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI) are managed by the Secretary of Commerce (Secretary) according to the FMP prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR part 675. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

Groundfish trawl fisheries use non-selective harvesting techniques resulting in incidental catches (bycatch) of prohibited species such as crab, halibut, and herring. Although prohibited species are required to be immediately returned to the sea, the rigor of groundfish trawl operations on species caught in standard trawl gear results in high bycatch mortality. The level of bycatch varies as a function of a number of factors, including time and area, target species, gear, fishing strategies, and oceanographic conditions. Conflicts arise when bycatch in one fishery is perceived to reduce the resources available to another fishery. Bycatch of crab, halibut, and herring in the groundfish fisheries is particularly contentious because fishermen value the use of these species very differently, depending on the fishery they pursue.

During 1990, the Council adopted the following three FMP amendments that address prohibited species bycatch in the BSAI groundfish fisheries:

(1) Amendment 16 was implemented January 18, 1991 (56 FR 2700, January 24, 1991), and continues the bycatch management regime for Pacific halibut, red king crab, and *C. bairdi* Tanner crab that had expired December 31, 1990, under Amendment 12a (54 FR 34642, August 9, 1989). A portion of Amendment 16 that would have authorized a vessel incentive program to reduce crab and halibut bycatch rates was disapproved by the Secretary. During a November 15, 1990, teleconference call, the Council adopted a revised vessel incentive program for Secretarial review.

(2) Revised Amendment 16 was approved February 1, 1991, and establishes the authority to implement incentive programs to reduce prohibited species bycatch rates in the groundfish trawl fisheries. An interim final rule to implement this amendment is undergoing Secretarial review.

(3) At its September 25-29, 1990, meeting, the Council adopted Amendment 16a for submission to the Secretary for review and approval under section 304(b) of the Magnuson Act. The proposed rule to implement this amendment is the subject of this action. If approved, Amendment 16a would:

(a) Implement management measures to limit Pacific herring bycatch in the groundfish trawl fisheries;

(b) Authorize the Regional Director to temporarily prohibit directed fishing for specified species in all or part of a Federal statistical area to reduce high bycatch rates of prohibited species ("hot-spot closure authority"); and

(c) Authorize the Regional Director to limit the amount of pollock that may be harvested in the directed trawl fishery for pollock using other than pelagic trawl gear.

A description of, and the reasons for, each of the management measures proposed under Amendment 16a follow.

(1) Implement Management Measures to Reduce Pacific Herring Bycatch In the Groundfish Trawl Fisheries

The Council has adopted measures to control the bycatch of herring in the BSAI groundfish trawl fisheries after considering recent declines in eastern Bering Sea herring stocks, reduced or eliminated inshore herring fisheries, and the issue of maintaining traditional subsistence herring fisheries. These measures include a frameworked prohibited species catch (PSC) limit and a series of timed area closures that would be triggered by the attainment of the PSC limit.

Herring that spawn along the eastern shore of the Bering Sea migrate to wintering areas near the western edge of the Bering Sea continental shelf, north and west of the Pribilof Islands. During this annual migration, an aggregate of nine Bering Sea herring stocks pass through areas in which groundfish vessels are trawling; herring from these stocks are incidentally caught during trawl operations. Because herring are easily damaged when they come into contact with trawl nets, trawl mortality approaches 100 percent.

The nine herring stocks, as identified by their spawning grounds, are from Port Moller, Togiak, Security Cove, Goodnews Bay, Cape Avinof, Nelson Island, Nunivak Island, Cape Romanzof, and Norton Sound. Herring bycatch exploitation fractions (the percentage of the herring population taken annually by trawlers) have increased from less than 2 percent in 1983 to 4 to 7 percent in 1989. Although herring caught by domestic and joint venture groundfish trawlers are a designated prohibited species and may not be retained, the amount of herring that may be incidentally taken is not limited.

The inshore herring fisheries are managed by the State of Alaska under

harvest policies established by the Alaska Board of Fisheries. State management of eastern Bering Sea herring stocks provides for full utilization of these stocks in the inshore sac roe, food/bait, and traditional subsistence fisheries. Alaska state harvest policies establish a maximum exploitation fraction of 20 percent on each distinct spawning stock, and specify that exploitation be reduced when herring stock abundance is low or when commercial fisheries occur in areas traditionally exploited by herring subsistence fisheries. Abundance thresholds also are established below which no commercial harvests are allowed. When the Alaska Board of Fisheries reviewed the increases in herring bycatch exploitation fractions for trawl gear at its November 1989 meeting, it found the maximum allowable herring bycatch exploitation fractions stated in its herring harvest policy had been exceeded.

Herring stocks are declining in all Bering Sea areas except Norton Sound. The very strong 1977–78 year classes sustained most eastern Bering Sea herring stocks through the 1980s. These year classes were aged 12 and 13 in 1990 and are rapidly approaching senescence. Except in Norton Sound, no substantial year classes have recruited to eastern Bering Sea herring stocks since the 1977–78 year classes. Herring biomass was below the threshold for a commercial harvest at Nunivak Island in 1990 and was only very slightly above threshold at Nelson Island. Nelson Island and Nunivak Island herring stocks are projected to be below threshold biomass levels in 1991.

Recent declines in the abundance of Bering Sea herring stocks have prompted additional concern over the effect of herring bycatch in the groundfish trawl fisheries on the western Alaska subsistence fisheries. Subsistence utilization of herring is an important part of the culture of the residents of many western Alaskan coastal villages, particularly at Nelson Island. The importance of herring to the traditional culture and economy of the central Yup'ik Eskimo of the Nelson Island area is described in the appendix to the EA/RIR/IRFA prepared for Amendment 16a. The small commercial harvests from these stocks comprise the basis of the cash economies in the coastal villages. While transfer payments from the Government also are an important source of income, the payments consist primarily of payments in kind rather than cash payments.

Given the declines in eastern Bering Sea herring stocks, the reduced or eliminated inshore herring fisheries, and the concern for maintaining traditional subsistence herring fisheries, the Council adopted measures to control the bycatch of herring in the BSAI groundfish trawl fisheries. These measures include a frameworked PSC limit and a series of timed area closures that would be triggered by the attainment of the PSC limit. Only areas along the herring migration route would be closed if the PSC limit is attained and only for the period of time that herring are present.

Frameworked PSC Limits for Herring

A flexible or "frameworked" herring PSC limit is proposed to address anticipated fluctuations in the Bering Sea herring biomass. The PSC limit would be based on 1 percent of the annual eastern Bering Sea herring stock biomass. This proposal would accommodate infrequent periods of very strong recruitment that have resulted in dramatic stock fluctuations over the last decade. The frameworked procedure would require an annual determination of the eastern Bering Sea herring stock biomass and an annual establishment of the PSC limit as 1 percent of the herring stock size. This procedure would result in higher herring PSC limits when herring are abundant, and would reduce PSC limits when herring are scarce.

Initial herring bycatch rates in the groundfish fishery of 1 percent of the herring biomass for a given fishing year would likely approach historical herring bycatch exploitation fractions of 2 to 3 percent by the end of a fishing year. This would occur because even though the proposed Herring Savings Areas would be closed once the 1 percent herring bycatch limit was reached, additional herring bycatch would occur outside of the Herring Savings Areas.

Although a herring PSC limit equal to 1 percent of the eastern Bering Sea herring biomass is proposed, the Council considered alternative PSC limits of 2 and 4 percent of the annual herring biomass. The results of the bycatch simulation model used for the analysis presented in the EA/RIR/IRFA, however, indicated that a 1 percent herring PSC limit is superior to the status quo or to PSC limits of 2 or 4 percent in terms of estimated herring bycatch, total bycatch impact cost, and net revenue from the groundfish trawl catch minus bycatch impact costs. The Secretary, after consultation with the Council, would establish the herring PSC limit for an upcoming fishing year based on annual estimates of herring stock biomass. A source of biomass estimates based on aerial surveys of spawning stocks and other abundance index parameters is the Alaska Department of Fish and Game (ADF&G); the estimates are available in the fall of each year. A preliminary notice of the herring bycatch limit for an upcoming year would be made available for public review and comment concurrently with the notice of preliminary initial specifications of the harvestable amount of groundfish required to be published by the Secretary in the **Federal Register** under § 675.20(a)(7). A final notice of the herring PSC limit for a fishing year also would be published in the **Federal Register** concurrent with the final notice of initial specifications.

At its December 3–7, 1990, meeting, the Council received a report from the ADF&G on the status of eastern Bering Sea herring stocks and associated biomass estimates. Based on spawn deposition surveys, aerial surveys of spawning stocks, and other age and abundance index parameters, ADF&G estimated current herring biomass to be 83,406 metric tons (mt). The Secretary determines that this estimate is derived from the best available scientific information. Under the proposed rule, therefore, the Secretary would establish a herring PSC limit for 1991 equal to 1 percent of the 1991 biomass estimate, or 834 mt.

Fishery Apportionments of the Herring PSC Limit

The annual herring PSC limit would be apportioned to domestic annual processing (DAP) and joint venture processing (JVP) trawl fisheries as prohibited species bycatch allowances. When a fishery attains its herring bycatch allowance, further directed fishing would be prohibited in the Herring Savings Areas described below. The establishment of fisheries eligible for separate herring bycatch allowances and the annual specification of those allowances would follow the same procedure as set forth for establishing and specifying halibut and crab bycatch allowances under the final rule implementing Amendment 16. As such, herring bycatch allowances would be apportioned to and monitored by the fishery definitions set forth in § 675.21(b) for purposes of PSC limit apportionments.

At times, in areas along the herring migration routes, herring bycatch in the midwater and non-pelagic trawl pollock fisheries and other fisheries may be significant and warrant separate herring bycatch allowances for the different fisheries. For purposes of monitoring prohibited species bycatch, the nonpelagic trawl pollock fishery is considered part of the "DAP other

fishery" category under § 675.21(b)(4) and would share the herring bycatch allowance apportioned to that fishery category. The Council recommended that the midwater pollock fishery be held accountable for its herring bycatch and receive a separate bycatch allowance of herring, attainment of which would close the Herring Savings Areas to further directed fishing for pollock by trawl vessels using pelagic trawl gear. Therefore, at the end of each weekly reporting period, a trawl vessel's catch of groundfish and associated herring bycatch during a weekly reporting period would be assigned to the midwater pollock fishery if pollock comprised 95 percent or more of the reported retained catch and discard amounts of groundfish species for which a total allowable catch (TAC) has been specified under § 675.20.

At its December meeting, the Council adopted the following fishery apportionments (annual herring bycatch allowances) of the 834 mt herring PSC limit based on each fishery's anticipated 1991 bycatch of herring:

Fishery category as defined in § 675.4(b)	1991 herring bycatch allowance (mt)
Midwater pollock	584
DAP Greenland turbot	8
DAP Rocksole	0
DAP Flatfish	83
DAP other fishery	159
Total	834

If the Secretary approves Amendment 16a, a fishery's herring bycatch since the beginning of the 1991 fishing year will be credited against its apportionment of the 1991 herring PSC limit. Fisheries that are apportioned a zero amount of the 1991 herring PSC limit would be prohibited from fishing in the Herring Savings Areas during the time periods specified in the definitions of those areas.

Herring Savings Areas

Two Summer Herring Savings Areas and one Winter Herring Savings Area are proposed to protect seasonal concentrations of herring from those fisheries that have attained their annual apportionment of the herring PSC limit. A description of these areas is as follows (See Figure 3 under § 675.2):

(1) *Summer Herring Savings Area 1* means that part of the Bering Sea subarea that is south of 57° N. latitude and between 162° and 164° W. longitude from 12:00 noon Alaska Local Time (ALT) June 15 through 12:00 noon ALT July 1 of a fishing year.

(2) *Summer Herring Savings Area 2* means that part of the Bering Sea subarea that is south of 56°30' N. latitude and between 164° and 167° W. longitude from 12:00 noon ALT July 1 through 12:00 noon ALT August 15 of a fishing year.

(3) *Winter Herring Savings Area* means that part of the Bering Sea subarea that is between 56° and 60° N. latitude and between 172° and 175° W. longitude from 12:00 noon ALT September 1 of the current year through 12:00 noon ALT March 1 of the succeeding fishing year.

The proposed Herring Savings Areas involve closures only for those areas and time periods where herring concentrations occur along the herring migration route. Based on the analysis presented in the EA/RIR/IRFA, closure of additional areas off the main migration route would not appreciably reduce herring bycatch compared to the smaller proposed closures.

When a fishery reaches its herring bycatch allowance, the Herring Savings Areas would be closed to that fishery. Consistent with existing crab and halibut bycatch management under § 675.21(c), only directed fishing for pollock and Pacific cod; in the aggregate, by trawl vessels using other than pelagic trawl gear would be prohibited in the Herring Savings Areas when the "DAP other fishery" reaches its herring bycatch allowance.

A fishery would be held accountable for its herring bycatch on the basis of a fishing year (January 1–December 31) because fishery apportionments of the annual herring PSC limits are based on a fishing year. Once a fishery reached its annual herring bycatch allowance during a fishing year, further fishing in the Summer and Winter Herring Savings Areas would be prohibited during that fishing year, and the Winter Herring Savings Area would remain closed to that fishery until March 1 of the following year to protect concentrations of herring during winter months. For example, if a fishery reached its herring bycatch allowance on June 25 of a fishing year, Summer Herring Savings Area 1 would be closed to further directed fishing for that fishery through July 1, Summer Savings Area 2 would be closed from July 1 through August 15, and the Winter Herring Savings Area would be closed for the 6-month period of September 1 of the current fishing year until March 1 of the following fishing year.

Under the provision for the Winter Herring Savings Area adopted by the Council, if a fishery reached its annual herring bycatch allowance prior to March 1 of a fishing year, the Winter Herring Savings Area would not be closed to that fishery until September 1 of that fishing year and would remain closed until March 1 of the following fishing year. However, the probability that a fishery would attain its annual herring bycatch allowance prior to March 1 is small based on an examination of historic herring bycatch amounts in groundfish trawl fisheries. Historic data suggest only small amounts of herring are taken during January and February. During this period, trawl vessels typically do not operate in areas of high herring abundance (i.e., the area defined as the Winter Herring Savings Area) because ice cover and other logistic considerations often inhibit fishing operations.

(2) "Hot-spot Closure Authority"

The proposed "hot-spot closure authority" would allow the Regional Director to temporarily close areas to directed groundfish fisheries to avoid relatively high bycatch rates of prohibited species specified under § 675.20(c). If the best available scientific information indicates that groundfish operations in an area exhibit relatively high bycatch rates of one or more prohibited species, the Regional Director would have the authority to temporarily close that area to the fisheries that are shown to be responsible for the high bycatch rates. The closure would be in effect for a period of up to 60 days unless NMFS data indicate that either prohibited species distribution or fishing effort for groundfish requires an extended closure beyond 60 days. The procedures for "hot-spot" closures would be the same as the procedures set forth for inseason actions under § 675.20(g). An EA/RIR/IRFA generally would be prepared for public review and comment.

The Regional Director would make the determination that an interim closure is necessary based on information available from: (1) inseason observer reports, (2) estimates of fishing effort in an area, and (3) historical observer data that provide an index of seasonal distribution patterns of prohibited species and areas in which bycatch "hot spots" traditionally have occurred.

Inseason closures would be based primarily on observer reports of bycatch rates that are submitted on a weekly basis. These reports currently are aggregated by 3-digit Federal statistical areas. The existing information and communication systems employed by NMFS at this time do not allow for more refined weekly reports (e.g., latitude/longitude information on daily

groundfish effort). Specific haul locations are not collected from observers until debriefing operations; this information then is verified, keypunched, and entered into the observer database over a 6- to 12-month period.

Because of the nature of inseason observer information available to the Regional Director on a weekly basis, most inseason closures would be limited to statistical areas, rather than some smaller portions of a statistical area. Parts of statistical areas could be closed if the Regional Director could determine that bycatch rates within a statistical area could be reduced if only a portion of the area were closed on an interim basis.

An inseason closure of all or part of a statistical area would be based upon a determination that such a closure was necessary to prevent:

(a) A continuation of relatively high prohibited species bycatch rates within all or part of a statistical area;

(b) The take of an excessive share of PSC limits or bycatch allowances established for specified fisheries by vessels fishing within all or part of a statistical area;

(c) The closure of one or more directed fisheries for groundfish due to excessive bycatch rates occurring in a specified fishery operating within all or part of a statistical area; and

(d) The premature attainment of established PSC limits or bycatch allowances and associated loss of opportunity to vessels to harvest the groundfish optimum yield.

The Regional Director would be required to consider one or more of the following factors when making the above determinations:

(a) The effect of overall fishing effort within all or part of a statistical area;

(b) Relative distribution and abundance of stocks of target and bycatch species within all or part of a statistical area;

(c) Inseason observed bycatch rates of prohibited species within all or part of a statistical area;

(d) Historical bycatch rates observed in target fisheries within all or part of a statistical area;

(e) Economic impacts on affected fishing businesses; or

(f) Any other factor relevant to the conservation and management of groundfish species for which a TAC has been specified or incidentally caught species which are designated as prohibited species or for which a PSC limit has been specified.

The intent of the proposed inseason closure authority is to reduce prohibited species bycatch rates and to provide fishermen with a greater opportunity to harvest groundfish TAC amounts by guaranteeing a longer fishing period before PSC limits are reached and groundfish trawl effort is curtailed. An inseason closure of the type contemplated under this action would not directly affect established PSC limits. However, inseason authority to close "hot spots" should reduce overall average bycatch rates in the BSAI area and decrease the possibility of exceeding established PSC limits due to fast-paced fisheries operating in areas associated with high bycatch rates. Thus, the proposed "hot spot closure authority" could provide additional protection to prohibited species stocks to the extent that the inseason authority to close fisheries in areas that exhibit high bycatch rates will help maintain bycatch amounts within established limits.

(3) Limit the Amount of Pollock TAC That May Be Taken In the Directed Trawl Fishery For Pollock Using Other Than Pelagic Trawl Gear

Proposed regulations that would implement this bycatch management measure would authorize the Regional Director, after consultation with the Council, to limit the amount of Bering Sea and Aleutian Islands pollock TACs that could be harvested in the directed trawl fishery for pollock using other than pelagic trawl gear. The intent of the Council when it adopted this management measure was to restrict the amount of pollock that could be taken with non-pelagic trawl gear in order to reduce the amount of halibut and crab bycatch that typically occurs when non-pelagic trawl gear is used to fish for pollock.

Based on the analysis presented in the EA/RIR/IRFA, a redistribution of pollock catch from non-pelagic to pelagic trawl gear would tend to decrease the halibut and crab bycatch, and increase herring bycatch. Herring bycatch rates would increase in the midwater pollock fishery if the fishery were to continue to operate in areas of high historic herring bycatch. The closure of the Herring Savings Areas to the midwater pollock fishery upon attainment of its herring bycatch allowance is intended to limit herring bycatch to a level consistent with the annual herring PSC limit. Such a closure would still provide for midwater pollock operations outside of closed areas.

The annual specification process used to establish the groundfish TACs under § 675.20 also would be used to specify proposed and final limits on the amount of pollock that could be taken in the non-pelagic trawl pollock fishery. The information that the Regional Director and the Council would consider when allocating pollock among pelagic and non-pelagic trawl gear includes the following:

(1) The PSC limits and PSC bycatch allowances;

(2) The projected bycatch of prohibited species that would occur with and without a limit in the amount of pollock TAC that may be taken with non-pelagic trawl gear;

(3) The effect, in terms of economic costs and benefits, on the non-pelagic and pelagic trawl fisheries of a limitation of pollock TAC that may be taken by the directed pollock fishery using non-pelagic trawl gear; and

(4) Other factors pertaining to consistency with the goals and objectives of the FMP.

At its December 1990 meeting, the Council recommended that 12 percent of the pollock TACs specified for the Bering Sea and Aleutian Islands be allocated to the directed trawl fishery for pollock using non-pelagic trawl gear. This allocation scheme was recommended because it:

(1) Represents the actual percentage of total 1990 pollock catch by non-pelagic trawl gear, and

(2) Satisfies the Council's intent to limit the amount of pollock that could be harvested with non-pelagic trawl gear.

Classification

Section 304(a)(1)(C) of the Magnuson Act, as amended by Public Law No. 99-659, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the FMP amendment and regulations. At this time the Secretary has not determined that the FMP amendments which would be implemented by these regulations are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment (EA) for Amendment 16a that discusses the impact of this rule on the environment. A copy of the EA may be obtained from the Council at the address above, and comments on it are requested.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), initially determined that the proposed rule is not a "major rule" requiring a regulatory impact analysis (RIR) under Executive Order 12291. The Council prepared an RIR that concludes that none of the proposed measures in

this rule would cause impacts considered major for purposes of this Executive Order. This proposed rule, if adopted, is not 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 a significant adverse effect 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. A copy of the RIR is available from the Council (see **ADDRESSES**).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, require the Assistant Administrator to publish this proposed rule 15 days after its receipt. The proposed rule 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.

The Council prepared an IRFA as part of the RIR that concludes that this proposed rule, if adopted, would have significant economic impacts on a substantial number of small entities. In general, the analysis presented in the EA/RIR/IRFA concludes that no impact would be expected on the BSAI trawl fleet's ability to harvest groundfish quotas as a result of herring bycatch limits and associated closures of the Herring Savings Areas. This finding was based on a bycatch impact model that did not allow for changes in vessel operating costs that may occur as a result of the changes in fishing patterns caused by closures of the Herring Savings Areas. The model also projected a total net benefit of $400,000 (in increased gross exvessel values) to the halibut, crab, and herring fisheries.

Notwithstanding the findings of the bycatch impact model, the Secretary recognizes that any increased operating costs resulting from closures of the Herring Savings Areas could affect small trawl vessels that deliver to shoreside processing plants disproportionately compared to larger trawl vessels that process at sea. The small size of some vessels, together with increased operating costs of fishing greater distances from port, could effectively preempt many smaller vessels from fishing for groundfish during closures of the Summer Herring Savings Areas. The effect of the Summer Herring Savings Areas on shoreside operations, in terms of reduced groundfish harvests and production are unknown, but could approach a five-percent reduction in annual gross revenues for some trawl operations. As such, these costs are considered to be significant for purposes of the Regulatory Flexibility Act.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

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

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 675

Fisheries, Fishing vessels.

Dated: April 9, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for 50 CFR part 675 continues to read as follows:

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

2. In § 675.2, Figure 1 is redesignated as Figure 1 to part 675 and will appear at the end of the part and a definition for *Herring Savings Areas* is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Herring Savings Areas means any of the three areas described as follows:

(1) *Summer Herring Savings Area 1* means that part of the Bering Sea subarea that is south of 57° N. latitude and between 162° and 164° W. longitude from 12:00 noon Alaska Local Time (A.l.t.) June 15 through 12:00 noon A.l.t. July 1 of a fishing year.

(2) *Summer Herring Savings Area 2* means that part of the Bering Sea subarea that is south of 56°30′ N. latitude and between 164° and 167° W. longitude from 12:00 noon A.l.t. July 1 through 12:00 noon A.l.t. August 15 of a fishing year.

(3) *Winter Herring Savings Area* means that part of the Bering Sea subarea that is between 58° and 60° N. latitude and between 172° and 175° W. longitude from 12:00 noon A.l.t. September 1 of the current fishing year through 12:00 noon A.l.t. March 1 of the succeeding fishing year.

* * * * *

3. In § 675.20, paragraphs (e)(2), introductory text, and (f) are revised, paragraphs (e)(3) and (4) are redesignated as (e)(4) and (5), and new paragraphs (e)(1)(iv), (e)(3), and (e)(6) are added to read as follows:

§ 675.20 General limitations.

* * * * *

(e) * * *

(1) * * *

(iv) Interim closures of statistical areas, or portions thereof, to directed fishing for specified groundfish species.

(2) Any inseason adjustment taken under paragraphs (e)(1)(i), (ii), or (iii) of this section must be based on a determination that such adjustments are necessary to prevent:

* * * * *

(3) Any inseason closure of a statistical area, or portion thereof, under paragraph (e)(1)(iv) of this section must be based upon a determination that such closures are necessary to prevent:

(i) A continuation of relatively high bycatch rates of prohibited species specified under § 675.20(c) of this part in a statistical area, or portion thereof;

(ii) The take of an excessive share of PSC limits or bycatch allowances established under § 675.21 of this part by vessels fishing in a statistical area, or portion thereof;

(iii) The closure of one or more directed fisheries for groundfish due to excessive prohibited species bycatch rates occurring in a specified fishery operating within all or part of a statistical area; or

(iv) The premature attainment of established PSC limits or bycatch allowances and associated loss of opportunity to vessels to harvest the groundfish optimum yield (OY).

* * * * *

(6) The inseason closure of a statistical area, or a portion thereof, under paragraph (e)(1)(iv) of this section shall not extend beyond a 60-day period unless information considered under paragraph (f) of this section warrants an extended closure period. Any closure of a statistical area, or portion thereof, to reduce prohibited species bycatch rates requires a determination by the Regional Director that the closure is based upon the best available scientific information concerning the seasonal distribution and abundance of prohibited species and

bycatch rates of prohibited species associated with various groundfish fisheries.

(f) *Data.* All information relevant to one or more of the following factors may be considered in making the required determinations under paragraphs (e)(2) and (3) of this section:

(1) The effect of overall fishing effort within a statistical area;

(2) Catch per unit of effort and rate of harvest;

(3) Relative distribution and abundance of stocks of groundfish species and prohibited species within all or part of a statistical area;

(4) The condition of a stock in all or part of a statistical area;

(5) Inseason prohibited species bycatch rates observed in groundfish fisheries in all or part of a statistical area;

(6) Historical prohibited species bycatch rates observed in groundfish fisheries in all or part of a statistical area;

(7) Economic impacts on fishing businesses affected; and

(8) Any other factor relevant to the conservation and management of groundfish species or any incidentally caught species which are designated as prohibited species or for which a PSC limit has been specified.

* * * * *

4. In § 675.21, paragraphs (b)(4)(i) through (v) are redesignated as paragraphs (b)(4)(ii) through (vi), paragraphs (c)(3) and (c)(4) are redesignated as paragraphs (e) and (f), paragraph (b)(4), introductory text, is revised, newly redesignated paragraphs (b)(4)(ii) through (v) are revised, the heading of paragraph (c) is revised, and new paragraphs (a)(6), (b)(4)(i), and (d) are added to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) * * *

(6) The PSC limit of Pacific herring caught while conducting any domestic trawl fishery for groundfish in the Bering Sea and Aleutian Islands management area is 1 percent of the annual eastern Bering Sea herring biomass. Annual herring PSC allowances, by target fishery, will represent apportionments of the annual Pacific herring PSC limit, and will be published along with the annual herring PSC limit in the **Federal Register** with the notices of proposed and final specifications defined in § 675.20(a)(7) of this part.

* * * * *

(b) * * *

(4) For purposes of this section six domestic fisheries are defined as follows:

(i) *DAP midwater pollock fishery* means DAP fishing with trawl gear during any weekly reporting period that results in a catch of pollock that is 95 percent or more of the total amount of groundfish caught during the week.

(ii) *DAP Greenland turbot fishery* means DAP fishing with trawl gear during any weekly reporting period that (A) results in retained amounts of Greenland turbot and arrowtooth flounder, in the aggregate, that are 20 percent or more of the total amount of other groundfish or groundfish products retained, calculated in round weight equivalents, and (B) does not qualify as a "DAP midwater pollock fishery."

(iii) *DAP rock sole fishery* means DAP fishing with trawl gear during any weekly reporting period that (A) results in retained amounts of rock sole that are 20 percent or more of the total amount of other groundfish or groundfish products retained, calculated in round weight equivalents, and (B) does not qualify as a "DAP midwater pollock fishery" or "DAP Greenland turbot fishery."

(iv) *DAP flatfish fishery* means DAP fishing with trawl gear during any weekly reporting period that (A) results in retained amounts of yellowfin sole and "other flatfish," in the aggregate, that are 20 percent or more of the total amount of other groundfish or groundfish products retained, calculated in round weight equivalents, and (B) does not qualify as a "DAP midwater pollock fishery," "DAP Greenland turbot fishery," or "DAP rock sole fishery."

(v) *DAP other fishery* means DAP fishing with trawl gear during any weekly reporting period that results in retained amounts of any other combination of groundfish species calculated in round weight equivalents that would not qualify as a "DAP midwater pollock fishery," "DAP Greenland turbot fishery," "DAP rock sole fishery," or "DAP flatfish fishery."

* * * * *

(c) *Attainment of a PSC allowance for red king crab, C. bairdi, or Pacific halibut.* * * *

(d) *Attainment of a PSC allowance for Pacific herring*—(1) *By the midwater pollock fishery.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the PSC allowance or seasonal apportionment of the allowance of Pacific herring while participating in the midwater pollock fishery as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing the Herring Savings Areas to directed fishing for pollock with pelagic trawl gear.

(2) *By the DAP rock sole, DAP Greenland turbot, or the JVP flatfish fisheries.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch a PSC allowance or seasonal apportionment of a PSC allowance of Pacific herring while participating in either the DAP rock sole, DAP Greenland turbot, or JVP flatfish fisheries as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing the Herring Savings Areas to directed fishing with trawl gear for rock sole, Greenland turbot, or JVP flatfish.

(3) *By the DAP flatfish fishery.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch a PSC allowance or seasonal apportionment of the PSC allowance of Pacific herring while participating in the DAP flatfish fishery as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing the Herring Savings Areas to directed fishing with trawl gear for yellowfin sole and "other flatfish," in the aggregate.

(4) *By the DAP other fishery.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance or seasonal apportionment of the PSC allowance of Pacific herring while participating in the "DAP other fishery" as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing the Herring Savings Areas to directed fishing for pollock and Pacific cod, in the aggregate, by trawl vessels using other than pelagic trawl gear.

* * * * *

5. In § 675.24, paragraph (c)(3) is added to read as follows:

§ 675.24 Gear limitations.

* * * * *

(c) * * *

(3) The Secretary, in consultation with the Council, may limit the amount of pollock TAC that may be taken in the directed fishery for pollock using non-pelagic trawl gear.

(i) The Regional Director must consider the following information when limiting the amount of pollock TAC that is apportioned to the directed fishery for pollock using non-pelagic trawl gear:

(A) The PSC limits and PSC bycatch allowances established under § 675.21 of this part;

(B) The projected bycatch of prohibited species that would occur with and without a limit in the amount of pollock TAC that may be taken in the

directed fishery for pollock using nonpelagic trawl gear;

(C) The cost of a limit in terms of amounts of pollock TAC that may be taken with non-pelagic trawl gear on the non-pelagic and pelagic trawl fisheries; and

(D) Other factors pertaining to consistency with the goals and objectives of the FMP.

(ii) Proposed and final apportionment of pollock TAC to the directed fishery for pollock using non-pelagic trawl gear will be published in the **Federal Register** with the notices of proposed and final specifications defined in § 672.20(a)(7) of this part.

6. Figures 3 and 4 to part 675 are redesignated as Figures 4 and 5 and a new Figure 3 is added to read as follows:

BILLING CODE 3510-22-M

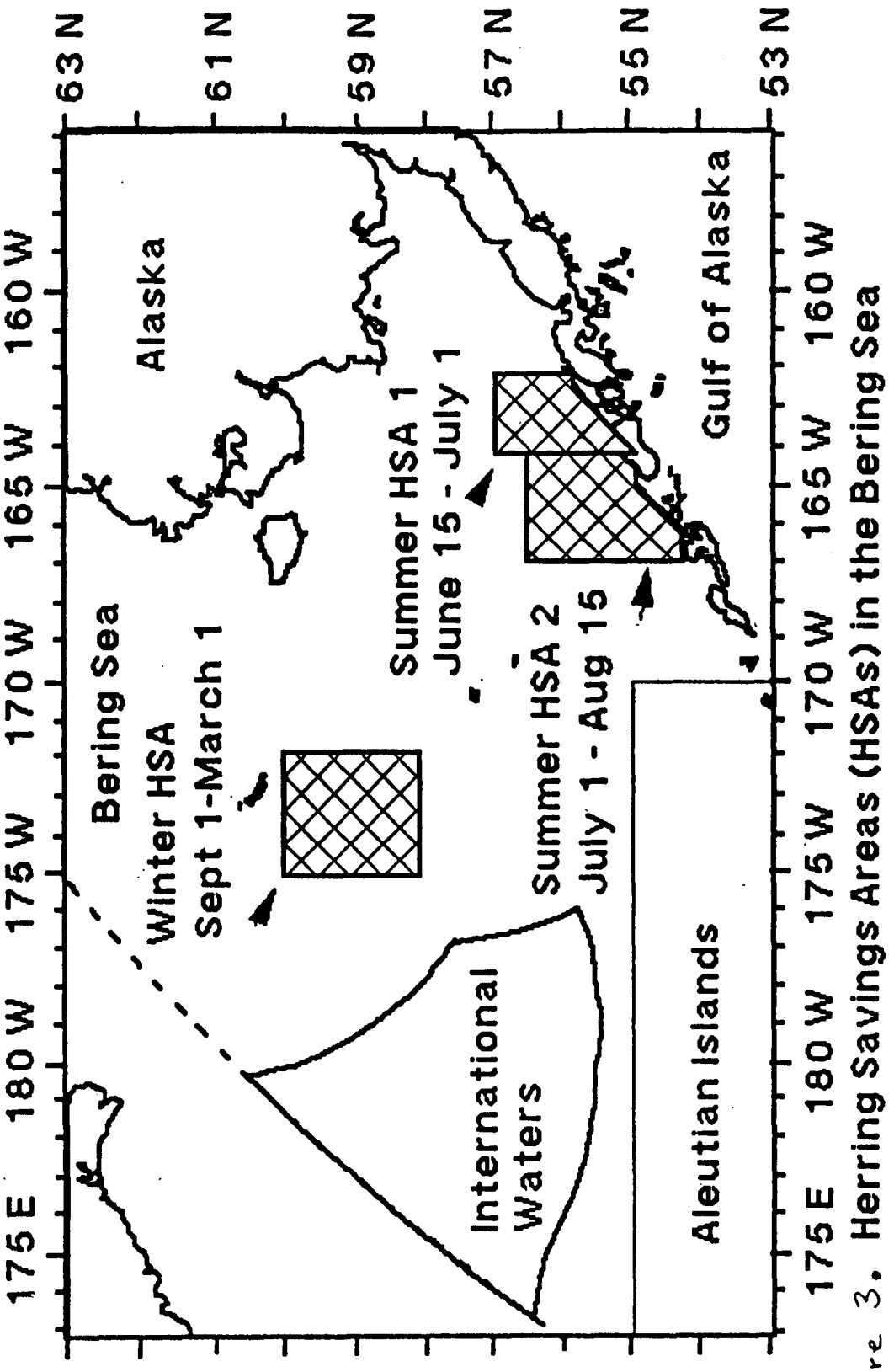

Figure 3. Herring Savings Areas (HSAs) in the Bering Sea and Aleutian Islands Area.

[FR Doc. 91-8767 Filed 4-10-91; 2:39 pm]

BILLING CODE 3510-22-C

Notices

Federal Register
Vol. 56, No. 72
Monday, April 15, 1991

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

Eagle Creek Timber Sale(s), Mt. Hood National Forest, Clackamas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an Enviromental Impact Statement (EIS) to analyze and disclose the environmental impacts of a site specific proposal to harvest and regenerate timber and construct associated roads on the Eagle Creek timber sale(s). The proposal will be in compliance with the October 1990 Mt. Hood National Forest Land and Resource Management Plan (Forest Plan), which provides the overall guidance for management of the area for the next ten years.

The Eagle Creek timber sales are located in the Eagle Creek drainage, Township 3–4 South, Range 6 East, Willamette Meridian, Clackamas County, Oregon. The sale areas include parts of Estacada and Zigzag Ranger Districts, Mt. Hood National Forest.

The proposed Eagle Creek timber sales will harvest approximately 450 acres of timber and build about five miles of access road, beginning in fiscal year 1993. Parts of the planning area are in the Salmon-Huckleberry Roadless Area described in appendix C of the Forest Plan Final EIS. We will examine the effects of different size and location of harvest areas, different harvest methods and prescriptions, and mitigation measures within the range of alternatives studied.

We invite written comments and suggestions on the scope of the analysis. In addition, we announce the environmental analysis and decision process occurring on this proposal so that intersted and affected people are aware of how they may participate and contribute to the final decision.

Public involvement meetings will be held in Estacada, Oregon. Actual dates, times and place of the meetings will be announced in the Oregonian, and other appropriate places.

DATES: Comments concerning the scope and implementation of this proposal must be received by August 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to District Ranger, Estacada Ranger District, 595 NW Industrial Way, Estacada, OR 97023.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to the Eagle Timber Sales EIS Project Manager Dave Ellen, USDA Forest Service, Estacada Ranger District, Mt. Hood National Forest, Estacada, Oregon 97023. (503) 630–6861.

The Eagle Creek timber sales are site-specific proposals for harvesting approximately 450 acres of timber within the 6700 acre Eagle Project Area, and constructing about fives miles of access roads. The effects of all associated projects, including site preparation, tree planting, and precommercial thinning will be evaluated.

The Forest Service will design and evaluate several different ways of harvesting the forest timber resource and moving toward the Desired Future Condition described by the Forest Plan. The range of project alternatives considered will include a No Action alternative. We will use the issues gathered through scoping to formulate Action alternatives. The Action alternatives will vary in: (1) Size and location of specific areas proposed for harvest; (2) the type and location of roads needed for access; and (3) the silvicultural and post-harvest treatments prescribed.

The proposal addressed through the draft EIS will tier to the Forest Plan. The Forest Plan provides the overall guidance (goals, objectives, standards and guidelines, and management area direction) for achieving the Desired Future Condition.

The Eagle Project Area includes several Management Areas which are described in the Forest Plan. They are: Pine Marten (B5), Special Emphasis Watershed (B6), General Riparian (B7), and Timber Emphasis (C1). The planning area is adjacent to the Salmon-Huckleberry Wilderness Area on the east, and private land on the west.

The USDI Fish and Wildlife Service will be a cooperating agency because of the importance of the Eagle Creek National Fish Hatchery, four miles downstream from the National Forest Boundary.

We seek the participation of interested persons, national, state, and local government agencies, and Indian Tribes, to aid us in the preparation of the draft EIS. Public participation will be especially important during the scoping process (40 CFR 1501.7). Scoping is a method for identifying relevant and significant issues surrounding the proposed action. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues, issues covered by previous environmental review, and issues not within the scope of this decision.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (including direct, indirect, and cumulative effects, and connected actions).
6. Determining potential cooperating agencies.

Issues we have identified so far are possible effects on: (1) The Eagle Creek National Fish Hatchery; (2) roadless attributes; (3) threatened, endangered or sensitive plants and animals; (4) water quality; (5) Pacific yew; (6) possible introduction of noxious weeds; and (7) forest fragmentation. These issues will be developed, and more issues may be recognized during the public involvement process.

The draft EIS is expected to be filed with Environmental Protection Agency (EPA) and to be available for public review January 1992. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date EPA publishes the notice of availability in the **Federal Register.** The final EIS is scheduled to be completed by June 1992.

We can effectively consider people's views and positions on the draft EIS during comment period. Comments should be as specific as possible. They may address the adequacy of the

statement or the merit of alternatives (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).

We believe it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their review of the proposal so that it alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after 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 those court rulings, it is very important that these interested in this proposed action participate by the close of the comment period so that the Forest Service can consider and respond to substantive comments and objections in the final EIS.

In the final EIS we will respond to comments and responses that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal (40 CFR 1502.4).

Michael S. Edrington, Forest Supervisor, Mt. Hood National Forest is the responsible official. As the responsible official he will document his decision and reasons for it in the Record of Decision. His decision will be subject to Forest Service appeal Regulations (36 CFR part 217).

Dated: April 5, 1991.

Michael S. Edrington,

Forest Supervisor.

[FR Doc. 91-8750 Filed 4-12-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Open Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Federal Advisory Committee on the European Community Common Approach to Standards, Testing and Certification in 1992 was established on February 23, 1990 to advise the Secretary of Commerce for the purpose of keeping him adequately informed regarding EC '92 standards-related activities in order for him to: (a) Identify those standards, testing procedures, and certification processes which may substantially affect the commerce of the United States; (b) represent U.S. interests to EC organizations; and (c) develop strategies for improving the coordination and cooperation of U.S. federal, state, local and private sector standards activities.

TIME AND PLACE: May 1, 1991, from 10:30 a.m. until 3:30 p.m. The meeting will take place in the Herbert C. Hoover Building, room 4830, 14th Street and Constitution Avenue, NW., Washington, DC.

AGENDA: The Committee will discuss the last two draft issue papers announced in the **Federal Register** on March 4 with a public comment period extending until March 22. The Committee will also begin preparation of a final report to the Secretary of Commerce on a full range of standards, testing and certification issues. The report will contain recommendations based on five issue papers prepared by Committee working groups. Additionally, Committee members will discuss the June 21 meeting of Secretary Mosbacher and EC Vice President Martin Bangemann on standards-related matters.

PUBLIC PARTICIPATION: The meeting will be open to the public, and a limited number of seats will be available. Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting. Minutes will be available 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Charles M. Ludolph, Director, Office of European Community Affairs, room H3036, U.S. Department of Commerce, Washington, DC 20230, phone (202) 377-5276.

Dated: April 8, 1991.

Charles M. Ludolph,

Director, Office of European Community Affairs.

[FR Doc. 91-8751 Filed 4-12-91; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

Receipt of Petition for Rulemaking; Emerald Seafoods, Emerald Resource Management, Seahawk Pacific Seafoods, Seacatcher Fisheries and Swan Fisheries

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

ACTION: Notice of receipt of petition for rulemaking and request for comments.

SUMMARY: NOAA announces receipt of a petition for rulemaking on issues related to fishery management regulations under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Emerald Seafoods, Emerald Resource Management, Seahawk Pacific Seafoods, Seacatcher Fisheries, and Swan Fisheries have jointly petitioned the Secretary of Commerce (Secretary) to adopt regulations related to financial disclosure requirements of Regional Fishery Management Council (Council) members, emergency rulemakings, requirements to balance the membership of the North Pacific Fishery Management Council between different fishing interests, and general procedures for Secretarial review of fishery management plan (FMP) and regulatory amendments.

DATES: Comments are requested through May 30, 1991.

ADDRESSES: Comments on the need for rulemaking on any items listed and described in the petition should be sent to Dr. William W. Fox, Jr., Assistant Administrator for Fisheries, NOAA, NMFS, Silver Spring Metro Center #1, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Copies of the petition are available and may be obtained from Lauren M. Rogerson, NOAA Office of the General Counsel, Silver Spring Metro Center #1, room 9246, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 427-2231.

SUPPLEMENTARY INFORMATION:

Description of Request

Emerald Seafoods, Emerald Resource Management, Seahawk Pacific Seafoods, Seacatcher Fisheries, and Swan Fisheries have jointly petitioned the Secretary to:

(1) Adopt a regulation that provides for more detailed disclosure of the financial interests of Council members, including information concerning the participation by fishery, product types produced, gear type utilized, revenue generated by fishery, and identification of primary buyers by fishery and product form for each financial interest;

(2) Adopt a rule that requires that biological reasons may not be used to support an emergency rule unless the Council's Scientific and Statistical Committee concurs that a biological justification exists;

(3) Adopt a rule that requires the Secretary to balance fairly the governor-nominated voting membership of the Council to the extent practicable between the at-sea processors and the onshore processors; and

(4) Adopt a rule that (a) Sets forth clearly the general procedures for Secretarial review of regulations and amendments that have been recommended to the Secretary for implementation by the Council and (b) that all final rules set forth clearly the procedure followed by the Secretary in reviewing a specific regulation or amendment.

Information Requested

NMFS requests interested persons to submit comments, information, and suggestions concerning the structure and content of regulations necessary to implement the request. NMFS will consider this information in determining whether to proceed with the development of regulations suggested by the petition. Upon determining whether to open the rulemaking suggested by this petition, the Assistant Administrator for Fisheries will publish a notice of the agency's decision or action in the **Federal Register**.

Dated: April 9, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-8768 Filed 4-12-91; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Environmental: Chlorofluorocarbons (CFCs) Advisory Committee

ACTION: Notice of meeting.

SUMMARY: This is another in a series of meetings to be held by the CFC Advisory Committee and Subcommittees to study the feasibility and cost within DoD of substitution chemicals or technologies to replace ozone depleting, depleting chemicals whose production is restricted by the Montreal Protocol.

DATES: April 25-26, 1991.

ADDRESSES: Two Crystal Park, Advanced Technology Conference Room, 2121 Crystal Drive, Suite 200, Arlington, VA 22207.

FOR FURTHER INFORMATION: Mr. William D. Goins, (703) 325-2215.

SUPPLEMENTARY INFORMATION: The Subcommittees will meet on April 25, 1991, at different locations in the Washington, DC area. For details on the Subcommittee meeting please contact Mr. Goins or Mr. Charles W. Purcell at (703) 934-3017. Due to limited space and security considerations please contact Mr. Purcell for attendance information and admission number.

Dated: April 9, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-8707 Filed 4-12-91; 8:45 am]

BILLING CODE 3810-01-M

Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories; Meetings

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of Public Law 92-463, the "Federal Advisory Committee Act." notice is hereby given that the Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories will hold its second meeting on April 29th and 30th, 1991, in the facilities of Science Applications International Corporation in McLean, Virginia. The meeting will convene at noon on the 29th and adjourn at 5 p.m. on the 30th. This session will be closed to the public.

The purpose of this meeting is to discuss technological factors involved in developing recommendations to the Secretary of Defense on consolidating, converting, or realigning various laboratories of the Department of Defense. The entire agenda for the meeting will consist of discussions of the key issues related to future military research and technology development. These matters constituted classified information that is specifically authorized by Executive Order to be kept secret in the interest of national Defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Director of Defense Research and Engineering has determined, in writing, that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Dr. Michael Heeb, Executive Secretary to the Federal Advisory Commssion on Consolidation and Conversion of Defense Research and Development Laboratores, 5109 Leesburg Pike, suite 317, Falls Church, VA 22041, Phone (703) 756-8969.

Dated: April 10, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-8763 Filed 4-12-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Military Personnel Testing

Pursuant to Public Law 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled from 8:30 a.m. to 4:30 p.m. on May 1-2, 1991. The meeting will be held at the Hyatt Regency Hotel, 102 Carnegie Center, Princeton, New Jersey 08540. The purpose of the meeting is to review: (1) Planned changes in the Department of Defense's Student Testing Program; (2) progress on developing paper-and-pencil and computerized enlistment tests; and (3) efforts to equate new and old test answer sheets. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271, no later than April 26, 1991.

Dated: April 10, 1991.

L.M. Bynum,

OSD Federal Register Alternate Liaison Officer, Department of Defense.

[FR Doc. 91-8760 Filed 4-12-91; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, May 7, 1991; Tuesday, May 14, 1991; Tuesday, May 21, 1991; and Tuesday, May 28, 1991 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider

wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: April 9, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–8708 Filed 4–12–91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 30 April 1991.

Time: 0800–1700.

Place: Natick Research, Development & Engineering Center (NRDEC) Natick, Mass.

Agenda: A subgroup of the Army Science Board 1991 Summer Study on the Soldier as a System will hold discussions with the Soldier Integrated Protective Ensemble Program Office to clarify issues of this 1992 Advanced Technology Transition Demonstration. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–8825 Filed 4–12–91; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the office of Personnel Management (OPM) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The purpose of the match is to identify regular officer military retirees who are civilian Federal employees subject to a limitation on the amount of military retired pay they can receive.

DATES: This proposed action will become effective May 15, 1991, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and OPM has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify regular officer military retirees who are civilian Federal employees and improperly receiving amounts of military retired pay beyond the limitation provided for any law.

The parties to this agreement have determined that a computer matching program is the most efficient, effective and expeditious method of obtaining and processing the information needed to determine whether employees are receiving compensation in excess of that permitted under the dual compensation and pay cap restrictions. The principal alternative to using a computer matching program for identifying such employees would be a manual comparison of all records of retired regular military officers with the records of all civilian employees.

Periodic matches of this type have been accomplished since 1984. The results for 1988 identified $300,000 in overpaid benefits involving dual compensation and pay cap restrictions.

By comparing the data received through this matching program on a recurring basis, OPM and DoD will be able to make timely and accurate adjustments in benefits. The matching program will prevent or correct overpayment, fraud and abuse, thus assuring proper benefit payments.

Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between OPM and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Secretary, Data Integrity Board, Workforce Information, room 7494, Office of Personnel Management, Washington, DC 20415.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on April 5, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB

and Congress and shall not become effective until that review period has elapsed.

Dated: April 10, 1991.

L. M. Bynum

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Office of Personnel Management and the Department of Defense for Military Retired Pay Verification and Continued Compliance with Statutory Requirements (Dual Compensation/Pay Cap)

A. Participating agencies

Participants in this computer matching program are: Office of Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management (OPM) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The OPM is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the match

The purpose of the matching agreement is to identify regular officer military retirees who are civilian Federal employees subject to a limitation on the amount of military retired pay they can receive.

DoD has responsibility for ensuring that regular military officer retirees who are also civilian employees of the Federal government do not receive compensation in excess of the legislated maximum amounts and ensuring that the correct amount of dual compensation is subtracted from retired pay.

Based on experience and a cost benefit analysis, OPM and DMDC expect a computer matching program is the most effective and expedient way to identify individuals who are receiving more retirement pay than permitted under dual compensation and pay cap restrictions. Yearly savings of $500,000 in military retired pay are anticipated by the DoD. DMDC expects to continue to find individuals who are receiving overpayment beyond dual compensation and pay cap restrictions.

By comparing the data received through this matching program on a recurring basis, DoD will be able to make timely and accurate adjustments in military retirement pay. The matching program will prevent or correct overpayment, fraud and abuse, thus assuring proper benefit payments.

Periodic matches conducted since 1984 have resulted in the identification of numerous improper payments and recovery of millions of dollars. Without a matching program, both agencies would have to rely on voluntary reporting by their beneficiaries. This would be an inadequate means of keeping records accurately updated to prevent overpayment.

The computer matching program is an efficient and non-obtrusive method of determining if individuals are receiving prohibited or erroneous military retirement pay from the DoD.

C. Authority for conducting the match

It is DoD's responsibility to monitor regular officer military retirees who are civilian Federal employees as to their miltary retirement entitlements under title 5 U.S.C. 5532.

D. Records to be matched

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. This match will involve the Central Personnel Data File (CPDF) portion of the OPM/GOVT-1, General Personnel Records, system published at 55 FR 3838 (February 5, 1990). The disclosure from the OPM/GOVT-1 system of records will be made in accordance with routine use "hh". The CPDF contains information on approximately 2.1 million current non-Postal Federal civilian employees.

2. The DoD system or records is S322.10 DLA-LZ, Defense Manpower Data Center Data Base, published at 55 FR 42755 (October 23, 1990). Information obtained as a result of the match will be disclosed internally within the DoD to the military finance centers. The DMDC files contain information on 1.6 million retired military members.

E. Description of computer matching program

DMDC will compare information from the CPDF file with retired military pay files concerning individuals potentially subject to dual compensation and/or pay cap limitations.

The CPDF extract to be provided by OPM contains the name, Social Security Number, date of birth, sex, annual salary rate (but not actual earnings), occupational series, position occupied, work schedule (full time, part time, intermittent), agency identifier, geographic location of duty station, metropolitan statistical area, and personnel officer identifier.

The data elements to be used from the DMDC files are Social Security Number, name, fan code, date of retirement, VA offset, combat-related injury flag, service, monthly retired pay amount and pay status.

Records matching on the Social Security Number where the combined income exceeds the maximum allowed by law will be sent to the applicable military finance centers to determine, based on a review of hard copy records, if further action is needed.

The military finance center will screen the intial data to rule out matched individuals who are properly receiving monies. The parties agree that the occurrence of a match (when a name appears on DMDC's files and OPM's files) is not conclusive evidence that any illegality has occurred; rather the match is an indication that further examination in the matter is warranted. The military finance center will verify the match results by reviewing the information in the acutal case file before any adverse action is taken.

Each individual identified as receiving unjustified benefits will be affored all applicable due process standards including, but not limited to, being given an opportunity to contest the findings and proposed actions. Benefits or payments will not be suspended or reduced pending expiration of a 35-day notification and response period.

F. Inclusive dates of the matching program

This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and may be repeated no more than four times a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between OPM and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for receipt of public comments or inquiries

Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

[FR Doc. 91-8761 Filed 4-12-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-351-000, et al.]

The Montana Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 4, 1991.

Take notice that the following filings have been made with the Commission:

1. The Montana Power Company

[Docket No. ER91-351-000]

Take notice that on March 29, 1991, The Montana Power Company (MPC) tendered for filing its proposed Rate Schedule REC-91, applicable for sales to Central Montana Electric Power Cooperative, Inc., (Rate Schedule FERC No. 39 and FERC No. 181).

MPC states that based on the test year ending December 31, 1989, adjusted for known and measurable changes through December 31, 1990, proposed Rate Schedule REC-91 would have provided it with increased revenues of $489,570 from sales to Central Montana. MPC further states that the rate increase has become necessary as a result of increasing costs being incurred in providing service to these customers, due in part to increases in the cost of power purchases, specifically, the WNP-1 Exchange Agreement, Idaho Power Purchase and purchases from Qualifying Facilities.

MPC states that, insofar as practicable, its cost of service study and proposed rate design for sales to Central Montana are consistent with the cost of service study and rate design recently submitted to the Montana Public Service Commission in connection with MPC's application for an increase in its retail electric rates.

MPC has proposed that Rate Schedule REC-91 become effective on June 1, 1991

Copies of the filing were served upon Central Montana, the Montana Public Service Commission and Montana Consumer Counsel.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania-New Jersey-Maryland Interconnection

[Docket No. ER91-349-000]

Take notice that on March 28, 1991, the Pennsylvania-New Jersey-Maryland Interconnection (PJM), a Mid-Atlantic Area power pool, tendered for filing on behalf of its members revised Schedules 3.01 (Revisions No. 2 and No. 3) and a new Schedule 3.011 of the PJM Agreement, which Agreement is on file as PJM FERC Rate Schedule No. 1. The revisions accommodate internal accounting changes with respect to intra-pool installed capacity accounting between the members of PJM.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Public Service Company

[Docket No. ER91-348-000]

Take notice that on March 29, 1991, Southwestern Public Service Company ("Southwestern"), tendered for filing its rate schedule implementing Service Schedule C, Interruptible Power Service, of the Interconnection Agreement ("Agreement") between Public Service Company of New Mexico ("PNM") and Southwestern.

Service Schedule C to the Agreement provides for the sale of interruptible electric power and energy from Southwestern to PNM, beginning June 1, 1991 and ending May 31, 2011, unless extended by mutual agreement.

Copies of the filing were served upon PNM and the New Mexico Public Service Commission.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power and Light Company

[Docket No. EL91-24-000]

Take notice that on March 24 1991, Wisconsin Power and Light Company requested a waiver of the Commission's fuel clause regulations as they relate to the buyout of a nuclear fuel milling contract. The inclusion of such costs in the fuel clause will result in a wholesale rate increase of less than 0.1% annually. The filing company requests an effective date of April 1, 1991.

Comment date: April 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER91-340-000]

Take notice that on March 28. 1991, Public Service Company of New Mexico (PNM) submitted for filing a 1991 through 2008 Power Sale Agreement (Agreement) between PNM and Arizona Power Pooling Association, Inc. (APPA). Under the terms of the 17-year power purchase provided for in the Agreement, PNM will provide APPA with year-round base demand and in June through September of each contract year, seasonal demand. Base demand will start at 15 megawatts (MW) in 1991, increase to 35 MW in June 1992, to 80 MW in June 1994 and decrease to 15 MW after May 2002. Seasonal demand will be 25 MW through 1998. The date of initial service under the Agreement is June 1, 1991.

Copies of the filing have been served upon APPA and the New Mexico Public Service Commission.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Canal Electric Company

[Docket No. ER91-343-000]

Take notice that on March 28, 1991, Canal Electric Company ("Canal") filed three documents under Section 205 of the Federal Power Act: (1) A Capacity Acquisition Commitment between itself and Commonwealth Electric Company ("Commonwealth"), which implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) with respect to the assignment by Commonwealth to Canal of a portion of Commonwealth's entitlement in Canal Unit No. 2. Canal will sell this entitlement in Canal Unit No. 2 to Central Vermont Public Service Corporation ("CVPS") and Canal will purchase from CVPS entitlements in two non-oil-fired generating units, both transactions to span the period March 1, 1991 through October 31, 1995; (2) a Power Sale Agreement between itself and CVPS with respect to the sale of the Canal Unit No. 2 entitlement; and (3) a Power Contract between itself and Commonwealth, which provides that Canal will sell and Commonwealth will purchase and pay for the capacity and associated energy purchased from CVPS. Canal states that the transaction will result in a net increase in its wholesale rates to Commonwealth of approximately $4.5 million in the first year, but that the improvement in Commonwealth's generating mix is expected to produce energy savings in excess of that amount. The transaction between Canal and CVPS will result in a increase in Canal's wholesale rates to CVPS of approximately $8.8 million.

Canal has requested that the Commission waive its notice requirements pursuant to § 35.11 of the Commission's Regulations in order to allow the tendered rate schedules to

become effective as of March 1, 1991, the date on which the transactions commenced.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER91-337-000]

Take notice that on March 28, 1991, Pacific and Electric Company (PG&E) tendered for filing changes to Rate Schedules FERC No. 63, 79, and 81 between PG&E and the Western Area Power Administration (Western).

The rate schedule changes revise rates for transmission services in the three Rate Schedules. The filing also shows the calculation of reduced transmission rates for the period July 1, 1987 through March 31, 1991, pursuant to the Tax Reform Act of 1986. When final billing date is available for this period, PG&E will make a compliance filing showing the total refund due Western.

PG&E has requested a waiver of the Commission's notice requirements to permit an effective date of April 1, 1991.

Copies of this filing have been served upon Western and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp Electric Operations

[Docket No. ER91-345-000]

Take notice that on March 29, 1991, PacifiCorp Electric Operations ("PacifiCorp"), tendered for filing, a Long-Term Power Sales Agreement ("Agreement") between PacifiCorp and The Department of Water Resources of the State of California ("CDWR") dated March 26, 1991.

Under terms of the Agreement, PacifiCorp will sell and CDWR will purchase long-term firm capacity and energy.

PacifiCorp requests that an effective date of June 1, 1991 be assigned to the Agreement, this date corresponding to the anticipated commencement of service under the Agreement.

Copies of this filing have been supplied to CDWR, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement

[Docket No. ER91-339-000]

Take notice that on March 28, 1991, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection filed, on behalf of the Parties to the PJM Agreement, Revision No. 11 to Schedule 4.01 of that Agreement.

The purpose of this filing is to increase the rate applicable to capacity deficiency transactions determined in accordance with the PJM Agreement. The new rate is to become effective with the beginning of the next 12-month Planning Period on June 1, 1991. No changes in facilities are proposed in this filing.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Iowa Public Service Company

[Docket No. ER91-362-000]

Take notice that on April 2, 1991, Iowa Public Service Company tendered for filing an executed Agreement for wholesale electric power and energy between Iowa Public Service Company and the City of Lake View, Iowa (City), whereby Iowa Public Service Company (IPS) will provide wholesale electric power and energy as required by the City above the amount provided by the Western Area Power Administration (Western). Accompanying the Agreement is a tariff containing the same rate terms, identified as Iowa Public Service Company Partial Requirements Wholesale Service Schedule 3, Sales for Resale, Original Issue Sheets Nos. 7-9.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Oklahoma Municipal Power Authority v. Oklahoma Gas and Electric Company

[Docket No. ER91-23-000]

Take notice that on March 28, 1991, Oklahoma Municipal Power Authority (OMPA) tendered for filing a complaint against Oklahoma Gas and Electric Company (OG&E).

OMPA requests that the Commission issue an order: (1) Initiating hearing procedures to investigate whether OG&E's refusal to extend Rate Schedule OSCC and TEGR to OMPA is unjust and unreasonable and unduly discriminatory; and (2) set a refund effective date in this proceeding at the earliest possible date.

Comment date: May 6, 1991, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before May 6, 1991.

12. Pacificorp Electric Operations

[Docket No. ER91-355-000]

Take notice that PacifiCorp Electric Operations (PacifiCorp) on April 1, 1991, tendered for filing a Transmission Service and Operating Agreement (Agreement) dated March 25, 1991 between PacifiCorp and Deseret Generation & Transmission Co-Operative (Deseret).

Under the Agreement, which simplifies and consolidates provisions of the certain previous agreements, PacifiCorp shall provide firm transmission service for various resources available to Deseret. In addition, PacifiCorp will provide load following, scheduling, frequency control, system dispatch and accounting service and emergency service associated with the transmission service provided.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations that a waiver of prior notice be granted and that an effective date of April 1, 1991 be assigned. Such date is consistent with the effective date shown on the Agreement.

Copies of this filing were supplied to Deseret and the Utah Public Service Commission.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp Electric Operations

[Docket No. ER91-346-000]

Take notice that on March 29, 1991, PacifiCorp Electric Operations ("PacifiCorp"), tendered for filing, the Restated Power Sales Agreement between PacifiCorp and Nevada dated March 25, 1991 ("Agreement").

PacifiCorp has requested, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of July 20, 1990 be granted for the Agreement.

Copies of this filing have been supplied to Nevada Power Company, the Public Service Commission of Nevada, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. The Cincinnati Gas & Electric Company

[Docket No. ER91-353-000]

Take notice that The Cincinnati Gas & Electric Company (CG&E) tendered for

filing on April 1, 1991, proposed changes in its FERC Electric Tariff, Original Volume No. 1, which cancel and supersede the rate schedules in said tariff. The proposed changes would increase revenues from jurisdictional sales and service by $594,000 based on the 12 month period ending December 31, 1990.

The reasons stated by CG&E for the change in rate schedule are to partially recover the cost of the Wm. H. Zimmer generating station, placed in service March 30, 1991.

Copies of this filing were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville, Ripley and the City of Lebanon, municipalities in the State of Ohio; and the Public Utilities Commission of Ohio.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Douglas W. Leatherdale

[Docket No. ID-2537-000]

Take notice that on March 29, 1991, Douglas W. Leatherdale (Applicant) tendered for filing under section 305(b) of the Federal Power Act to hold the following positions:

Director, NSP-Minn.
Director, John Nuveen & Co. Incorporated.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. Pennsylvania Electric Company

[Docket No. ER91-281-000]

Take notice that on March 28, 1991, Pennsylvania Electric Company (Penelec) filed an amendment to its agreement with the Borough of Berlin for delivery from the New York-Pennsylvania State line to the Borough of Berlin of the Borough's allocation of electric power and energy from the New York Power Authority's Niagara and St. Lawrence Projects. The delivery of electric power and energy will result in a net decrease in annual revenues to Penelec of $58,800. According to Penelec the amendment clarifies that supplemental energy is to be billed at Penelec's rate RP.

Comment date: April 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Company Services, Inc.

[Docket No. ER91-326-000]

Take notice that on March 18, 1991, Southern Company Services, Inc. (SCS) acting as agent for Alabama Power Company, Georgia Power Company (GPC), Gulf Power Company, Mississippi Power Company (collectively referred to as "Southern Companies) and acting as agent for GPC individually, tendered for filing the following documents: (i) The Transition Energy Agreement among Florida Power & Light Company (FPL), Southern Companies, and SCS dated as of December 31, 1990 (FPL Transition Energy Agreement); (ii) the Transition Energy Agreement among Jacksonville Electric Authority (JEA), Southern Companies, and SCS dated as of December 31, 1990 (JEA Transition Energy Agreement); (iii) the Plant Robert W. Scherer Unit Number Four Transmission Service Agreement among FPL, GPC, and SCS dated as of December 31, 1990 (FPL Transmission Service Agreement); and (iv) the Plant Robert W. Scherer Unit Number Four Transmission Service Agreement among JEA, GPC, and SCS dated as of December 31, 1990 (JEA Transmission Service Agreement).

Comment date: April 18, 1991. In accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8732 Filed 4-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-33-003]

ANR Pipeline Co., Proposed Changes in FERC Gas Tariff

April 8, 1991.

Take notice that ANR Pipeline Company ("ANR") on April 2, 1991 tendered for filing as part of its FERC Gas Tariff those tariff sheets listed on Attachment A attached to the filing.

ANR states that the referenced tariff sheets are being submitted in compliance with the Commission's order issued March 1, 1991 in the captioned proceedings, *See, ANR Pipeline Company, "Order Approving Settlement"*, Docket Nos. RP91-33-000 and RP91-35-000 (March 1, 1991). In such order, the Commission approved the "Offer of Settlement of ANR Pipeline Company for Approval of Stipulation and Agreement in Settlement of Rate Proceedings" (Stipulation and Agreement") as filed by ANR on February 12, 1991. The Stipulation and Agreement requires ANR to file revised tariff sheets reflecting its provision, to be effective as set forth in Article IX thereof.

ANR submits the tariff sheets listed on Attachment A with a requested effective date of May 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8729 Filed 4-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-132-000]

Colorado Interstate Gas Company; Tariff Filing

April 8, 1991.

Take Notice that on April 5, 1991, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets in the Original Volume No. 3, with a proposed effective date of May 1, 1991.

Fourth Revised Sheet No. 5
Second Revised Sheet No. 23
Second Revised Sheet No. 25
Original Sheet No. 25A
First Revised Sheet No. 58
First Revised Sheet No. 59
First Revised Sheet No. 60
First Revised Sheet No. 64
First Revised Sheet No. 99
Original Sheet No. 99A
Original Sheet No. 99B
Second Revised Sheet No. 100
Original Sheet No. 100A
Thied Revised Sheet No. 101

CIG states that the purpose of this filing is to:

1. Add a new section 3.6 to its Rate Schedule TI-1 governing interruptible transportation incident to CIG's interruptible contract storage service under Rate Schedule IS-1.

2. Revise the General Terms and Conditions of its Volume No. 3 Tariff governing the scheduling and allocation of injection and withdrawal capacity. These changes would affect interruptible storage only.

3. Eliminate current tariff provisions applicable to interruptible overrun storage service.

4. Modify the Form of Service Agreement applicable to rate Schedule IS-1 to reflect the above modifications.

CIG states that copies of its filing were served on all holders of Volume No. 3 of CIG's FERC Gas Tariff and appropriate state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal energy regulatory commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8731 Filed 4-12-91; 8:45 am]

BILLING CODE 67 /-01-M

[Docket No. RP91-52-003]

Panhandle Eastern 'ipe Line Co.; Compliance Filing

April 8, 1991.

Take notice that on March 1, 1991, Panhandle Eastern Pipe Line Company (Panhandle), to comply with the Commission's order issued March 1, 1991 in Docket Nos. RP91-52-000 and RP91-53-000, submitted an explanation which it states demonstrates that the cost allocation methodology used for the small customers served under Rate Schedule SG-1, SG-2 and SG-3 proposed in the captioned dockets is more beneficial to those customers than the 50% reallocation methodology described in Order No. 528-A.

Panhandle states that copies of the filing are being mailed to all affected customers, state commissions and parties in Docket Nos. RP91-52-000 and RP91-53-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8726 Filed 4-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-72-002]

Texas Eastern Transmission Corp.; Compliance Filing

April 8, 1991.

Take notice that on March 1, 1991, Texas Eastern Transmission Corporation (Texas Eastern), to comply with the Commission's Order issued February 14, 1991 in Docket No. RP91-72-000, submitted an explanation which it states demonstrates that the cost allocation methodology with respect to SGS customers proposed in the captioned dockets is more beneficial to those customers than the 50% reallocation methodology described in Order No. 528-A.

Texas Eastern states that copies of the filing are being mailed to all affected customers, state commissions and parties in Docket No. RP91-72-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8727 Filed 4-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-54-005]

Trunkline Gas Co.; Compliance Filing

April 8, 1991.

Take notice that on April 1, 1991, Trunkline Gas Company (Trunkline), to comply with the Commission's Order issued March 1, 1991 in Docket No. RP91-54-000, submitted an explanation which it states demonstrates that the cost allocation methodology used for the small customers served under Rate Schedule SG-1, and SG-2 proposed in the captioned docket is more beneficial to those customers than the 50 percent reallocation methodology described in Order No. 528-A.

Trunkline states that copies of the filing are being mailed to all affected customers, state commissions and parties in Docket No. RP91-54-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8728 Filed 4-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-2-011]

Williston Basin Interstate Pipeline Co.; Compliance Filing

April 8, 1991.

Take notice that on April 4, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing under protest certain revised tariff sheets to First Revised Volume No. 1,

Original Volume Nos. 1-A, 1-B and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed under protest in compliance with the Commission's "Order Denying Rehearing and Rejecting Tariff Sheets" issued March 20, 1991 in Docket Nos. RP90-2-008 and RP90-2-010 and cover the period from April 3, 1990 through February 1, 1991, as more fully described in the filing. Williston Basin states that this filing is being made without prejudice to its rights on judicial review of the Commission's November 23, 1990 and March 20, 1991 Orders.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8730 Filed 4-12-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3921-7]

Control of Air Pollution From New Motor Vehicle Engines; Federal Certification Test Results for 1991 Model Year

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 206(e) of the Clean Air Act, as amended August 1977, directs the Administrator of the Environmental Protection Agency to announce in the **Federal Register** the availability of the results of certification tests. These tests are conducted on new motor vehicles and new motor vehicle engines to determine conformity with Federal standards for the control of air pollution caused by motor vehicles. The Federal Certification Test Results for the 1991 model year are now available and may be obtained by writing: U.S. Environmental Protection Agency, Office of Mobile Sources, Certification Division, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Clarice Reed, Certification Division, U.S. Environmental Protection Agency, Office of Mobile Sources, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668-4266.

Dated: April 9, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-8783 Filed 4-12-91; 8:45 am]

BILLING CODE 6560-50-M

[FR L-3922-1]

Acid Rain Advisory Committee; Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protection Agency gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the Acid Deposition Control title of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the Acid Rain Advisory Committee will hold an open meeting from 9 a.m. to 5 p.m. on April 29, 30, and May 1 at the Ramada Renaissance Hotel, Washington Dulles, 13869 Park Center Road, Herndon, VA 22071 (703) 478-2900.

At its first meeting, ARAC established four subcommittees: Allowance Trading and Tracking, Permits and Technology, Emissions Monitoring, and Energy Conservation and Renewables. The Emissions Monitoring and Permits and Technology Subcommittees will begin their deliberations at 9 a.m. on Monday, April 29. The Allowance Trading and Tracking Subcommittee will begin its deliberations at 1 p.m. on April 29. The Energy Conservation and Renewables Subcommittee will begin its deliberations at 9 a.m. on Tuesday, April 30. The subcommittees will meet concurrently in different rooms to discuss and frame issues related to their areas of assignment. Seating in those rooms will be limited and publicly available on a first come, first serve basis. It is anticipated that on the afternoon of April 29 and on May 1, the full committee will meet to hear presentations and engage in discussions on issues developed in the subcommittees.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting, including a more detailed meeting agenda will be publicly available in limited numbers at the meeting. Thereafter, these documents together with related documents prepared for previous ARAC meetings will be available in the EPA Air Docket Number A-90-39 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 8:30 to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION: Concerning ARAC or its activities, please contact Mr. Paul Horwitz, Designated Federal Official to the Committee at (202) 475-9400; fax, (202) 252-0892, or by mail at USEPA, Acid Rain Division (ANR 445), Office of Air And Radiation, Washington, DC 20460.

Dated: April 10, 1991.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 91-8898 Filed 4-12-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3921-6]

Proposed Administrative Settlements; McKin Super Fund Site

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into two *de minimis* administrative settlements to resolve claims for recovery of costs incurred at the McKin Superfund Site in Gray, Maine, under the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlements and of the opportunity to comment. These settlements are intended to resolve the past administrative or civil cost recovery liabilities of 30 alleged generators of hazardous substances to the site (the Settling Parties). The settlements require the Settling Parties to pay a total of $375,720.00 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlements. EPA's response to any comments received will be available for public inspection at Gray Public Library, 5 Skilling Street, Gray, Maine, and at the

EPA Records Center at 90 Canal Street, Boston, Massachusetts.

DATES: Comments must be provided on or before May 13, 1991.

ADDRESSES: The proposed settlements are available for public inspection at the EPA Records Center at 90 Canal Street, Boston, Massachusetts. A copy of the proposed settlements may be obtained from Beth Tomasello, U.S. Environmental Protection Agency Region I, Office of Regional Counsel, One Congress Street, Boston, Massachusetts 02203. Comments should be addressed to the Office of the Regional Administrator, U.S. Environmental Protection Agency Region I, One Congress Street, Boston, Massachusetts 02203, and should refer to the specific settlement being commented upon, either "In the Matter of McKin Superfund Site, Gray, Maine" U.S. EPA Docket No. I-90-1129 or "In the Matter of McKin Superfund Site, Gray, Maine," U.S. EPA Docket No. I-90-1130.

FOR FURTHER INFORMATION CONTACT: Luis E. Rodriguez or Beth Tomasello, U.S. Environmental Protection Agency, Region I, Office of Regional Counsel, RCU, One Congress Street, Boston, Massachusetts 02203, (617) 565-3376 or 565-3428.

SUPPLEMENTARY INFORMATION:

Notice of Administrative Settlements

In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of two proposed administrative settlements concerning the McKin Superfund Site in Gray, Maine. These settlements are entered into pursuant to the authority vested in the President of the United States by section 122(g) of CERCLA, 42 U.S.C. 9622(g), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, 100 Stat. 1613, 122(g) (1986), delegated to the Administrator of the United States Environmental Protection Agency on January 23, 1987 by Executive Order 12580, 52 FR 2923 and further delegated to the Regional Administrator by EPA Delegation 14-14-E, September 13, 1987. The U.S. Department of Justice approved these settlements in writing on March 21, 1991. Below are listed the parties who have executed signature pages committing them to participate in the respective agreements.

In the Matter of McKin Superfund Site, Gray, Maine, U.S. EPA Docket No. I-90-1129

Under this settlement, 25 Settling Parties listed below, who are alleged generators of hazardous substances delivered to the McKin Superfund Site, will pay $298,120.00 to the Hazardous Substances Superfund. This amount includes penalties assessed against those Settling Parties who were given an earlier opportunity to settle, but who failed to do so. The Settling Parties are: Town of Bar Harbor; Coca-Cola Bottling Plant, Augusta; Morris Greenburg; Hanover High School; Jay Community Building; Kesslen Shoe Company; L & A Grocers, Inc.; Lachance Brick Co.; Maine Coal Sales Co.; Mount St. Joseph's Nursing Home; Pepsi-Cola Bottling Co. of VT.; Sears Roebuck, Inc.; Southworth Machine Co.; United States General Services Administration; United States Federal Post Office Building; Windsor School Department; Cascade Lodge; Chaplin Motors, Hertz Corporation; J.L. Hall Company; Laconia School Department; Portsmouth Housing Authority; Resnick Oil Co.; Rollinsford Grammar School; and Mrs. Bennett C. Webber.

In the Matter of McKin Superfund Site, Gray, Maine. U.S. EPA Docket No. I-90-1130

Under this settlement, 5 Settling Parties listed below, who are alleged generators of hazardous substances delivered to the McKin Superfund Site, will pay $77,600.00 to the Hazardous Substances Superfund. This amount includes penalties assessed against those Settling Parties who were given an earlier opportunity to settle, but who failed to do so. The Settling Parties are: Littleton School District; Smith-Whitcomb & Cook; Associated Memorial Products; Riverside Rest Home and Van Baalen & Co.

Dated: April 4, 1991.

Julie Belaga,

Regional Administrator.

[FR Doc. 91-8785 Filed 4-12-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city/state	File No.	MM docket No.
A. Republic Broadcasting Company; Del Rio, TX.	BPCT-900220KE	91-61
B. Pena Communications, Inc.; Del Rio, TX.	BPCT-900424KF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
Site availability	B
Section 73.685(e)	A
Comparative	A & B
Ultimate	A & B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 91-8800 Filed 4-12-91; 8:45 a.m.]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Kodiak and Sea-Land Service, Inc. Terminal Agreement

The Federal Maritime Commission hereby givens notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal

Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, delivery a copy of that document to the person filing the agreement at the address shown below.

Agreement no: 224–011052–001/224–011053–001.

Title: City of Kodiak and Sea-Land Service, Inc. Terminal Agreement.

Parties: City of Kodiak, Sea-Land Service, Inc. (Sea-Land).

Filing party: Marcella H. Dalke, CMC/AAE, City Clerk, City of Kodiak, P.O. Box 1397, Kodiak, Alaska 99615.

Synopsis: The Agreement, filed April 4, 1991 (1) Extends the term of the two interrelated basic agreements, the Terminal Operation Contract (Agreement No. 224–011052) and the Pier II Warehouse Lease Agreement (Agreement No. 224–011053) for five years beginning May 1, 1991; (2) provides for Sea-Land's construction of a fire-resistive wall and other improvements required to bring the Pier II Warehouse (Warehouse) into compliance with safety codes; (3) provides for an annual increase in Warehouse rent; and (4) modifies paragraph 3B of Agreement No. 224–011052 with regard to Sea-Land's stevedoring services at the facility.

By order of the Federal Maritime Commission.

Dated: April 10, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–8801 Filed 4–12–91; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Georgia Ports Authority/Wilhelmsen A/S Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200230–002.

Title: Georgia Ports Authority/Wilhelmsen A/S Terminal Agreement.

Parties: Georgia Ports Authority (GPA) Wilhelmsen A/S.

Synopsis: The Agreement amends the parties' basic agreement to delete paragraph 4 of the agreement and substitute a new paragraph 4 in lieu thereof which provides for GPA to guarantee one Container Berth to Wilhelmsen Lines vessels docking at GPA's Garden City Terminal, Savannah, Georgia, as close as possible to Container Berth 5.

By Order of the Federal Maritime Commission.

Dated: April 10, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–8802 Filed 4–12–91; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Technical Assistance Workshop in May

OFFICE: Office for Treatment Improvement, ADAMHA, HHS.

ACTION: Notice of Technical Assistance Workshop.

SUMMARY: In addition to the technical workshop announced on Page 14111, Vol. 56 of the **Federal Register** published on Friday, April 5, 1991, this notice sets forth the schedule and proposed agenda for an added technical assistance workshop to assist prospective applicants in responding to the Office for Treatment Improvement's (OTI) following Requests for Applications: (1) Model Comprehensive Drug Abuse Treatment Programs for Adolescents/Juvenile Justice. Applications for this grant announcement will be received June 17, 1991; (2) Model Comprehensive Drug Treatment Programs for Critical Populations: Residents of Public Housing. Applications for this grant announcement will be received June 24, 1991.

Region/Date/Location

Public Health Service Region III, Washington, DC, May 6–7, 1991.

Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008 (202) 234–0700.

Time: The workshops will begin at 9 a.m. and end at 3 p.m.

Day 1 (May 6, 1991) Agenda Highlights include:

Overview of the RFA: Model Comprehensive Drug Abuse Treatment Programs for Critical Populations: Residents of Public Housing.

Strategies for Successful Grant Submission and General Principles of the Review and Award Process.

Technical/Practical Aspects of the Grant Application Process including: completing forms, program narrative, budget justification, management and evaluation.

Questions and answers.

Day 2 (May 7, 1991) Agenda Highlights include:

Overview of the RFA: Model Comprehensive Drug Abuse Treatment Programs for Adolescents/Juvenile Justice.

Strategies for Successful Grant Submission and General Principles of the Review and Award Process.

Technical/Practical Aspects of the Grant Application Process including: completing forms, program narrative, budget justification, management and evaluation.

Questions and answers.

STATUS OF WORKSHOP: Open to prospective OTI grant applicants.

FOR FURTHER DETAILS ON THE TECHNICAL ASSISTANCE WORKSHOPS CONTACT: Technical Resources, Incorporated, 3202 Tower Oaks Blvd., Rockville, Maryland 20852 (301) 230–4792, (301) 230–4788.

PURPOSE: The Office for Treatment Improvement, Division of Review and Division of Treatment Resources Development will provide general assistance through these workshops to prospective applicants in responding to the OTI Request for Applications.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–8745 Filed 4–12–91; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 88N-0394]

Generic Animal Drug and Patent Term Restoration Act; Seventh Policy Letter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a seventh policy letter, dated March 20, 1991, relating to the implementation of the Generic Animal Drug and Patent Term Restoration Act (GADPTRA). The letter contains four policy statements prepared by the Center for Veterinary Medicine (CVM) entitled: (1) "Guidance for Analytical Methods for ANADA's," (2) "Hybrid Applications," (3) "ANADA's, NADA's, and Supplemental Approvals for Subtherapeutic Antibiotics," and (4) "Waivers of *In Vivo* Bioequivalence Studies for Topical Products." The agency is soliciting comments on the policy statements.

DATES: Written comments may be submitted at any time regarding this or previous policy letters or implementation of GADPTRA in general.

ADDRESSES: Submit written requests for single copies of the seventh policy letter to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, room 7-85, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the policy letters to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The policy letter and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HVF-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4500.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed GADPTRA into law (Pub. L. 100-670, 102 Stat. 3971). GADPTRA amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by extending the generic approval system to copies of new animal drugs that were approved after October 10, 1962, and provides patent extention of certain animal drugs.

FDA has published six policy letters concerning implementation of GADPTRA. A list of the publication dates and topics of the first five policy letters were published in the **Federal Register** on June 18, 1990 (55 FR 24645), and FDA published the sixth policy letter in the **Federal Register** of October 31, 1990 (55 FR 45860). FDA is now announcing the availability of a seventh policy letter dated March 20, 1991. The letter contains four policy statements entitled: (1) "Guidance for Analytical Methods for ANADA's," (2) "Hybrid Applications," (3) "ANADA's, NADA's, and Supplemental Approvals for Subtherapeutic Antibiotics," and (4) "Waivers of *In Vivo* Bioequivalence Studies for Topical Products."

The agency anticipates that changes in these policy statements may occur in the future. When and if changes are made, copies of the revised policy statements will be placed on display in the Dockets Management Branch (address above) and a notice of availability will be published in the **Federal Register.**

In addition, the subjects contained in these policy statements may be addressed in the regulations that will implement the new law. Comments submitted in response to this notice will be considered in the drafting of the proposed regulations.

Dated: April 9, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-8747 Filed 4-12-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OIS-012-N]

Medicare Program; Quarterly Listing of Program Issuances

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

ACTION: General notice.

SUMMARY: This notice lists HCFA manual instructions, regulations and other **Federal Register** notices, and statements of policy that were published during October, November, and December of 1990 that relate to the Medicare program. Section 1871(c) of the Social Security Act requires that we publish a list of our Medicare issuances in the **Federal Register** at least every 3 months.

FOR FURTHER INFORMATION CONTACT:

Allen Savadkin, (301) 966-5265, (For Instruction Information).

Margaret Teeters, (301) 966-4678, (For All Other Information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program that pays for health care and related services for 34 million Medicare beneficiaries. Administration of the program involves (1) Providing information to beneficiaries, health care providers, and the public; and (2) effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the program is based, we issue regulations under authority granted the Secretary under sections 1102 and 1871 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the program efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register,** no less frequently than every 3 months, a list of all Medicare manual instructions, interpretative rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). As in prior notices, although both substantive and interpretative regulations published in the **Federal Register** in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements, we are including regulations (proposed and final) published.

II. Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual. In that notice, we indicated that revisions to the Medicare Coverage Issues Manual will be

published at least quarterly in the **Federal Register** notices. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. Sometimes no Coverage Issues Manual revisions were published during a particular quarter. This listing reflects that fact.

Since the August 21, 1989, publication date, we have issued two updates that includes the text of changes to the Coverage Issues Manual. The first update was issued on March 20, 1990 (55 FR 10290), and the second, on February 6, 1991 (56 FR 4830). These updates, when added to material from the manual published on August 21, 1989, constitute a complete manual as of December 31, 1990. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

III. How to Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, regulations, or coverage decisions published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) those desiring information on the Coverage Issues Manual may wish to review the August 21, 1989, publication; and those seeking information on the location of regional depository libraries may wish to review Table IV of our first notice (53 FR 21730). We have divided this current listing into three tables.

Table I describes where interested individuals can get a description of all previously published HCFA manuals and memoranda.

Table II of this notice lists, for each of our manuals or Program Memoranda, a transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often, it is necesary to use information in a transmittal in conjunction with information currently in the manuals.

Table III lists all Medicare regulations and general notices published in the **Federal Register** during this period. For each item, we list the date published, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changed.

IV. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202) 783–3238; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS will give complete details on how to obtain the publication they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or may subscribe to the **Federal Register** by contacting the Government Printing Office at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202) 783–3238. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA regional office or review them at the nearest Federal Depository Library (FDL). We also sometimes publish Rulings in the **Federal Register**.

V. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the closest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Table II, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual, part 1—Fiscal Administration (HCFA-Pub. 13–1) transmittal "Completing Schedule of Appeals," use the Superintendent of Documents No. HE 22.8/6–3 and the HCFA transmittal number 119.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Individuals must procure copies or arrange to review them as noted above.

Questions concerning items in Tables I or II may be addressed to Allen Savadkin, Office of Issuances, Health Care Financing Administration, room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966–5265.

Questions concerning all other information may be addressed to Margaret Teeters, Regulations Staff, Health Care Financing Administration, room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966–4678.

Table I.—Description of Manuals, Memoranda and HCFA Rulings

An extensive descriptive listing of manuals and memoranda was previously published at 53 FR 21730 and supplemented at 53 FR 36891 and 53 FR 50577. Also, for a complete description of the Medicare Coverage Issues Manual, review 54 FR 34555.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS

[October-December 1990]

Trans. No.	Manual/subject/publication number
	Intermediary Manual—Part 1—Fiscal Administration (HCFA-Pub. 13-1) (Superintendent of Documents No. HE 22.8/6-3)
119	● Completing Schedule of Appeals Workload.
	Intermediate Manual—Part 2—Audits, Reimbursment Program Administration (HCFA-Pub. 13-2) (Superintendent of Documents No. HE 22.8/6-2)
381	● Contractor Performance Evaluation Program—FY 1991.
	Part A Performance Functional Criteria.
382	● Distribution of Providers Notices, Bulletins, and Newsletters.
	Intermediary Manual—Part 3—Claims Process (HCFA-Pub. 13-3) (Superintendent of Documents No. HE 22.8/6)
1494	● Intermediary Part B Appeals Report.
1495	● Calculating Part B Payments.
	Calculating HHA Payments.
1496	● Effect of Payment by Liability Insurer on Deductibles and Utilization.
	Definitions.
	Provider Actions.
	Identification of Liability Situations.
1497	● Item 53 of HCFA-1450, Total Charges.
1498	● Review of Form HCFA-1450 for Inpatient and Outpatient Bills.
1499	● Screening Pap Smears.
1500	● Review of ESRD Claims.
	Medical Review Activity Reports.
1501	● HCPCS for Hospital Outpatient Radiology and Other Diagnostic Services.
	Diagnostic Radiology.
	Cardiac Catheterization.
1502	● Reimbursement for Certified Registered Nurse Anesthetist or Anesthesiologists' Assistants Services.
	Development of Focused Medical Review Criteria.
1503	● Heart Transplants.
	Charges for Heart Acquisition Services.
1504	● Time Limitations for Filing Provider Claims.
	Request for Additional Medical Information.
1505	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices.
	Reporting Outpatient Surgery and Other Services.
1506	● Outpatient Physical Therapy Edits.
	Outpatient Occupational Therapy Edits.
1507	● Electronic Media Claims.
	Requirement for Submission of Electronic Media Claims Data.
	Carriers Manual—Part 1—Fiscal Administration (HCFA-Pub. 14-1) (Superintendent of Documents No. HE 22.8/7-2)
113	● Completing Appeals and Inquiries Data, Form HCFA-1524C.
	Workload.
114	● Coordination of Medicare Supplemental Health Insurance Policies.
	Carriers Manual—Part 2—Program Administration (HCFA-Pub. 14-2) (Superintendent of Documents No. HE 22.8/7-3)
114	● The Contractor Performance Evaluation Program for FY 1991.
	Carriers Manual)—Part 3—Claims Process (HCFA-Pub. 14-3) (Superintendent of Documents No. HE 22.8/7)
1371	● Overpayments.
1372	● Carrier Approval Authority for Laparoscopic Cholecystectomy.
	Limiting Charge for Nonparticipating Physicians.
1373	● Budgeting Allocation and Workload Reporting.
	Elements of a Review.
	Request for Hearing.
	On-The-Record Decision.
	Content of Hearing Decision.
	Effectuation of HO's Decision.
	Disclosure of Information.
	Request for Hearing Before Administrative Law Judge.
	Effectuation for Administrative Law Judge Decisions.
	Reconsiderations, Hearings, and Appeals Where a PRO Has Review Responsibility.
	Glossary of Terms.
	Review and Hearing Process.
	Examples of Situations Where Good Cause Exists.
	Review.
	Telephone Inquiries.
	Written Inquiries.
	Preparation for the Hearing.
	Representatives of the Party.
	Witnesses.
	Transcript of Hearing.
	Regional Office Examination of Hearing Decisions.
	Reopening and Revision of Claim Determination and Decisions.
1374	● Treatment of Sanctions, Civil Monetary Penalty Cases and Cost Exclusions.
1375	● Description of Procedures, Services or Supplies Billings for Physician Assistant and Nurse Practitioner Services.
	Billing for Skilled Nursing Facility and Nursing Facility Visits.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS—Continued

[October-December 1990]

Trans. No.	Manual/subject/publication number
1376	● Limiting Charges for Nonparticipating Physicians.
	Program Memorandum—Intermediaries (HCFA-Pub. 60A) (Superintendent of Documents No. HE 22.8/6-5)
A-90-13	● Updated Data for Determining Additional Payment Amounts for Hospitals With a Disproportionate Share of Low Income Patients.
A-90-14	● Planning for October 1, 1990 Prospective Payment System and Other Claims Processing Changes.
A-90-15	● Current Durable Medical Equipment, Oxygen, Orthotic and Prosthetic HCPCS Codes Subject to the Fee Schedule.
A-90-16	● Incorrect Hospital Coding of Patient (Discharge) Status.
A-90-17	● Submission of Form HCFA-2552-89 (Hospital and Hospital Health Care Complex) for Outpatient Capital Reduction.
	Program Memorandum—Carriers (HCFA-Pub. 60B) (Superintendent of Documents No. HE 22/8/6-5)
B-90-8	● Outpatient Limit on Physicians' Services.
B-90-9	● Capturing Physicians ZIP codes on CWF Records.
B-90-10	● 1991 Dear Doctor and Dear Supplier Materials.
B-90-11	● 1991 Medicare Update for Physicians and Supplier Services.
	Program Memorandum—Intermediaries/Carriers (HCFA-Pub. 60A/B) (Superintendent of Documents No. HE 22/8/6-5)
AB-90-7	● Current Status of Medicare Program Memorandums and Intermediary Letters Issued Before 1990.
AB-90-8	● Durable Medical Equipment Fee Schedules—Payment for Air-Fluidized Beds.
AB-90-9	● FY '91 Sequestration.
AB-90-10	● New "Q" Code for Lupron Depot.
AB-90-11	● HMO Directory.
AB-90-12	● Section 206(c), Effective January 1, 1991, Requires Changes in Adverse Notices to Claimants.
	Program Memorandum—Regional Offices (HCFA-Pub. 52) (Superintendent of Documents No. HE 22.8/6-5)
90-3	● Current Status of Medicare Program Memorandums and Letters Issued Before 1990.
	Program Memorandum—Health Maintenance Organization/Competitive Medical Plan (HCFA-Pub. 76) (Superintendent of Documents No. HE 22.28/2)
90-2	● Health Maintenance Organization Directory.
	State Operations Manual—Provider Certification (HCFA-Pub. 7) (Superintendent of Documents No. HE 22.8/12)
243	● Interpretive Guidelines, Physical Therapy or Speech Pathology Services. Interpretive Guidelines, Physical Therapist in Independent Practice.
	Regional Office Manual—Part 2—Medicare (HCFA-Pub. 23-2) (Superintendent of Documents No. HE 22.8/8)
311	● Conduct of Quality Measurement System Reviews. Universe Identification and Sampling. Appeals. Documentation to Submit. Derror Categories. Findings. Errors.
	Hospital Manual (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)
599	● Hospital Manual Index.
600	● Payment for Blood Clotting Factor Administered to Hemophilia Inpatients.
601	● Completion of Form HCFA-1450 for Dialysis Items and Services.
602	● Screening Gap Smears.
603	● HCPCS for Hospital Outpatient Radiology and Other Diagnostic Services. Diagnostic Radiology. Cardiac Catherization.
604	● Payment Under Prospective Payment System Diagnosis Related Groups. Reporting Outpatient Surgery and Other Services. Reasonable Cost Reimbursement for Certified Registered Nurse Anesthetist of Anesthesiologists Assistants Services.
605	● Retention of Health Insurance Records. Heart Transplant. Charges Under Prospective Payment System Diagnosis Related Groups. Rural Referral Centers. Criteria and Payment for Sole Community Hospitals and for Medicare Dependent Hospitals. Request for Additional Medical Information.
607	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices. Reporting Outpatient Surgery and Other Services.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS—Continued

[October-December 1990]

Trans. No.	Manual/subject/publication number
	Peer Review Organization Manual (HCFA-Pub. 19) (Superintendent of Documents No. HE 22.8/15)
27	● Quality Review—Overview. Generic Quality Screen Review—General. Operational Use of Screens and Guidelines. Reporting Results of Screen Application. Authority and Scope of Beneficiary Complaint Review. Complaints to be Reviewed. Disposition of Complaints. Timing of Review. Receipt of Medical Records. Disclosing Information. Corrective Actions. Coordination With Other Groups. Quality Intervention Plan—General. Operational Use of Quality Intervention Plan. Selection of Appropriate Intervention. Overriding Intervention Triggers.
	Home Health Agency Manual (HCFA-Pub. 11) (Superintendent of Documents No. HE 22.8/5)
240	● Retention of Health Insurance Records.
241	● Billing for Part B Intermediary Outpatient Speech-Language Pathology Services. Request for Additonal Medical Information.
	Skilled Nursing Facility Manual (HCFA-Pub. 12) (Superintendent of Documents No. HE 22.8/3)
295	● Completion of Form HCFA-1450 for Inpatient and/or Outpatient Billing (Delegates Occurrence Code (46) and Associated Value Code (53)).
296	● Screening Pap Smears.
297	● Retention of Health Insurance Records.
298	● Request for Additional Medical Information.
299	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices.
	Rural Health Clinic Manual (HCFA-Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
40	● Reimbursement.
	Renal Dialysis Facility Manual (HCFA-Pub. 29) (Superintendent of Documents No. HE 22.8/13)
47	● Total Charges.
48	● Retention of Health Insurance Records.
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/9)
99	● Completion of Form HCFA-1450 for Billing CORF, Outpatient Physical Therapy, Occupational Therapy, or Speech Pathology Services (Deletes Occurrence Code (46) and Associated Value Code (53)).
100	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices. Retention of Health Insurance Records.
	Provider Reimbursement Manual Provider Cost Reporting Forms and Instructions (HCFA-Pub. 15-II) (Superintendent of Documents No. HE 22.8/4)
14	● Electronic Submission of Cost Reports.
	Carrier Quality Assurance Handbook (HCFA-Pub. 25) (Superintendent of Documents No. HE 22.8:C 23/982)
43	● Data Submission Requirements.

TABLE III.—REGULATIONS AND NOTICES PUBLISHED OCTOBER-DECEMBER, 1990

Publication date/cite	42 CFR part	Title
Final Rules:		
11/01/90 (55 FR 46064)	412, 413	Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1991 Rates (Correction Notice for Final Rule Published 09/04/90 (55 FR 35990)).
11/07/90 (55 FR 46887)	412, 413	Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1991 Rates (Correction Notice for Final Rule Published 09/04/90 (55 FR 35990)).
12/11/90 (55 FR 50831)	418	Medicare Program; Hospice Care Amendments: Medicare.
12/31/90 (55 FR 53510)	405, 410, 411, 413, 494	Medicare Program; Medicare Coverage of Screening Mammography.
11/02/90 (55 FR 46222)	408	Medicare Program; Grace Period and Termination for Nonpayment of Supplementary Medical Insurance (Part B) Premiums for Insured and Uninsured Persons.
11/06/90 (55 FR 46685)	405	Medicare Program; Offset Medicare Payments to Individuals to Collect Past-Due Obligations Arising from Breach of Scholarship and Loan Contracts.
11/06/90 (55 FR 46689)	413	Medicare Program; Limit on Payment for the Cost of Intraocular Lens Furnished by a Hospital on Outpatient Basis.

TABLE III.—REGULATIONS AND NOTICES PUBLISHED OCTOBER-DECEMBER, 1990—Continued

Publication date/cite	42 CFR part	Title
12/14/90 (55 FR 51434)	401, 488	Medicare Program; Granting and Withdrawal of Deeming Authority to National Accreditation Organizations.
12/26/90 (55 FR 53007)	405, 414	Medicare Program; Payment Change for Home Dialysis.
10/09/90 (55 FR 41140)		Medicare Program; Withdrawal of Coverage of Thermography.
10/12/90 (55 FR 41603)		Medicare Program; Part A Premium for the Uninsured Aged for 1991.
10/24/90 (55 FR 42900)		Medicare Program; Data, Standards and Methodology Used to Establish Budgets for Fiscal Intermediaries and Carriers.
10/24/90 (55 FR 42907)		Medicare Program; Standards Applied by Utilization and Quality Control Peer Review Organziations; Consideration of Remote Rural Location and Other Relevant Factors.
11/01/90 (55 FR 46104)		Medicare Program; Inpatient Hospital Deductible and Hospital and Skilled Nursing Facility Coinsurance Amounts for 1991.
11/09/90 (55 FR 47165)		Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance (Correction Notice for General Notice with Comment Period Published 09/28/90 (55 FR 39730)).
11/21/90 (55 FR 48694)		Medicare Program; Establishing Procedures for Transmitting Information Between Medicare Carriers and Medicare Supplmental Insurers.
11/27/90 (55 FR 49344)		Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting.
12/07/90 (55 FR 50590)		Medicare Program; Proposed Additions to and Deletions from the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers.
12/13/90 (55 FR 53142)		Medicare and Medicaid Programs; Freedom of Information (FOI) Guidelines.
12/26/90 (55 FR 51300)		Medicare Program; Proposed Additions to and Deletions from the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers (Correction Notice for Proposed Notice Published 12/07/90 (55 FR 50590)).
12/28/90 (55 FR 53356)		Medicare Program; Physician Performance Standard Rates of Increase for Federal Fiscal Year 1991.

(Catalog of Federal Domestic Assistance Program No. 93.773, Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: March 27, 1991.

Gail R. Wilensky,

Administrator, Health Care, Financing Administration.

[FR Doc. 91-8705 Filed 4-12-91; 8:45 am]

BILLING CODE 4120-01-M

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of System of Records.

SUMMARY: In accordance with the regulations of the Privacy Act of 1974, we are proposing to establish a new system of records, "Health Care Financing Administration (HCFA) Correspondence and Assignment Tracking and Control System (CATCS)," HHS/HCFA/OBA No. 09-70-9001. We have provided background information about the system in the "Supplementary Information" section below.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 11, 1991. The system of records, including routine uses, will become effective June 14, 1991, unless HCFA receives comments which would necessitate changes to the system.

ADDRESSES: Members of the public should address comments to Mr. Richard A. DeMeo, Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, room 108, Security Office Park, 7008 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: If you have any technical questions regarding the operation of this system of records, please contact Ms. Johnnie Christian, Correspondence Control Branch, Office of Executive Operations, Health Care Financing Administration, room 309 G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 245-8375.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records that tracks correspondence and assignments pursuant to the authority of 42 CFR 401.101-401.148 and section 1106(a) of the Social Security Act, 42 U.S.C. 1306(a). These regulations and statutory provisions establish the conditions under which Medicare and Medicaid information shall be made available to the public as well as Freedom of Information Act rules that apply to such disclosures of information.

5 U.S.C. 552(b)(3) of the Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the system meet the compatibility criteria since the information is collected for answering and tracking correspondence dealing with Medicare and Medicaid beneficiaries.

We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: April 4, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09-70-9001

SYSTEM NAME:

Health Care Financing Administration (HCFA) Correspondence and Assignment Tracking and Control System (CATCS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Office of Executive Operations, Health Care Financing Administration, Room 789 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Office of Executive Operations, Health Care Financing Administration, Room 309G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any beneficiary; any person who writes on behalf of beneficiaries; the public; other government agencies; contractors; and members of the Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes the following:

1. Name of Beneficiary
2. Beneficiary social security number or railroad retirement number
3. Name of correspondent other than a beneficiary
4. Bureau/office to which case is assigned
5. Correspondence control number
6. Date of initial entry and any subsequent updating
7. Subject of request
8. Location of case
9. Due date
10. Type(s) of information required
11. Cross reference
12. Incoming correspondence and response

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 CFR 401.101–401.148 and section 1106(a) of the Social Security Act, 42 U.S.C. 1306(a).

PURPOSE OF THE SYSTEM:

This system is used to track, control, and respond to correspondence from the public, other government agencies, contractors, and members of the Congress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

2. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

4. To the Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment.

5. Third-party contacts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is reasonably expected to have information relating to the individual's capability to manage his or her eligibility for an entitlement to benefits under the Medicare or Medicaid program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: There is a reasonable basis to conclude that the individual is of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual,) or,

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and they concern one or more of the following: The individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal; or evaluation and measurement of system activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in magnetic media (e.g., magnetic tape and computer discs) and in paper form.

RETRIEVABILITY:

The data in this system are retrieved by name, social security number, or correspondence control number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS *Information Resource Management Manual,* Part 6, ADP Systems Security. This includes maintaining the records in a secure enclosure.

Access to specific records is limited to those who have a need for them in the performance of their official duties.

Paper records are maintained in locked files or in buildings which are secured after normal business hours.

All HCFA agency employees and contractor personnel will be notified of the confidentiality of the records and of criminal sanctions for unauthorized disclosure of the information.

RETENTION AND DISPOSAL:

Records are maintained on-line in the system for 2 years. After a 2-year period, records are transferred to an archive file and destroyed three years later.

SYSTEM MANAGER AND ADDRESS:

Director, Executive Secretariat, Office of Executive Operations, Health Care Financing Administration, Room 309G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the system manager at the address indicated above and specify name or social security number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the records content being sought. You may also request an accounting of disclosures that have been made of your records, if any. These procedures are in accordance with Departmental Regulations 45 CFR 5b.5(a)(2).

CONTESTING RECORDS PROCEDURE:

Contact the system manager named above and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with information to show how the record is inaccurate, incomplete, untimely, or irrelevant. These procedures are in accordance with Departmental Regulations 45 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Incoming correspondence and responses to such correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91-8743 Filed 4-12-91; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Advisory Council; Renewal

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. appendix II), the Health Resources and Service Administration announces the renewal of the following advisory committees:

Councils	Termination date
Departments of Family Medicine Review Committee.	May 9, 1993.
Faculty Development Review Committee.	May 9, 1993.
Graduate Training in Family Medicine Review Committee.	April 27, 1993.
Residency Training Review Committee.	May 9, 1993.

Dated: April 9, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-8701 Filed 4-12-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency for Health Care Policy and Research; Establishment

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. app 2), the Administrator, Agency for Health Care Policy and Research, announces the establishment of the following review committee.

Designation: Dissertation Grant Review Committee.

Purpose: The purpose of the Committee is to advise and make recommendations to the Secretary and the Administrator, Agency for Health Care Policy and Research, with regard to the awarding of grants for dissertations and, as requested, other research proposals related to health services.

Function: The Committee shall review and make recommendations principally on dissertation grant applications proposing research on the organization, delivery, financing, or quality of health care services in a number of high priority areas of the Agency, including, but not limited to, effectiveness, efficiency, quality and outcomes of health care services; variations in medical practice/patient outcomes; health care technologies and their assessment; facilities and equipment; AIDS; and medical liability. The Committee may also, on occasion, review other general health services research applications.

Structure: The Committee shall consist of up to twenty members, including the Chair, who will serve limited terms. No member may be an officer or employee of the Federal Government. Members and Chair shall be selected by the Administrator, Agency for Health Care Policy and Research, from individuals with appropriate expertise and experience in health services research, including, but not limited to, planning, organization, and evaluation of health services. Relevant disciplines of members may be in biostatistics, economics, epidemiology, health and medical administration, hospital administration, nursing, operations research, political science, sociology, psychology, medicine, and computer science.

Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Committee shall continue in existence until otherwise provided by law.

Date: April 8, 1991.

J. Jarrett Clinton,

Assistant Surgeon General Acting Administrator, Agency for Health Care Policy and Research.

[FR Doc. 91-8746 Filed 4-12-91; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3252; FR-2996-N-01]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c)(5) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, SW., room 9146, Washington, DC 20410, telephone (202) 708-1824. The Telecommunications Device for the Deaf (TDD) number is (202) 708-4594). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989)) requires that HUD "publish in the **Federal Register** a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5) notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from October 18, 1990 through February 1, 1991 with the cause for such actions. An earlier notice on administrative actions of the Mortgage Review Board was published in the **Federal Register** on December 6, 1990 (55 FR 56413). That notice covered the period from enactment of section 142 of the Housing and Community Development Act of 1989 (December 15, 1989) through October 17, 1990.

1. Mortgage Credit Corp., Inc., Corpus Christi, Texas

Action: Withdrawal of HUD mortgagee approval.

Cause: Improper use of approximately $1.1 million in the GNMA Principal and interest Account and Tax and Insurance Account for loans serviced by the company; indictment of certain individuals based upon alleged fraudulent actions involving mortgage loans that were originated by the company; and failure to notify HUD of corporate changes in ownership and management of the company.

2. Financial Entity Corporation, Fresno, California

Action: Probation.

Cause: A HUD monitoring review cited violations of HUD-FHA requirements for failing to timely remit to HUD-FHA One-Time Mortgage Insurance Premiums (OTMIPs), that were collected from borrowers with respect to 12 HUD-FHA insured loans.

3. Heritage Mortgage Company, Chicago, Illinois

Action: Probation and proposed Settlement Agreement that provides for indemnification for six improperly

originated loans and maintenance of a quality control plan which complies with HUD–FHA requirements.

Cause: A HUD Office of Inspector General audit citing violations of HUD–FHA single family program loan origination requirements including: Failure to conduct face-to-face interviews with mortgagors; permitting interested third parties to handle loan documents; submitting inaccurate mortgagor's income and asset information to HUD; and having an inadequate quality control plan for the origination of HUD–FHA insured mortgages.

4. Fireman's Fund Mortgage Corporation, Farmington Hills, Michigan

Action: Settlement Agreement that provides for indemnification to HUD in the amount of $143,290 for claim losses in connection with six improperly originated loans and agreement not to submit any further claims on 10 other improperly originated loans.

Cause: HUD monitoring review citing noncompliance with HUD–FHA single family program loan origination requirements by the company's Phoenix, Arizona, branch office. The violations include failure to perform face-to-face interviews with mortgagors; permitting real estate agents to prepare loan applications; and failure to assure that mortgagors made the minimum required downpayment investment in the property.

5. Central Mortgage Corporation Tulsa, Oklahoma

Action: Withdrawal of HUD Mortgagee Approval.

Cause: A HUD monitoring review cited violations of HUD-FHA single family program loan origination requirements. The violations include: Failure to remit to HUD-FHA at least 29 One-Time Mortgage Insurance Premiums (OTMIPs) collected from borrowers in connection with HUD-FHA insured mortgage transactions; failure to pay appraisers; and failure to meet HUD-FHA mortgagee approval requirements.

6. Mortgage One Corporation Indianapolis, Indiana

Action: Withdrawal of HUD Mortgagee Approval.

Cause: HUD monitoring review citing violations of HUD-FHA program requirements including: Use of incorrect or non-existent mortgagee Social Security numbers to obtain HUD approval; failure to remit One-Time Mortgage Iinsurance Premiums (OTMIPs) collected from borrowers; submitting defaulted loans for HUD-FHA mortgage insurance; failure to implement a Quality Control Plan for the origination of HUD-FHA financial reporting requirements.

7. Interstate Mortgage Corporation Portland, Oregon

Action: Letter of Reprimand and proposed Settlement Agreement that provides for indemnification to HUD for future claim losses in connection with 12 improperly originated loans.

Cause: HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements. The company failed to verify the source of mortgagor downpayments and to ensure that mortgagors made the minimum required downpayment investment in the property.

8. Gershman Investment Corporation St. Louis, Missouri

Action: Proposed Settlement Agreement that includes indemnification of HUD for claim losses in connection with 15 improperly originated loans.

Cause: HUD monitoring review citing violations for HUD-FHA single family program loan origination requirements. The violations include: Failure to ensure that mortgagors made the minimum downpayment requried investment in the property; omitting mortgagor liabilities; and submitting loans for insurance when in default.

9. American Mortgage Network, SW. Las Vegas, Nevada

Action: Withdrawal of HUD mortgagee approval.

Cause: HUD monitoring review cited violations of HUD-FHA single family program loans origination requirements. The violations include: failure to remit 130 One-Time Mortgage Insurance Premiums (OTMIPs) collected from borrowers in connection with HUD-FHA loans transactions; failure to implement a Quality Control Plan for the origination of HUD-FHA insured mortgages; failure to establish a custodial bank account for funds received from mortgagors; and noncompliance with HUD-FHA financial reporting requirements.

10. National Mortgage Corporation of Indiana Indianapolis, Indiana

Action: Withdrawal of HUD mortgagee approval.

Cause: A HUD Office of Inspector General audit which cited violations of HUD-FHA single family program loan origination requirements. The violations include: Misusing section 203(k) rehabilitation escrow funds; improper underwriting; submitting false documents to HUD; overvalued properties; failure to remit mortgage insurance premiums to HUD; overcharging morgagors' interest cost; selling improperly originated and uninsured loans to investment mortgagees which were placed into GNMA pools; and noncompliance with HUD-FHA financial reporting requirements.

11. Philadelphia Freedom Corporation Las Vegas, Nevada

Action: Probation and Settlement Agreement.

Cause: HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements with respect to five investor loans. The violations include: Failure to perform face-to-face interviews with borrowers and failure to assure that borrowers made the minimum downpayment investment in the property.

Dated: April 9, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91–8780 Filed 4–12–91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-01-4120-11); WYW123482 & WYW123521]

Invitation for Coal Exploration Licenses

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration licenses.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as subpart 3410, title 43, Code of Federal Regulations, all interested parties are hereby invited to participate with Shell Mining Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, Wyoming:

Exploration License Application No. WYW123482

T. 42 N., R. 70 W., 6th P.M., Wyoming
Sec. 4: Lots 5 thru 20;
Sec. 5: Lots 5 thru 20;
Sec. 8: Lots 1 thru 16;
Sec. 9: Lots 1 thru 8, 11 thru 14;
T. 43 N., R. 70 W., 6th P.M., Wyoming

Sec. 29: Lots 3 thru 6, 9 thru 16;
Sec. 32: Lots 1 thru 16;
Sec. 33: Lots 3 thru 6, 11 thru 14.

Containing 3,814.52 acres

Exploration License Application No. WYW123521

T. 43 N., R. 70 W., 6th P.M., Wyoming
Sec. 4: Lots 8, 9, 15 thru 18;
Sec. 5: Lots 5 thru 20;
Sec. 6: Lots 8 thru 23;
Sec. 7: Lots 5 thru 13, 18, 19;
Sec. 8: Lots 1 thru 16;
Sec. 9: Lots 3 thru 6, 11 thru 14;
T. 44 N., R. 70 W., 6th P.M., Wyoming
Sec. 31: Lots 13 thru 20;
Sec. 32: Lots 9 thru 16;
T. 43 N., R. 71 W., 6th P.M., Wyoming
Sec. 1: Lots 5 thru 19, SENE.

Containing 4,280.72 acres

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain coal quality information and coal seam geometry.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to exploration plans to be approved by the Bureau of Land Management. Copies of the exploration plans are available for review during normal business hours in the following offices (serialized under numbers WYW123482 and WYW123521): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and, Bureau of Land Management, Casper district Office, 1701 East "E" Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in The News-Record of Gillette, Wyoming, once each week for two (2) consecutive weeks beginning the week of April 1, 1991, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Shell Mining Company no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Shell Mining Company, c/o Triton Coal, Attn: Tim L. Thamm, P.O. Box 3027, Gillette, WY 82717, and the Bureau of Land Management, Wyoming State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003.

The foregoing is published in the **Federal Register** pursuant to title 43 Code of Federal Regulations, § 3410.2-1(c)(1).

F. William Eikenberry,
Associate State Director.

[FR Doc. 91-8752 Filed 4-12-91; 8:45 am]

BILLING CODE 4310-22-M

[NV020-4331-10]

Winnemucca District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Winnemucca District Advisory Council will be held on Thursday, May 23, 1991. The meeting will begin at 8 a.m. in the conference room of the Bureau of Land Management Office at 705 East 4th Street, Winnemucca, Nevada 89445.

The Agenda for the meeting will include:

1. National Conservation Area Proposal for the Black Rock Desert/High Rock Area.
2. Endangered Species update.
3. Wild Horse and Burro update.
4. Bighorn Sheep transplant—Black Rock Range.

The meeting is open to the public. Interested persons may make oral statements to the Council at 10 a.m. on May 23rd or file written statements for the Councils consideration. Anyone wishing to make an oral statement must notify the District Manager by May 21st, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: April 4, 1991.

Robert J. Neary,
Acting District Manager.

[FR Doc. 91-8712 Filed 4-12-91; 8:45 am]

BILLING CODE 4130-HC-M

[MT-030-01-4212-14]

Realty Actions; Sales, Leases, etc.: Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of notice of realty action.

SUMMARY: This action will cancel Notice of Realty Action published in the Friday, February 15, 1991, **Federal Register** Vol. 56, No. 32, pages 6411 through 6412, Doc. 91-3655 Filed 2-14-91.

ADDRESSES: 2933 Third Avenue West; Dickinson, North Dakota 58601

FOR FURTHER INFORMATION CONTACT: William C. Monahan, Dickinson District Office, 701-225-9148.

Dated: April 5, 1991.

Gene C. Campbell,
Acting District Manager.

[FR Doc. 91-8773 Filed 4-12-91; 8:45 am]

BILLING CODE: 4310-DN-M

[NV-930-91-4212-14; N-52942]

Realty Action: Modification of Recreation and Public Purposes Classification and Designation of Public Land for Noncompetitive Sale; White Pine County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Classification of the following land pursuant to the Recreation and Public Purposes Act of 1926, as amended (43 U.S.C. 869 et seq.), is hereby modified to allow for disposal of the land through sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1719), at no less than fair market value.

Mount Diablo Meridian, Nevada

T. 12 N., R. 61 E.,
Sec. 35, NE¼NE¼NE¼, N½SE¼NE¼NE¼, SW¼SE¼NE¼NE¼, W½SE¼SE¼NE¼NE¼, N½NE¼SE¼SE¼NE¼NE¼, SW¼NE¼SE¼SE¼NE¼NE¼, W½SE¼SE¼SE¼NE¼NE¼;
Sec. 36, W½E½NW¼NW¼NW¼NW¼, W½NW¼NW¼NW¼NW¼, W½NE¼SW¼NW¼NW¼NW¼, S½SE¼NE¼SW¼NW¼NW¼NW¼, W½SW¼NW¼NW¼NW¼, SE¼SW¼NW¼NW¼NW¼, S½S½N½SE¼NW¼NW¼NW¼, S½SE¼NW¼NW¼NW¼, N½SW¼NW¼NW¼, N½N½S½SW¼NW¼NW¼.

The area described above contains 31.484 acres.

The land will remain closed to all other forms of appropriation including the mining laws. The land has been and will remain open to mineral leasing.

In 1985, the subject land was classified as suitable for lease pursuant

to the Recreation and Public Purposes Act, and was subsequently leased to White Pine County for sanitary landfill purposes.

White Pine County has recently expressed an interest in obtaining unrestricted title to the land. The land has been examined and a determination has been made that it is suitable for disposal by noncompetitive sale to White Pine County pursuant to the Federal Land Policy and Management Act. Disposal of the land is in conformance with the Bureau of Land Management's Egan Resource Management Plan and Record of Decision, as well as State and local planning and zoning. It is not required for any Federal purpose and disposal would be in the public's interest.

The land contains no known mineral value except for oil and gas. Therefore, mineral interests, excluding oil and gas, will be conveyed simultaneously with the surface estate. In addition to the purchase price, White Pine County will be required to submit a $50.00 nonrefundable fee for conveyance of the available mineral interests. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain the following reservations to the United States:

1. A reservation for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Oil and gas mineral deposits.

And will be subject to oil and gas leases N-40803 and N-52614.

Further information regarding this sale is available for review at the Ely District Office, Bureau of Land Management, HC33, Box 150, Ely, Nevada 89301-9408. 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 Ely BLM District Manager at the above address. All objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated this 28th day of March, 1991.

Kenneth G. Walker,

District Manager, Ely, Nevada.

[FR Doc. 91-8209 Filed 4-12-91; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-930-01-4214-10, A-7950]

Withrawal of Application, Termination of Segregation, Withdrawal of Public Land, AZ

April 2, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By memoranda dated February 26, and December 17, 1990, the U.S. Fish and Wildlife Service withdrew pending application A-7950. Application A-7950 was filed on February 21, 1974, for approximately 747,200 acres of land in Townships 1, 2, 3, and 4 North, Ranges 15, 16, 17, and 18 West, and Townships 1, 2, 3, 4, and 5 South, Ranges 15, 16, 17, 18 and 19 West, Gila and Salt River Meridian, Arizona. Subsequent actions reduced the withdrawal request to approximately 87,200 acres. On November 28, 1990, Public Law 101-628, the Arizona Desert Wilderness Act of 1990, was passed negating the need for application A-7950. Title I, section 101(a)(38) of Public Law 101-628 designated approximately 21,680 acres of the subject 87,200 acres as the New Water Mountains Wilderness Area, to be administered by the Bureau of Land Management, and title III, section 301(a)(3) added approximately 5,400 acres of public land located along the west boundary to the Kofa Refuge. This area was designated as wilderness to be administered by the U.S. Fish and Wildlife Service.

The land added to the Kofa Refuge is described as follows:

Gila and Salt River Meridian

T. 1 S., R. 19 W.,
Sec. 12, 13, 24, and 25, All;
Sec. 26, S½S½;
Sec. 35 and 36, All.
T. 2 S., R. 19 W.,
Sec. 16, S½S½, that portion located south of the existing road located on the approximate North line of the S½S½ of sec. 16;
Sec. 17, SE¼SE¼, that portion located south of the existing road located on the approximate North line of the SE¼SE¼, of sec. 17;
Sec. 20, NE¼NE¼, S½NE¼, SE¼;
Sec. 21, All;
Sec. 29, E½.

The area described above totals 5,400 +/− acres.

The New Water Mountains Wilderness area as identified in Public Law 101-628 is predominately unsurveyed land. If surveyed, however, the land designated as Bureau of Land Management wilderness would be described as follows:

Gila and Salt River Meridian

T. 3 N., R. 15 W.,
Sec. 30 and 31, portions thereof;
T. 3 N., R. 16 W.,
Sec. 14 through 23, all or portions thereof;
Sec. 25 through 36, all or portions thereof.
T. 3 N., R. 17 W.,
Sec. 7 through 11, all or portions thereof;
Sec. 13 through 36, all or portions thereof.

The area roughly described approximates 21,680 acres.

With the passage of Public Law 101-628 the need to process application A-7950 no longer exists. As a result, the segregative effect imposed by A-7950 will be removed effective 10 a.m., M.S.T., on April 15, 1991. However, the lands described above (27,080 acres) will be segregated from all forms of entry due to the wilderness designations. The Bureau of Land Management records will be noted upon publication.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 640-5509.

Beaumont C. McClure,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 91-8567 Filed 4-12-91; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18).

File No. PRT-740507

Applicant

Name: U.S. Fish and Wildlife service, Alaska Fish & Wildlife Research Center, 1011 East Tudor Road, Anchorage, Alaska 99503.

Type of Permit: Scientific Research.

Name of Animals: Alaska sea otters (*Enhydra lutris*).

Summary of Activity to be Authorized: The applicant proposes to amend their current permit to extend the capture area to include southeast Alaska (Baranof Island, in the Sitka area) in order to obtain an additional set of control samples and to authorize the collection, in both source areas, of urine samples to more accurately assess potential organ dysfunction, which may be related to oil exposure, and biopsy oral and vaginal lesions, where present,

for virology assays. They propose to conduct activities currently authorized under their permit, in southeast Alaska, such as, capture/recapture, transport, temporarily maintain, drug, flipper tag, blood sample, and inject with subcutaneous transponder chip, with the exception of surgically implanting radio transmitters. No additional takes of otters have been requested.

Source of Marine Mammals for Research: Prince William Sound and southeast Alaska (activities specified above).

Period of Activity: At least through 1991.

Concurrent with the publication of this notice, the Office of Management Authority is forwarding copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments and/or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281)

Dated: April 9, 1991.

Karen W. Rosa,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–8719 Filed 4–12–91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Introduction of commission members and guests.

(2) Superintendent's welcome, including a review of role and function of SRC.

(3) Federal subsistence management status report.

(4) Election of Chairperson.

(5) Review and approval of minutes.

(6) Old business.

(7) Public and other agency comments.

(8) Update on land exchange.

(9) Hunting plan recommendation work session.

(10) New business.

DATES: The meeting will begin at 9 a.m. on Tuesday, May 7, 1991, and conclude around 5 p.m. The meeting will reconvene at 9 a.m. on Wednesday, May 8, 1991, and conclude that afternoon.

LOCATION: The meeting will be held at the Regency Hotel, room #49, 95 10th Avenue, Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Roger Siglin, Superintendent, P.O. Box 74680, Fairbanks, Alaska 99707. Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Paul F. Haertel,

Acting Regional Director.

[FR Doc. 91–8793 Filed 4–12–91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 5, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 30, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Osborn, William Lewis, House, 1266 W. Pierce Ave., Phoenix, 91000544

Phoenix Union Colored High School, 415 E. Grant St., Phoenix, 91000543

CALIFORNIA

Mariposa County

Mariposa County High School Auditorium, 5074 Old Highway N., Mariposa, 91000547

San Diego County

Verlaque, Theophile, House, 645 Main St., Ramona, 91000548

MISSISSIPPI

Jackson County

St. Mary's By the River, 3855 River Rd., Moss Point, 91000542

WEST VIRGINIA

Berkeley County

Burwell; James Nathanial, House, E of US 11, N of WV state line, Ridgeway vicinity, 91000553

Downs, Charles, II, House, WV Secondary Rt. 1, W of US 11, Marlowe vicinity, 91000554

Hedges—Lemen House, Co. Rt. 4, .7 mi. N of jct. with WV 9, Hedgesville vicinity, 91000556

Kunkel, Elizabeth, House, W side of US 11, 2.4 mi. N of Martinsburg, Martinsburg vicinity, 91000557

Mulliss, George W. F., House, W side of US 11, 1 mi. S of Martinsburg, Martinsburg vicinity, 91000549

Stuckey House, Co. Rt. 7/8, along Wilson Ridge, Jones Spring vicinity, 91000555

Monongalia County

Camp Rhododendron [Coopers Rock State Forest MPS], off US 48, 8 mi. E of Morgantown, Morgantown vicinity, 91000545

Coopers Rock State Forest Superintendent's House and Garage [Coopers Rock State Forest MPS], off US 48, 8 mi. E of Morgantown, Morgantown vicinity, 91000546

Ohio County

Hazlett, Robert W., House, 921 N. Main St., Wheeling, 91000552

Woods, Robert C., House, 923 N. Main St., Wheeling, 91000551

Wood County

Meldahl House, Washington Bottom Rd. off WV 892, Washington vicinity, 91000550

[FR Doc. 91–8794 Filed 4–15–91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-344X]

Chicago Southshore & South Bend Railroad Co.—Abandonment Exemption—in La Porte County, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Chicago Southshore & South Bend Railroad Co. (CSS) of a 2.3-mile line of railroad between milepost 0.0 and milepost 2.3, in La Porte County, IN, 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 May 15, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c) must be filed by April 25, 1991, petitions to stay must be filed by April 30, 1991, and petitions for reconsideration must be filed by May 5, 1991. Requests for a public use condition must be filed by April 25, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-344X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Stephen W. McVearry, Weiner, McCaffrey, Brodsky, Kaplan, & Levin, P.C., 1350 New York Avenue, NW., suite 800, Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

Decided: April 5, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-8775 Filed 4-12-91; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Docket No. AB-305 (Sub-No. 1X)]

Nicholas, Fayette & Greenbrier Railroad Company—Abandonment Exemption—in Greenbrier and Nicholas Counties, WV

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 7.83-mile line of railroad between milepost 1.20, near Brushy Junction, and milepost 4.25, at Watts, and between milepost 0.0, at Brushy Junction, and milepost 4.78, at Leivasy Junction, in Greenbrier and Nicholas Counties, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 15, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve exvironmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 25, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 6, 1991, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 19, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 8, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-8774 Filed 4-12-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on March 27, 1991, a Consent Decree in *United States* v. *Allens Manufacturing Co, Inc.*, Civil Action No. CA90-0029, was lodged with the United States District Court for the District of Rhode Island. The proposed Consent Decree requires the Defendant to pay a civil penalty of $210,000, and obligates the Defendant to demonstrate its

compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and pretreatment standards for electroplating, 40 CFR part 413, and for metal finishing, 40 CFR part 433, through a strict monitoring and reporting schedule. If unable to demonstrate continuous compliance for one year, the Defendant must construct and install additional pollution control equipment and/or perform operations and maintenance to its pretreatment system.

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 of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Allens Manufacturing Company*, D.J. Ref. 90-5-1-1-3394.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Rhode Island, Westminster Square Building, 10 Dorrance Street, 10th Floor, Providence, Rhode Island 02903; at the Region I Office of the Environmental Protection Agency, JFK Federal Building, Boston, Massachusetts, 02203; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. A copy of the proposed Consent Decree can be obtained in person or by mail from the Document Center. In requesting a copy of the Consent Decree, please enclose a check in the amount of $6.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-8713 Filed 4-12-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 9, 1991, a proposed consent Decree in *United States* v. *C. Robert Ivey, et al.*, Civil Action No. 89 CV 71179DT was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree concerns the hazardous waste site known as the Liquid Disposal, Incorporated ("LDI") Site, located at 3901 Hamlin Road in Shelby Township, Macomb County, Michigan. The Consent Decree sets forth a settlement with three Defendants. Chemical Recovery Systems, Holly Container Corporation, and Gordon Ver Hulst. Under the terms of the Consent Decree, the United States will obtain judgements against each of the three defendants for $4.8 million and will receive payments totalling $265,000 as reimbursement to the United States for its response costs at the LDI Site.

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. *C. Robert Ivey, et al*, D.J. Ref. 90-11-2-220A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 231 West Lafayette, Detroit, Michgian 48226; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please include a check in the amount of $6.50 (25 cents per page for reproduction costs) payable to the Treasurer of the United States.

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-8741 Filed 4-10-91; 10:28 am]

BILLING CODE 4410-01-M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Public Law 94-463.

DATES: Friday, May 31, 1991, 9 a.m. to 1 p.m.

ADDRESS: Dining Room A, Library of Congress, 101 Independence Avenue, SE., Washington, DC 20540 .

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 707-6590.

The American Folklife Center was created by the U.S. Congress with passage of Public Law 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: April 5, 1991.

Rhoda W. Canter,

Associate Librarian for Management.

[FR Doc. 91-8716 Filed 4-12-91; 8:45 am]

BILLING CODE 1410-01-M

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities Under OMB Review

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB)D is revising its appeal form, Optional Form 283 (Rev. 12-89), to add two sections for use in processing appeals filed by whistleblowers under the provisions of the Whistleblower Protection Act of 1989. Revisions also include some minor word changes in the general instructions and the renumbering of sections II, III, and IV. The MSPB is submitting the

revised form to the Office of Management and Budget (OMB) for approval under section 3504(h) of the Paperwork Reduction Act of 1980, and soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DATES: Comments must be received on or before May 15, 1991.

ADDRESSES: Copies of the revised form may be obtained from Paul D. Mahoney, Director, Office of Management Analysis, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419. Comments concerning the paperwork burden should be addressed to Paul D. Mahoney, Director, Office of Management Analysis, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419; and the Office of Management and Budget, Paperwork Reduction Project (Optional Form 283), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: C.P. Handly, Office of Management Analysis; (202) 653-8892.

Dated: April 9, 1991.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 91-8702 Filed 4-12-91; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Music Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #1 Section) to the National Council on the Arts will be held on May 1-2, 1991 from 9 a.m.—5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-8733 Filed 4-12-91; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #2 Section) to the National Council on the Arts will be held on May 6-7, 1991 from 9 a.m.—5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-8734 Filed 4-12-91; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Solo Recitalists Fellowships Section) to the National Council on the Arts will be held on May 8, 1991 from 9 a.m.—5:30 p.m. and May 9 from 9 a.m.—5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 9 from 3 p.m.—5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on May 8 from 9 a.m.—5:30 p.m. and May 9 from 9 a.m.—3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants.

In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-8735 Filed 4-12-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Young Scholars Program FY 1992, Guidelines for Proposal Submission; Submission Deadline—August 5, 1991

Introduction

The Research Career Development Division of the Directorate for Education and Human Resources (EHR) manages and coordinates a variety of programmatic efforts that aid young men and women in their development toward productive research and teaching careers in science, mathematics and engineering. Each effort, in its own way, focuses on a period in the lives of such students during which important career options must be analyzed and critical choices made. The designation of a field of specialization, selection of a graduate school, and choice of first employing organization are decisions made during periods targeted by current Division activities—periods when a modest amount of individual support can stimulate the development of careers that will strengthen the academic base and economic competitiveness of the United States.

One of the first decisions for young men and women is the choice of a career. For many the commitment to a career in science, mathematics, or engineering begins to develop during their secondary school years. In order to assist students in reaching an informed decision about a potential career in science, the National Science Foundation initiated in Fiscal Year 1988 the NSF Young Scholars Program, which offers two-year continuing awards, with a second year of support contingent on NSF review of project activities and the availability of funds. In its first three years of operation, the Young Scholars Program supported more than 200 projects which provided enrichment experiences in science, mathematics and engineering for more than 10,000 high ability or high potential secondary school students during the summers of 1988, 1989 and 1990.

The underrepresentation of women, minorities and persons with disabilities at the advanced levels of science, mathematics and engineering deprives the Nation of much potential talent. Consequently the Foundation strongly encourages the full participation of members from these groups as proposers, staff and participants.

Goals/Scope

The goals of the Young Scholars Program are to:

- Increase participant knowledge of and exposure to science, mathematics and/or engineering as careers in order to facilitate their making realistic decisions based on the full range of career options available:
- Stimulate participant interest in science disciplines as possible career choices;
- Increase student awareness of the academic preparation necessary for such careers;
- Acquaint students with the environment and resources of universities, colleges and research organizations;
- Contribute to students' confidence in their ability to make career decisions.

These experiences with the scientific enterprise should develop student awareness of the work of scientists through a variety of activities including:

- Intellectually challenging experiences which are not a part of the school curriculum,
- Experiences in laboratories and classrooms that broaden understanding of the subject matter through first-hand experience in the research process,
- Personal interaction with researchers by working side-by-side with them,
- Career guidance by scientists and educational counseling personnel,
- Discussion of the philosophy and ethics of the science discipline of the project.

Eligibility

There are three categories of eligibility for the Young Scholars Program: Submitting organization, activities and discipline focus. Proposals must meet the requirements in all three categories as outlined below to be eligible for consideration for funding.

Submitting Organization

Proposals may be submitted by colleges or universities, their associations or consortiums, scientific or professional societies whose members are primarily university faculty or researchers, and for-profit industries or other organizations which are engaged in significant advanced research efforts and have experience in interacting with pre-college students. Academic institutions are encouraged to combine efforts with industries with appropriate research facilities.

Secondary schools and school districts and other organizations with programs focused on secondary education are not eligible to apply as submitting organizations.

Of course, any organization is welcome to collaborate in a project proposal developed and submitted by an eligible institution.

Activities

Required and eligible activities are discussed under Project Design. Young Scholars project activities are not intended to duplicate or replace the secondary school curriculum or offer tutorial or remedial services. Thus the project should not provide course work primarily designed to improve performance in regular school courses. Nor should the goal of activities be to prepare students for standardized tests for college admissions or advanced placement courses, or to duplicate regular college courses. Further, secondary school or college credit for the successful completion of project activities is neither required nor encouraged. exceptions may be made when the institution or schools involved require that credit be given. However, grant funds cannot be used to pay per credit fees.

Discipline Focus

Grants for Research and Education in Science and Engineering (GRESE) (NSF 90–77, rev. 8/90, p.1) specifies the fields of science and engineering which are eligible for support. Consistent with these guidelines, the Young Scholars program will not support activities focused on clinical or health science disciplines.

Any questions regarding a proposed project's eligibility under these categories should be referred to the program staff. Proposers may be asked to submit additional information regarding organizational or project characteristics. In some cases it may be necessary for NSF staff to review a formal proposal before a final and fair determination of eligibility can be made.

Project Design

Except where otherwise indicated, the Foundation intends to allow project directors maximum flexibility in designing their projects to address specific discipline areas and participant age groups.

The Young Scholars program actively seeks innovative approaches to cost-effective enrichment activities for young students. These include off-campus sites where scientific inquiry is especially intense, unusual designs for instruction and demonstration, and creative techniques for academic-year follow-up.

Particular attention should be paid to the following areas in the proposal:

Environment

The project should create a learning environment which challenges the students' intellectual abilities and encourages the development of the

requisite skills for the use of these abilities. The environment also should foster close interaction among the participants, and between the participants and science, mathematics, and engineering practitioners, including the project director and senior staff. Activities should be structured to prevent isolation and promote group identity and support, and facilitate student involvement. The opportunities for interaction should be both formal and informal and the participation of mentors is strongly encouraged.

Activities

proposers should keep in mind that students learn science best by practicing science; that is, by exercising their natural curiosity and participating in the process of scientific discovery. Projects may consist of any combination of activities involving instruction, problem solving, research and exposure to the research environment and research methods that are appropriate for the targeted age group and the discipline focus. However, proposers should strive for balance between classroom, laboratory and field experiences. Activities should be strongly participatory and intellectually challenging, and should promote positive interaction among students and staff.

It also should be noted that while some assignments or tasks will be individualized, a major characteristic of Young Scholars projects is group activities (instructional, field work and informal activities) which foster mutual support and feedback. The goal is to facilitate peer support for participant interest in science and to encourage networking among participants for future support and information exchange.

Required Activities—The following components must be included in all proposed projects and outlined in a Schedule of Activities:

Research Related Activities

Research methodology.—The specific methods and techniques of scientific research differ by field, but the scientific method serves as the basis for the discovery of knowledge across disciplines. Projects should include a general discussion of research methodology, with specific attention to the techniques and methods utilized in the disciplines which serve as the focus of the project.

Participant activities.—Hands-on activities should be included as a means of exploring scientific concepts and allowing participants to actively engage in the process of scientific discovery. Mathematics projects should be designed to include inquiry- oriented instruction and should allow students to engage in the construction of mathematical concepts. Because of their limited exposure to mathematics and science, group experimentation may be more appropriate for younger students (e.g. 8th-10th graders). Individual research projects are expected for students with a more extensive background in mathematics and science.

Scientific concepts.—The scientific and/or mathematical concepts which will serve as the focus of instruction and research activities should be clearly outlined in the proposal. Additionally, the proposer must clearly describe how class, laboratory, and field activities will be integrated into the project's discipline focus.

Career exploration. Since a major objective of this program is to heighten student awareness of science, mathematics and engineering as possible careers, each project must include career exploration activities which offer information and guidance regarding the opportunities of science as a profession, particularly in the discipline area of the project. These activities also should include attention to precollege science and mathematics teaching as a career choice. Specific attention should be given to the secondary school and college academic requirements for a degree in the selected discipline. The participation of female and minority scientists and scientists with disabilities in this activity is especially encouraged.

Ethics of science. The development of a mature and participating citizen, scientist or not, requires an appreciation of the role of science in society. Therefore, all projects must include some activity that focuses on scientific ethics specific to the discipline focus of the project. Current events which illustrate ethical issues within the project's discipline focus should be considered for discussion. Project staff also are encouraged to use issues relevant to their research as discussion topics.

Follow-up activities. An academic-year follow-up for summer programs to sustain the intensity of the experience is also required. In general the shorter the summer component, the more extensive follow-up activities should be. Proposed activities should reinforce and expand the knowledge and skills learned during the summer and strongly participatory activities, including follow-on research, should be considered. In addition these activities should help students utilize newly acquired skills in classroom activities. To this end, the follow-up academic-year component need not be limited to summer participants, but may also involve their classmates and teachers. A summer follow-up component may be proposed for academic-year programs. Student presentations of project activities in one of their classes at their home school or another appropriate forum is a required follow-up activity during the school year.

Project assessment. Proposers must specify project goals and objectives, planned outcomes and plans to measure the success of the project. The latter should include feedback from participants and staff. This is in addition to participation in Young Scholars program data collection activities, described below. Established projects should include a discussion of previous project outcomes. Current Young Scholars project directors submitting new proposals should summarize previous accomplishments and outline proposed revisions in project design and scope along with the rationale for these changes.

Setting/Length

Residential or commuter projects during the summer are recommended as the principal mechanism for creating an enrichment experience. The summer components should include a minimum of three weeks of activity. Projects offering an after school/weekend academic-year program as the principal mechanism are also eligible for funding. Follow-up activities are not required for academic-year projects.

Participants

Middle school/senior high focus. Proposers are expected to design projects which target subsets of students entering grades 8–12, who are U.S. citizens or permanent residents. The selection of a specific age group or grade level should be justified in the proposal. Projects including both middle school and high school students should be designed to accommodate the diversity in the science/mathematics background of students in all targeted grade levels.

Participants should be students of high ability or high potential, with interest in science, mathematics or engineering. The Foundation assumes that students defined as high ability have demonstrated this ability on some objective criteria, and the prosper must indicate these criteria, (i.e. grades, examination scores, honors, awards in science competitions, etc.) Students of high potential are those suspected of high ability, and the prosper must define the criteria to be utilized in identifying

these participants, (i.e. interviews, recommendations, extracurricular activities, etc.)

Project size/participant tenure. The overall program philosophy is to reach as many students as possible. The number of project participants will depend on the proposed activities and staff but should allow for substantial one-on-one or small group interaction among students and between students and senior staff. Proposals with fewer that 15 students should outline outreach efforts that will involve a larger audience in some phase of project activities. In addition the budget should be formulated to offset the generally higher costs of smaller projects.

Each year of project activity is intended as a separate unit, with new participants selected each year. However, this does not preclude consideration of a proposal in which some students return for the second year in a different capacity or for an expanded program of activities. Such a design must be justified in the proposal.

Proposers are encouraged to accept students who have not had an opportunity to participate in a YS project previously, and should not accept students who have participated in more than one YS project in previous years.

Participant Recruitment and Selection

Proposals must specify how participants will be identified, recruited and selected. Admission decisions regarding participants should be made on the basis of materials submitted by applicants. This information might include: (a) Recommendations from current or recent science or mathematics teachers or counselors, (b) a short essay by the student on why he or she would like to participate or some other appropriate topic and (c) selected background and biographical information. Selection procedures should specify the academic course requirements necessary for participation. Other selection mechanisms such as examinations and interviews also can be considered. Recruitment procedures must include a mechanism that allows individual students to initiate the application process.

The Foundation expects broad-based participation in these projects regarding the number of schools, geographic areas covered and participant characteristics. That is, participants should be selected from a variety of secondary schools, and excessive representation from any one school is strongly discouraged. Regarding geographic distribution, projects should be designed, where possible, to attract students on a regional or national basis, rather than only locally. Also projects must be open to all eligible students in the targeted geographic area, except for those projects designed for students with disabilities and those proposals responding to the Early Alert Initiative (EAI). In the selection of participants, the number of minorities and females should reflect their representation in the designated geographic area.

In the Early Alert Initiative which is described in this announcement, participant selection may focus exclusively on women, minorities or other groups.

Participant Costs

Lack of personal or family financial resources should not be a barrier to participation by any eligible student. Therefore proposers may request NSF funding for all or a portion of student expenses, including room and board for residential projects, travel and a small stipend for students whose participation will preclude needed employment income. Stipends for participants must be justified in terms of their use in attracting the target population. Further, the age of participants in terms of earning potential should be taken into consideration in requesting stipends. Stipends should not exceed $100/week per student for high school students. Stipends for younger students should be less. Stipend amounts can be supplemented by other funding sources.

Proposers can require payment for room and board from participants whom they determine are able to assume responsibility for these expenses. (These fees cannot be considered cost-sharing.) The narrative should detail per student costs for room and board if applicable, travel and any stipends proposed, as well as the percentage of any or all of these costs NSF is being asked to assume. Proposers who plan to charge room and board fees that will vary among NSF-supported participants should outline how applicant financial need will be determined. Ability to pay may be assessed on an individual or group basis. Proposals must include a plan for providing financial assistance to eligible students.

Staff

Project staffing requirements will depend on the design of the project and participant needs. Senior staff, defined as those who will have primary responsibility for the selection of participants, the supervision of intellectual activity and the demonstration of research techniques and field instruction, should be academic faculty or active research scientists, mathematicians or engineers in industry. Staffing levels should allow for substantive one-on-one interaction between participants and senior staff.

The Project Director (Principal Investigator), who must be a member of the senior staff, will serve as the intellectual leader of the project and as the administrative contact with NSF. The proposal narrative must include a brief statement of the role and responsibilities of the Project Director, his/her time commitment to the project and his/her qualifications to serve in this capacity. Except in unusual cases, the program discourages the designation of more than one PD.

We encourage the participation as support staff of precollege science and mathematics teachers, counselors, undergraduate and graduate students. Proposers are encouraged to solicit volunteers and to utilize part-time as well as full-time staff in order to reduce costs. Skill in teaching and the ability to interact with young students should be a prerequisite for the selection of all staff. The participation of women, minority and scientists with disabilities is strongly encouraged.

Sites—Resources and Equipment

Since a major objective of this program is to acquaint students with the environment and resources of universities, colleges and research organizations, projects should be located at facilities where higher education or advanced research takes place.

Established Programs

The Foundation is aware that a number of activities similar to Young Scholars Projects have been offered at various campuses in recent years, and have reached funding stability. The Foundation strongly encourages the continuation of such programs, and will not normally award support for such projects where NSF support would serve mainly to replace established funding. The Foundation, however, does invite proposals from institutions that organized such activities in the summer of 1991 or regularly in the last few years, where NSF support would serve to strengthen such projects by funding new key components such as research participation, or expand such projects by broadening participation from previously underrepresented groups.

Established projects for which supplementary support is proposed must in their entirety be eligible for Young Scholar support, and thus must include all the required Young Scholar

components, and must be described fully in the proposal. Proposals from these projects also must include a statement describing the use of NSF funding, with attention to how these funds will enhance the project.

Budget

Proposers may request from the Foundation appropriate direct, indirect and participant costs. Separate budgets must be prepared for year one and year two of project activities, along with a 2-year cumulative budget. Normally awards will be funded initially for the first year only. Support for the second year will be contingent on the availability of funds and after review of the activities of the first year, including the Project Director's participation in program assessment activities.

NSF has specific provisions regarding allowable costs for salaries and wages, indirect costs, fringe benefits, equipment purchasers, participant support costs, tuition remission, consultant services and subcontracts. In general the Young Scholars Program is subject to these provisions as stated in the GRESE referenced below and proposers must follow these provisions in preparing the budget for a Young Scholars project.

General NSF provisions of special relevance to this program as well as additional program specific regulations are summarized below:

- Our previous experiences indicate that the *total* cost of a residential project to NSF is approximately $550 per student per week. Commuter projects should cost considerably less. Higher costs must be fully justified in the proposal.
- Established Young Scholars project directors must justify any increase in project costs.
- The Foundation will consider requests for extra compensation for faculty (overload). Such requests should be clearly outlined in the budget justification section and will be reviewed on an individual basis with attention to the nature of the project as well as institutional and current NSF policies.
- Summer salary for faculty members on academic-year appointments will not be funded for more than ⅔ of their regular academic-year salary. This total includes summary salary received from all NSF-funded grants.
- Support will not be provided for general purpose office equipment such as typewriters or furniture, nor for permanent scientific equipment. Permanent equipment is defined as any item with a unit cost of $500 or more and an expected service life of two or more years. Where such equipment is deemed necessary, proposals should consider borrowing or renting. Rental costs are allowable under this program. However, when rental costs exceed the purchase price of an item, purchasing the item will be considered.
- Indirect costs will not be paid on participant costs.
- Funds should be included for the project director (one person only) to attend the annual two-day project directors meeting in the Spring in Washington DC. Proposers should use their institutional guidelines regarding per diem allowances.
- Support may not be requested for social activities, project director attendance at any conference except the project directors meeting, or for teacher training components.
- Proposers are advised to determine whether insurance coverage normally available to students and faculty on campus applies to participants in these projects. The budget may request funds to purchase health and accident insurance for participants not covered by the usual student health plans. Insurance costs should be specifically justified, and will be reviewed on a case-by-case basis.
- The Young Scholars Program requires a reasonable degree of cost-sharing in all proposals. Cost-sharing should be clearly detailed by category in the proposal's budget justification section, and will be taken into consideration in decisions on the extent of NSF support. Fees assessed of participants are not considered cost-sharing.

The Young Scholars Program: Early Alert Initiative—FY 1992

The Young Scholars program established in FY 1990 an Early Alert Initiative (EAI) component. While there is a continuing need for scientists, mathematicians and engineers at all levels, there has developed a persistent shortfall in the number of college graduates earning degrees in these fields. Part of the problem is the decreasing number of students selecting careers in these disciplines. In fact, there are indications that many students eliminate careers in science, mathematics, and engineering as viable choices prior to high school.

If we are to increase the supply of scientists, attention should be given to students earlier than high school. Activities should focus on providing those experiences and opportunities which introduce students to the excitement and challenge of science careers. Projects addressing these areas should include science and mathematics course work beyond that offered in school; expanded counseling regarding career opportunities in these disciplines; interaction with role models in these fields; activities which strengthen family and peer support for student interest in these areas; and the elimination of social/cultural and financial barriers. Without these experiences, many students will continue to enter high school lacking interest in science careers, or lacking key prerequisites for a college science major.

The EAI, which focuses on mathematics and physics, is a response to this situation. Mathematics and physics are targeted because of continuing critical personnel shortages in these fields. The goal of EAI is to support projects which offer activities to develop or sustain the interest of adolescent students in careers in these two disciplines.

This initiative differs from the regular Young Scholars competition in several ways:

Eligible Students

Unlike the regular Young Scholars Program, EAI projects are restricted to students entering grades 7, 8 and 9. An EAI project may focus on one or more of these three grades. Unlike the regular Young Scholars program, EAI projects may be designed exclusively for ethnic minorities and/or women. Other groups such as persons with disabilities, the economically disadvantaged, or rural residents, also could be the focus of recruitment efforts.

Recruitment and Selection

Consistent with the overall Young Scholars Program, the EAI is focused on students of high ability or high potential. However, considering the young age of the target pool, and the focus on students who may have had limited exposure to mathematics and science, such high ability or high potential in these areas may not necessarily have been demonstrated in the classroom. Therefore grades should not be the sole selection criteria. A combination of alternative mechanisms should be utilized to identify students ability or potential. Proposers should clearly outline their strategies for selecting student participants on these factors.

Discipline Focus

Proposals must focus on mathematics or physics. In order to allow students to explore their interests in more than one discipline within the targeted fields, we encourage proposals which include attention to both mathematics and physics and their applications.

Project Format

EAI projects will almost necessarily be local in focus and involve students at an early stage of their interest in science and math. Therefore, unlike the regular Young Scholars Program, EAI projects must be comprised of year-round activities. Summer activities as well as substantive interactions between project staff, local scientists, teachers, and students during the school year are required. The goal is to provide a continuing enrichment experience for these students. Proposers may request support for two 12-month cycles for two separate groups of students, or one 24-month cycle for a single group of students.

Activities

Instructional activities. The EAI is not intended for students who perform below grade level in non-science and non-mathematics school courses. In light of the age of this target group, it is recognized that the teaching of some additional basic science and math concepts may be necessary. Advanced course work may be proposed, where appropriate for the selected population. Proposers must clearly outline the mathematics and/or physical science concepts that will serve as the focus of instructional and research activities.

Research methodology. EAI activities must enable students to experience the excitement of "doing science" in the discipline(s) chosen. Therefore activities should be strongly participatory. Details about how this will be accomplished must be provided. However, unlike the regular Young Scholars competition, individual research projects may be less appropriate for this category of students.

Career exploration. The EAI places a stronger emphasis than the regular Young Scholars competition on career exploration. Thus activities should include interaction with scientists in a variety of potential work settings. Discussions of higher education options and costs, with particular attention to options for financial assistance, are required. Integrated throughout planned activities should be attention to cultural/social barriers to student entry into science and mathematics careers.

Mentoring. A variety of small group activities, which facilitate interaction between scientists and students in both formal and informal settings are required and should be an integral part of summer and academic year activities. Mentors should be academic or industrial scientists engaged in active research;; undergraduate and graduate students also may be involved in mentoring activities, though not in primary roles. Where appropriate, activities should include interaction with scientists in the work place, if these differ from the major site of project activities.

Costs

There should be no charge for participation in these activities, and minimum stipends for students may be requested to cover the costs of transportation, meals, etc. Proposers also may include the costs of materials and supplies for student use in follow-up activities including science experiment kits, calculators, science magazine subscriptions, etc.

Except as explained above, proposals submitted under EAI should follow guidelines for the regular Young Scholars Program.

Proposal Preparation and Submission

Reference Documents

A formal proposal should be prepared following the guidelines contained in the NSF document Grants for Research and Education in Science and Engineering [GRESE] NSF 90–77, rev. 8/90 and the instructions contained in this solicitation. Additional information may be obtained from the NSF Grants Policy Manual, Revised (July, 1989), NSF 88–47.

Proposal Submission Forms

There are several NSF and Young Scholars program forms which are necessary as part of the submission of a proposal. These include a Young Scholars Program Data Sheet (appendix B) which will be used in the assignment of proposals to appropriate review panels. A checklist for Proposal Preparation, specifying the order of presentation, can be found in the appendix A to this solicitation . All NSF forms are contained in the NSF GRESE referenced above. Please check that all forms are filled out completely and signed, where necessary. Forms may be photocopied.

Narrative Content and Format

The narrative is limited to 30 double-spaced pages (15 single-spaced pages). There is no limit on the length of the appendices. However, proposers should be judicious in this regard as NSF leaves to individual reviewer discretion what part of the appendices, if any, should be read. The narrative should discuss each of the following areas (in the order given) in sufficient detail to allow the proposal to be evaluated in accordance with the goals of this program:

- Project Goals and Objectives
- Disciplinary Focus
- Project Design (must include a detailed Schedule of Activities)
  - —Disciplinary Focused Activities (classroom and laboratory)
  - —Activities Focused on Research Methodology
  - —Career Exploration Activities
  - —Philosophy and Ethics of Science Activities
  - —Project Assessment
  - —Follow-up Activities
- Setting
- Selected Population
- Participant Recruitment & Selection
- Project Staff
- Project Site

(Note that the budget and budget explanation are a separate section of the proposal.)

Proposals for the Young Scholars Program Should Be Postmarked by August 5, 1991.

Ten (10) complete copies of the formal proposal; one copy of the required NSF form 1225 and three (3) additional sets of forms each stapled as a unit, containing one Cover Sheet, one Summary Budget and one Young Scholars Program Data Sheet should be sent to the address listed below: Proposal Processing Unit, room 223, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Evaluation and Selection of Proposals

General criteria used in the evaluation of proposals are described in the NSF GRESE referenced above. They are performance competence, intrinsic merit, utility or relevance, and effect on the infrastructure of science and engineering.

Within the context of the Young Scholars Program specific evaluation criteria will include the appropriateness and quality of the following project elements:

(1) Overall project design including time frame for implementation, discipline focus and setting (commuter/residential; summer or academic year);

(2) Research, laboratory, field and classroom activities focused on the science discipline chosen, including hands-on projects and planned interaction between students and scientists and mathematicians;

(3) Project staff qualifications and mix;

(4) Participant recruitment and selection procedures and demographics;

(5) Follow-up activities;

(6) Scientific ethics and career awareness activities;

(7) Project site and resources;

(8) Budget, including total costs, proposed cost sharing and participant costs;

(9) For established projects, the proposed use of NSF funds to enhance the operation and the success of current activities; and

(10) For established YS project directors, staff analysis of the quality of prior project activities.

Proposals will be reviewed for scientific and educational merit by scientists, mathematicians, engineers, science educators including precollege teachers, and experts in other fields represented by the proposals.

Awards

The announcement of Young Scholars Program awards should be made in February 1992. Notification of awards is made in writing by the Foundation. As soon as possible thereafter the Foundation will publish and distribute a project directory as a reference guide for potential applicants.

Awards will normally provide for one year of support, with a second year of support contingent upon acceptable progress in implementing program objectives, including assistance in program assessment activities, and the availability of funding.

Participants admitted and successfully completing these projects will be identified in NSF records as National Science Foundation Young Scholars. Project Directors may use this terminology in the title of their proposed project and in any presentations made in closing ceremonies and any reference to the participants thereafter. The terms "Science", "Mathematics" and "Engineering" may be inserted as appropriate.

Program Assessment Activities

The Foundation has established a plan to facilitate early and regular assessment of program impact. This includes data collection instruments for administration to project applicants, participants, and Project Directors. As a part of these activities NSF will provide copies of these instruments and guidance on their administration at the time of the award. The cooperation of project directors will be an important factor in assuring the success of this effort. Second-year funding will not be approved without receipt of the interim report and completed survey instruments.

Grant Administration

NSF grants are administered in accord with the terms and conditions of NSF GC-1 (10-88), Grant General Conditions, or FDP II, Federal Demonstration Project General Terms and Conditions (10/90), copies of which may be requested from the NSF Forms and Publication Unit.

Inquires

Questions not addressed in this publication may be directed to the NSF staff by writing to: Young Scholars Program, Division of Research Career Development, Directorate for Education and Human Resources, National Science Foundation, room 630, Washington, DC 20550, (202) 357-7538.

Note: All required NSF forms are contained in the revised GRESE NSF 90-70, August, 1990. Several of these forms, including the cover sheet, have been revised and new forms have been added.

Formal proposals should be prepared in accordance with the guidelines contained in the Grants for Research & Education in Science and Engineering [GRESE], pp. 1-8 and the instructions contained in this Program Announcement. Single copies of the GRESE (NSF 90-77, rev. 8/90) may be ordered from the: Forms and Publication Unit, room 232, National Science Foundation, Washington, DC 20550.

Proposals also may be submitted electronically. For information contact the Electronic Proposal Submission Program Director, Office of Information Systems (OIS) by telephone at 202/357-9767 or via electronic mail to nsfprops@nsf (Bitnet) or nsfprops@nsf.gov(internet).

Dated: April 9, 1991.

Virginia Eaton,

Associate Program Director, Young Scholars Program.

[FR Doc. 91-8766 Filed 4-12-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Biological, Behavioral, and Social Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological, Behavioral, and Social Sciences (BBS).

Date and Time: May 2, 1991; 11 a.m.-5 p.m. and May 3, 1991; 9 a.m.-5 p.m.

Place: Rooms 1242-1243, National Science Foundation, 1800 G Street, NW., Washingnton, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological, Behavioral, and Social Sciences, (202) 357-9854, room 506, National Science Foundation, Washington, DC 20550.

Summary of Minutes: May be obtained from the contact person.

Purpose of Advisory Committee: The Advisory Committee for BBS provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BBS.

Agenda: Update on the BBS Task Force Looking to the 21st Century; long-range planning discussion.

Dated: April 9, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-8723 Filed 4-12-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Design and Manufacturing Systems;

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Design and Manufacturing Systems.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC, 20550 room 523.

Date & Time: Tuesday, May 7, 1991; 8:30 a.m.-5 p.m.

Type of Meeting: Closed.

Contact Person: Thom J. Hodgson, Acting Program Director, Design & Computer-Integrated Engineering, Program, room 1128, National Science Foundation, Washington, DC 20550 Telephone: (202) 357-7925.

Purpose of Committee: To provide advice, recommendations, and oversight concerning support for research and research-related activities.

Agenda: To carry out Committee of Visitors (COV) review of the Design & Computer-Integrated Engineering Program including examination of decisions on proposals, reviews, and other privileged materials.

Reason for Closing: The oversight committee's review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: April 9, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-8724 Filed 4-12-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National

Science Foundation announces the following meeting(s) to be held at 1800 G Street NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Dated: April 9, 1991.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Room*	Date(s)	Times
Special Emphasis Panel in Mechanical and Structural Systems	Res. Initiation Awards/Res. Eng. Grants	540	04/30/91 05/01/91	9 am-5 pm. 9 am-5 pm.

*At 1800 G Street NW., Washington, DC.

[FR Doc. 91-8725 Filed 4-12-91; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Los Angeles, CA: Aviation Accident

In connection with the investigation of USAir, Inc., Flight 1493 (a B-737) and Skywest Airlines, Inc., Flight 5569 (a SA-227) accident at Los Angeles, California, February 1, 1991, the National Transportation Safety Board will convene a public hearing at 2 p.m. (Pacific daylight time), on Monday, May 6, 1991, in the International A Ballroom of the Los Angeles Airport Hilton Hotel, located at 5711 West Century Boulevard, Los Angeles, California. For further information contact Ted Lopatkiewicz, Office of Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382-6605.

Dated: April 10, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91-8787 Filed 4-12-91; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Fourth Quarter CY 1990 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The AOs are described below, together with the remedial actions taken. The events are also being included in NUREG-0090, vol. 13, no. 4 ("Report to Congress on Abnormal Occurrences: October-December 1990"). This report will be available in the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC about three weeks after the publication date of this **Federal Register** notice.

Other NRC Licensees

90-21 Medical Therapy Misadministration

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—August 29, 1990; University of Cincinnati; Cincinnati, Ohio.

Nature and Probable Consequences—On August 29, 1990, 86 iodine-125 seeds (small sealed radiation sources) were permanently implanted in an 86-year-old patient. The seeds totaled 27.5 millicuries of iodine-125. A dose of 16,000 rads was prescribed for the prostate gland. The seeds were to be implanted in the prostate using an ultrasonic probe to view and position the implants.

Subsequent review by the licensee determined that most of the seeds had been implanted too deeply and had passed through the prostate into the surrounding tissue. Many of the seeds were 5 to 10 centimeters beyond the prostate gland. As a result, the radiation dose to the prostate was negligible compared to the prescribed dose of 16,000 rads. The licensee estimated a dose of 15,000 rads to the tissue beyond the prostate gland, considerably greater than the dose which would have been received if the seeds had been positioned as intended.

The licensee does not anticipate any significant effects to the patient as a result of the misadministration. Further treatment, including a repeat of the implant procedure, was planned.

Cause or Causes—The iodine-125 seed implant procedure was relatively new for the licensee, although it had been used 13 times previously. The attending radiation oncologist is an authorized-user who is certified in therapeutic radiology by the American Board of Radiology. The primary cause of the misadministration appears to be the difficulty in viewing the prostate area using the ultrasonic probe. Ultrasonic imaging is often difficult and inexact, especially when attempting to visualize a soft tissue organ like the prostate.

Actions Taken To Prevent Recurrence

Licensee—The licensee has adopted revised procedures to prevent recurrence of the misplacement of the iodine-125 seeds in procedures of this nature. The revisions include an improved measuring technique to ensure proper seed depth placement and improved ultrasonic image analysis. The attending radiation oncologist traveled to the research center where the implant procedure had been developed to evaluate the procedure and to gather further information to improve the licensee's implant techniques.

NRC—An inspection was conducted in November and December 1990 to review the full scope of NRC-licensed activities at the University of Cincinnati, including this misadministration. Although unrelated violations and deficiencies in the licensee's program were identified, there were no violations

associated with this misadministration. The licensee's corrective actions were determined to be acceptable.

* * * * *

90-22 Radiation Overexposure of a Radiographer

One of the AO examples notes that an exposure of the feet, ankles, hands or forearms of any individual to 375 rem or more of radiation can be considered an abnormal occurrence.

Date and Place—October 5, 1990; Western Stress, Inc.; Houston, Texas; the radiation overexposure occurred at a temporary jobsite in Bordentown, New Jersey.

Nature and Probable Consequences—During the evening of October 5, 1990, the licensee notified the NRC that an incident had occurred earlier that evening while a radiographer and his assistant were working at a temporary jobsite. The radiographic operation involved the use of a radiography device containing an 80.5-curie iridium-192 sealed source. (A radiography device uses a radioactive sealed source to make x-ray-like images of welds and heavy metal objects. The position of the source is controlled by a drive cable that is used to crank the source out of the exposure device and to retract it back to the shielded position within the device via an unshielded source guide tube.)

The licensee reported that the source became disconnected from the drive cable and remained in the guide tube. The radiographer retracted the drive cable unaware that the source was no longer attached to it. At this point, the radiographer removed his personnel dosimetry and approached the end of the guide tube to adjust the guide tube end-cap and collimator. As he removed the end-cap, the source chain containing the iridium-192 source fell to the ground. The radiographer immediately retreated from the area. The licensee notified the NRC, and two NRC Region I inspectors were sent and arrived on site at midnight to investigate the incident. The circumstances associated with the radiation overexposure are described below.

Radiographic operations to perform 35 exposures of welds on a waste water storage tank were planned. The source guide tube end-cap and attached collimator were clamped to a stand that was magnetically mounted to the exterior surface of the tank wall. The stand was moved along the weld for each successive 45-second exposure.

After cranking out the source for the sixth exposure, the radiographer heard a crash and saw the magnetically mounted stand, that held the collimator and end-cap, had fallen from the side of the tank and was lying on the concrete pad. The source guide tube end-cap with the collimator had been approximately 10 feet above the concrete pad for this exposure.

The radiographer attempted to crank the source back into the camera but found that the drive cable could only be retracted a short distance. He then looked around the tank and noticed the guide tube was looped. The radiographer then dragged the camera back by pulling on the drive cable housing in order to straighten out the guide tube. After straightening the guide tube, the radiographer was able to fully retract the cable, and consequently thought that the source was in the camera. Subsequently, the radiographer removed the chain from around his neck that held his two 200 millirem self-reading pocket dosimeters and his thermoluminescent dosimeter badge and laid the chain and dosimeters near the crank handle. The radiographer later admitted that he took this action to conceal the radiation exposure he would later receive.

The radiographer walked up to the end of the source guide tube with his survey meter in his hand, but did not refer to the instrument for any indication of radiation. At this time he grasped the end of the source guide tube with his left hand. With his right hand he removed the tape which held the collimator in place and cast the collimator aside. He then began to unscrew the source guide tube end-cap from the source guide tube to exchange the end-cap for a lighter end-cap assembly. As he removed the cap, the source chain containing the sealed source fell out of the end-cap assembly onto the concrete pad. The radiographer then dropped the source guide tube and end-cap, and rapidly left the immediate area.

A source recovery team from the camera manufacturer was sent to the site and safely recovered the source.

Based on interviews conducted with the radiographer and the Corporate Radiation Safety Officer, NRC inspectors determined that the radiographer received exposures in excess of regulatory limits. Dose estimates performed by the NRC indicated a whole body exposure to the radiographer of about 8.9 rem and an extremity exposure of about 1070 rem. The licensee sent the radiographer to a physician for examination and blood tests. No clinical manifestations of the overexposure were evident.

Cause or Causes—The radiographer failed to conduct a radiation survey of the exposure device after the exposure. Without a radiation survey, the radiographer was not aware that the source was disconnected and had not returned to the shielded position. His willful removal of dosimetry devices complicated subsequent dose calculations.

Actions Taken to Prevent Recurrence

Licensee—The licensee's proposed corrective actions include temporarily removing the radiographer from radiography duties, doubling the number of management audits and safety meetings, revising company policy on the number of hours worked, and increasing safety training from 16 hours per year to 32 hours per year.

NRC—NRC Region IV transmitted its inspection report on December 9, 1990, and conducted an Enforcement Conference with the licensee on December 7, 1990, to discuss the event. Escalated enforcement action is pending. NRC issued an immediately effective order on January 28, 1991, prohibiting the radiographer from engaging in NRC-licensed activities on behalf of the licensee for a period of 1 year.

* * * * *

90-23 Medical Therapy Misadministration

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—October 15, 1990; William Beaumont Hospital; Royal Oak, Michigan.

Nature and Probable Consequences—On October 10, 1990, a 60-year-old female patient was referred to the nuclear medicine department for iodine-131 thyroid ablation therapy after undergoing a thyriodectomy for cancer. After reviewing the clinical data on the patient, the authorized physician-user prescribed 175 millicuries of iodine-131 to be administered orally on October 15.

On October 15, the licensee received the patient's oral iodine-131 solution from a distributor. In addition, the licensee also received a second vial containing 140 millicuries of iodine-131. This vial is a weekly standing-order for the hospital and is used as needed during the week.

The two vials were assayed by a technologist. The one vial contained 180 millicuries, and this amount was later approved by the authorized physician for the patient's treatment. The standing-order vial contained 140 millicuries. After the assay, the

technologist placed both vials side by side in the fume hood located in the nuclear pharmacy. Both were still in their original leaded shields and labeled as to their contents.

At 10:30 a.m., the authorized physician-user was ready to administer the iodine-131 to the patient, and called for the material. Since the technologist who had prepared the dosage was not readily available, another technologist went to the pharmacy to obtain the radiopharmaceutical. The technologist who had prepared the dosage did not indicate to the administering technologist how many vials were to be administered. The administering technologist picked up both vials, assuming they were to be administered to the patient. The technologist did not review the labels on the containers, assuming they were the proper doses. The technologist also did not consider the administration of more than one vial to be unusual since this was a common occurrence at this facility.

After reviewing the dosage record, the authorized physician instructed the technologist to administer the dose to the patient. The technologist then proceeded with the administration of both vials containing 320 millicuries. The physician did not review the labeling on the containers, believing that since the patient's unit dose record was complete and indicated a dosage of 180 millicuries, the two vials were the proper ones for administration.

On October 16, the nuclear pharmacist received a request for 25 millicuries of iodine-131, but could not find the standing-order vial. The resulting investigation determined that the vial had been erroneously administered the previous day. The patient and her doctor were subsequently informed of the misadministration. The licensee's radiation safety officer also was notified.

NRC Region III contracted with a medical consultant to evaluate the potential medical effects on the patient as a result of the misadministration. The consultant's evaluation indicated that the misadministration should not have any significant medical effects on the patient; the estimated bone marrow dose received by the patient was between 40 and 50 rads, which should be well tolerated by the patient.

Cause or Causes—The three primary causes were: (1) The stock solution of iodine-131 was stored in the same location as the patient's dose, (2) the administering-technologist was never informed by the technologist who actually prepared the dose that only one vial was to be used, and (3) the administering-technologist and physician did not review the labels on the containers.

Actions Taken to Prevent Recurrence

Licensee—On October 18, 1990, the hospital requested that its NRC license be amended to include the following modifications to its iodine-131 administration procedures: (1) On all iodine-131 therapy doses, the person administering the dose must either be present in the radiopharmacy when the dose is assayed, or the person must personally assay the dose before it is taken out of the radiopharmacy; (2) the dose sheeting must indicate the number of vials that comprise the dose; (3) just prior to the administration, the physician will verify the assay dose activity with the prescribed dose and initial the dose sheet; and (4) the standing order of therapeutic iodine-131 will be stored in the hot locker and will be placed in the fume hood only when needed for dispensing. On October 29, 1990, these new procedures were incorporated into the hospital's NRC license via an amendment.

NRC—NRC Region III conducted an inspection at the facility on October 17, 1990. Although no violations of NRC requirements were identified, concerns were expressed over the storage of stock iodine-131 with the patient's intended dose and the lack of communication between the technologist who prepared the dose and the technologist who administered the dose. The NRC medical consultant indicated that the licensee's corrective action program was appropriate. Corrective actions will be examined by the NRC Region III during future inspections.

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90-24 Radiation Overexposure of a Radiographer

One of the AO examples notes that an exposure of the feet, ankles, hands or forearms of any individual to 375 rem or more of radiation can be considered an abnormal occurrence.

Date and Place—November 12, 1990; Tumbleweed X-Ray Company; Greenwood, Arkansas; the radiation overexposure occurred at a temporary jobsite in Burns Flat, Oklahoma.

Nature and Probable Consequences—On November 26, 1990, the licensee notified the NRC that on November 12, 1990, a radiographer's assistant may have sustained a possible radiation overexposure to his right hand. The licensee stated that it was not informed of the incident by the radiographer until the morning of November 25, 1990, because the radiographer did not think an overexposure had occurred until the assistant radiographer's right hand became red and his fingers began to swell. On the day of the incident, the radiogrpaher and his assistant were performing radiographic operations at a temporary jobsite with a radiography device that contained a 49-curie iridium-192 sealed source. NRC Region IV sent an inspector to investigate the incident; based on interviews with the radiographer, the assistant, and the owner of the company, the circumstances associated with the radiation overexposure are described below.

The radiographer and his assistant were performing radiographic exposures of welds on a 48-inch diameter tank at a fabrication shop. After the sixth exposure, the radiographer left the immediate area to load film in a belt. While the radiographer was away, the assistant set up the seventh exposure and cranked out the source. The assistant had turned the crank about two or three turns when he saw that the magnetically mounted stand, that held the guide tube near the exterior of the tank, had fallen.

The assistant radiographer's alarming personnel dosimeter (chirper) had alarmed loudly when the guide tube had fallen. The assistant stated that he froze for about 5 seconds, then he cranked the source back to the shielded position. The assistant's chirper had quit alarming, so he thought the source was in the shielded position in the radiography device. The assistant radiographer then stated that he failed to pick up and use his survey instrument to perform a survey of the radiography device and the source guide tube, because his chirper was not alarming. (The licensee later reported that the chirper had been dropped a couple of times that night and upon subsequent testing was found to be malfunctioning due to a shorted ground wire.) Instead, he walked over to the tank and repositioned the magnetic stand and source guide tube. After the assistant radiographer correctly positioned the guide tube with his right hand, he returned to the crank handle to proceed with the exposure.

When he performed this exposure, he noted that his chirper did not alarm when the source was cranked out. Because of this, after the exposure was completed, he looked at his pocket dosimeter and noticed that it was off scale (greater than 200 millirem). At about the same time, the radiographer returned and the assistant told him what had happened and that his pocket dosimeter had gone off scale. The

assistant told the radiographer that he did not think that he had received an overexposure, but that he thought his pocket dosimeter was off scale because he had bumped it earlier. The radiographer and his assistant continued to work and did not inform the Radiation Safety Officer of the incident until after the assistant's hand showed clinical signs of a radiation injury.

The assistant radiographer stated that he grasped the guide tube with his right hand just below where the guide tube was taped to the magnetic stand. The radiation injuries that the assistant radiographer sustained to his hand indicated that he grasped the guide tube with the thumb, index, and middle fingers, and that the source had to be directly beneath the point grasped. This information may indicate that the assistant radiographer mistakenly cranked the source out, instead of in, when the incident first occurred.

From reenactments, clinical observations, and calculations, the dose to the assistant radiographer's hand was estimated by the NRC to be between 1500 to 3000 rem. The whole body dose to the assistant, as measured by his thermoluminescent dosimeter, was 365 millirem. Blood samples were taken from the assistant for cytogenetic tests; the results indicated an equivalent whole body exposure of less than 10 rem.

On November 29, 1990, the NRC inspector noted that the assistant's thumb, index, and middle fingers were severly blistered and swollen. On this date the assistant was admitted to a burn center in Oklahoma City, Oklahoma, for medical care. The assistant remained in the hospital for approximately two weeks, and during that period had a skin graft performed on his index finger. On January 22, 1991, the physician contacted NRC and stated that the assistant's middle finger and thumb appeared to be healing and that the index finger was grafted due to lesions that were not healing. The physician also stated that the assistant would remain under his care, and he would supply NRC with periodic reports.

Cause or Causes—The radiographer failed to supervise the assistant properly, and the assistant failed to conduct a radiation survey of the exposure device.

Actions Taken to Prevent Recurrence

Licensee—The assistant radiographer is no longer employed by the licensee. Additional actions to be taken by the licensee will be discussed at an upcoming enforcement conference with the NRC.

NRC—During the investigation of this event, an order modifying the license was issued on December 4, 1990, prohibiting the radiogapher and the assistant from participating in licensed activities. NRC Region IV issued an inspection report to the licensee on February 5, 1991 and plans to conduct an enforcement conference with the licensee.

* * * * *

90–25 Medical Diagnostic Misadministration

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurence.

Date and Place—November 26, 1990; Veterans Administration Medical Center; San Diego, California.

Nature and Probable Consequences—On November 26, 1990, a patient scheduled for the administration of 5 millicuries of indium-111 labeled anti-CEA monoclonal antibody for diagnostic imaging of colorectal cancer was mistakenly administered 168 millicuries of technetium-99m pertechnetate.

Prior to the administration, a nuclear medicine physician instructed his technical assistant to obtain the indium-111 from the Nuclear Medicine Preparation Lab. However, the assistant erroneously picked up a syringe containing the technetium-99m pertechnetate. The physician failed to positively identify the label on the syringe before injecting the contents of the syringe into the patient.

The error was discovered by the licensee within minutes after the misadministration and the patient was administered 10 drops of iodide and 1 gram of perchlorate to block and flush the thyroid gland respectively.

The patient was placed in an isolated room normally used for therapy for two days. The patient was scanned approximately thirty hours after the misadministration and the thyroid gland showed no elevated radioactivity. A small residual amount of technetium-99m was detected in the bladder. Following the scan, the patient was noted to be clinically unchanged and was discharged from the licensee's medical center.

Had the blocking and flushing agents not been administered, the organ receiving the highest exposure would have been the stomach wall, receiving an estimated 42 rem compared to about 5 rem for indium-111. Administration of the blocking and flushing agents reduced the radiation exposure to all organs except the bladder wall. It is estimated the bladder wall received about 17 rem from the technetium-99m compared to about 3 rem for indium-111.

Cause or Causes—The main cause of the misadministration was the failure of the nuclear medicine physician and his technical assistant to read the label on the technetium-99m syringe at the time of the injection. A contributing cause of the misadministration was inadequate training of the physician's technical assistant who was provided a description of the radiopharmaceutical based only on the color and shape of a container and not the label.

Actions Taken to Prevent Recurrence

Licensee—The physician's privilege to inject patients has been temporarily revoked. Additional training of the nuclear medicine staff is planned. Recommendations of a licensee internal quality assurance investigation board are currently being considered.

NRC—A special NRC team inspection was conducted at the Licensee's facility following the misadministration. An inspection report was issued on January 3, 1991 and an Enforcement Conference was held with the licensee on January 10, 1991. On March 13, 1991, a notice of violation was issued to the licensee for violations identified during the inspection. None of the violations pertained to the misadministration and no civil penalty was proposed.

* * * * *

Dated at Rockville, MD this 5th day of April 1991.

For The Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–8781 Filed 4–12–91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100–203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Board's Panel on Risk & Performance Analysis will hold a meeting on May 20–21, 1991, on performance assessment for the proposed high-level radioactive waste repository at Yucca Mountain, Nevada. Performance assessment is an analysis that predicts the behavior of a system or component of a system under a given set of conditions. In this case, the system

includes the repository and the geologic, hydrogeologic, and biologic environment, and performance assessment can be used to determine whether specific standards or criteria are being met. The two-day panel meeting, which will run from 8:30 a.m.–5 p.m. both days, will be held at the Board's Offices, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

On May 20, panel members will hear from the Department of Energy (DOE) and its consultants on past, present, and future DOE performance assessment activities. Topics will include the results of PACE (Performance Assessment Calculational Exercises) 90; the use of performance assessment in the DOE's task force studies; planned studies for fiscal years 1991 and 1992; and the systematic integration of performance assessment into the proposed repository program.

On May 21, representatives from groups primarily outside of the DOE will present their views on performance assessment. The Nuclear Regulatory Commission (NRC) will discuss the results of its ongoing "demonstration performance assessment" and the NRC perspective on the use of performance assessment for the proposed repository. A consultant to the Center for Nuclear Waste Regulatory Analysis will discuss the probabilistic risk analysis of nuclear power plants and provide any insights that may be applicable to the use of performance assessment for a proposed repository. The Electric Power Research Institute also will present its views on performance assessment. At the end of the meeting, speakers from both days will participate in a roundtable discussion on performance assessment in general, and the DOE's program in particular.

Members of the public are welcome to attend the meeting as observers. A block of hotel rooms has been reserved at the Hyatt Arlington, 1325 Wilson Boulevard, Arlington, Virginia 22209; (703) 525–1234. To be included in the block and receive the preferred rate, individuals must contact the Hyatt Arlington Hotel *on or before April 28, 1991,* and indicate that they are attending the Nuclear Waste Technical Review Board meeting.

Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board Librarian, beginning June 10, 1991. For further meeting information, contact Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington Virginia 22209; (703) 235–4473.

Dated: April 9, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91–8717 Filed 4–12–91; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

[Issuance of Policy Letter 91-3]

Reporting Nonconforming Products

AGENCY: Executive Office of the President, Office of Management Budget, Office of Federal Procurement Policy (OFPP).

ACTION: Final issuance of OFPP Policy Letter 91–3.

SUMMARY: Policy Letter 91–3 establishes Government-wide policies and procedures for using the Government/Industry Data Exchange Program (GIDEP) as a central system for exchanging information among agencies about nonconforming products. A nonconforming product is defined within the Policy Letter as a product, process or material that does not meet manufacturing specifications, design, composition or other contract requirements. The use of GIDEP will enhance communications among agencies and help eliminate instances where individual agencies or their contractors acquire products previously identified as nonconforming by other agencies.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, OFPP, Office of Management and Budget, Washington, DC 20503, (202) 395–6803.

SUPPLEMENTARY INFORMATION: A draft of Policy Letter 91–3 was published in the **Federal Register** for review and public comment on February 1, 1991 (56 FR 4112). Comments were received in response to the **Federal Register** notice from 11 agencies and three private organizations. All comments were reviewed, and where warranted changes have been made in the final Policy Letter. The main issues and concerns raised during the comment period are summarized below.

1. Concerns about "Blacklisting"

Concern was expressed that the collection and dissemination of information about nonconforming products would be tantamount to the de facto suspension or debarment of the suppliers of such products. OFPP does not agree with this view. Paragraph 8 of the Policy Letter states that the initiation of any suspension or debarment action resulting from nonconforming products, including the use of the GSA listing of "Parties Excluded From Procurement Programs," shall continue to be governed by part 9.4 of the FAR. None of the due process requirements presently provided in the suspension and debarment processes, are waived by the Policy Letter and the requirement for contracting officers to make "responsibility determinations" has not been changed.

Moreover, Policy Letter 91–3 is not intended to implement FAR 9–105–(d) which requires that:

> Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information.

Policy Letter 91–3 simply requires agencies to exchange information about nonconforming products. It is not a contractor past performance evaluation system and will not replace such systems now maintained by many agencies. Its objective and purpose is to require agencies to give notice about nonconforming products and thereby "help eliminate instances where individual agencies or their contractors acquire products and materials previously identified as nonconforming by other agencies."

2. Reporting of Sensitive Information

Inspectors General and other agency investigative activities raised concerns that the requirement to report information about nonconforming products through GIDEP could compromise their investigations. Accordingly, provisions have been included in the Policy Letter that require agencies to develop procedures and processes to protect sensitive information relating to ongoing and planned investigations. Special procedures will be developed to permit GIDEP to limit distribution of sensitive information to designated agency contact points.

3. Need for Training

Several agencies suggested that special workshops or training sessions be arranged to teach GIDEP data entry and retrieval procedures to new users. OFPP agrees with this suggestion and an appropriate training program is being developed.

4. Major and Minor Nonconformances

One of the main concerns expressed by the present users of GIDEP was that it might become inundated with

information about "minor nonconformances" or problems that would not adversely affect other agencies or the public. To address these concerns, new provisions were developed and included in Paragraph 4(a) of the Policy Letter. Paragraph 4(a) essentially requires that agencies only submit information to GIDEP about nonconforming products that are in common use and, if not reported, could adversely affect other agencies or the public. Problems with unique parts or materials purchased to individual agency or contractor specifications should be handled on a case-by-case basis by the acquiring activity and should not be submitted to GIDEP.

5. Headquarters vs. Field Activities

Questions were raised regarding the responsibility for disseminating GIDEP information within agencies and for reporting agency information to GIDEP. The Policy Letter does not specify whether this function should be performed at an agency's headquarters or by a field activity. That decision should be made by each agency. During the initial implementation of the Policy Letter, however, agencies not presently participating will be limited to one GIDEP contact point. That contact point should be responsible for coordinating the submission and dissemination of GIDEP information. Requests for multiple agency contact points will be considered by the GIDEP Operations Center beginning 6 months after an agency first starts participating in GIDEP.

6. Federal Activities vs. Regulated Industries

One agency was concerned that the Policy Letter only addressed products procured under Federal contracts. It was suggested that the letter be expanded to include products acquired by federally regulated industries; e.g., nuclear power plants regulated by the Nuclear Regulatory Commission (NRC). Many federally regulated activities already participate in GIDEP. These are not Government activities and mandating their participation was not considered appropriate. OFPP, however, does not oppose such participation and a clarifying provision was added to the Policy Letter (Paragraph 6).

7. Waiver to GIDEP Participation

Paragraph 7 of the Policy Letter provides that if an agency believes that participating in GIDEP would not be beneficial, the agency may petition the Administrator for Federal Procurement Policy to waive the participation requirement. It was suggested that agencies be permitted to exempt themselves from GIDEP. This suggestion was not accepted as it would not have provided adequate Government-wide control.

8. Unduly Burdensome Reporting Requirements

One private sector firm stated that it opposed the Policy Letter because it would impose "unduly duplicative and costly requirements on all Defense contractors," and that existing procedures were adequate to prevent the use of nonconforming products. While OFPP supports the elimination of unnecessary procedures and reporting burdens, the procedures imposed by Policy Letter 91-3 are neither unnecessary nor overly burdensome. Numerous General Accounting Office and Inspectors General reports, plus findings of several Congressional hearings, indicate the need to exchange information about nonconforming products. In addition, the Policy Letter does not prescribe new reporting requirements for the Department of Defense. Instead, it directs attention to GIDEP and expands its applicability to civilian agencies. Moreover, GIDEP reporting burdens will be lessened later this year by the updating and further automation of the GIDEP data bases.

9. Budget Requirements

Several concerns were expressed regarding the costs to be assessed against agencies that participate in GIDEP. Over the last 3 years, the GIDEP budget has averaged $4.4 million per year. This includes $1.8 million in FY 1990 and 91 funds for automation improvements. Eighty percent of all GIDEP funding has been provided by DOD. Most of the remainder has been paid by civilian agencies. It is anticipated that this ratio of funding will continue. Any changes will be made on an equitable basis, with DOD continuing to be the major contributor and other agencies paying on a pro-rata basis. The Policy Letter is not expected to have a major budgetary impact on any agency.

Dated: April 9, 1991.

Allan V. Burman,

Administrator.

Attachment

April 9, 1991.

Policy Letter No. 91-3

To the Heads of Executive Departments and Establishments

Subject: Reporting Nonconforming Products

1. *Purpose.* This Policy Letter establishes policies and procedures for using a Government-wide system for exchanging information among agencies about nonconforming products and materials. The use of a central system will enhance communications among agencies. Specifically, it will help eliminate instances where individual agencies or their contractors acquire products and materials previously identified as nonconforming by other agencies.

2. *Definitions.* For purposes of this Policy Letter, a nonconforming product, process or material (nonconforming product) is a product, process or material that does not meet manufacturing specifications, design, composition or other contract requirements.

3. *Background.* Recent General Accounting Office (GAO) and Inspectors General (IG) reports indicate that nonconforming products are a common problem. A July 1990 survey report of 22 Federal agencies by the President's Council on Integrity and Efficiency (PCIE) reveals that approximately 40 percent of Government personnel involved in the procurement process have had recent experience with nonconforming products. In comparison, 85 percent of the employees who perform quality assurance/quality control responsibilities or receive or use products are aware of recent product substitution problems. The PCIE survey found that instances of nonconforming products occur most frequently in the construction equipment and materials area. Office equipment and supplies are second in frequency and electronic equipment is third.

The Federal Acquisition Regulation (FAR) Part 46.407 requires that contracting officers ordinarily reject nonconforming products when the nonconformance adversely affects safety, health, reliability, durability, performance, interchangeability, or other contract objectives. Such products, if not detected, can compromise defense and other agency missions, result in unanticipated replacement, repair or maintenance costs, and jeopardize public safety and health.

Nonconforming products often result from the failure of suppliers to adequately control quality and in some instances from criminal intent.

4. *Policy.* Agencies shall review existing programs or, where necessary, establish new programs to assure the quality of purchased products and materials. Information shall be exchanged among agencies about nonconforming products. The existing Government/Industry Data Exchange Program (GIDEP) operated by the Department of Defense will serve as the central data base for receiving and disseminating information about such products.

a. *Screening Information.* Information should be submitted to GIDEP about nonconforming products that (1) do not meet the requirements of contracts (including purchase orders), catalogue descriptions or referenced specifications, or (2) are commonly available products or materials such as, nondevelopmental items, commercial off-the-shelf items, National Stock Numbered items, catalogue items, and (3) if the nonconformance is not reported to GIDEP, continued supply or use could adversely affect other Government agencies or contractors. Information should not be transmitted to GIDEP that would not benefit other agencies or protect the public; e.g., routine acceptance test anomalies or routine

quality deficiency reports. GIDEP information should be limited to situations where the nonconformity adversely affects safety, health, operating performance or could result in significant maintenance cost and the nonconformity has not been granted formal waivers or deviations by the acquiring agency.

b. *Internal Controls.* Each agency, as part of its periodic internal controls reviews under Office of Management and Budget Circular A-123, shall assess its programs for identifying and preventing the acquisition of nonconforming products. As a minimum, this assessment should address:

—The impact such products have on the agency's mission and on the health and safety of agency employees and the public, and

—The agency's procedures for assuring the quality of acquired products and materials and, where appropriate, recommendations for improving those procedures.

New assessments of agency programs for controlling nonconforming products are not required in those agencies where such assessments have been made with the past 18 months.

5. *Required Practices.* Agencies not currently participating in GIDEP shall commence participating within 60 days of the date of this Policy Letter. Agencies are required to participate only in the "Failure Experience" data interchange. Participation in the other GIDEP data bases is elective and shall be determined by each agency. An application for GIDEP participation is attached (Attachment 1). The application shall be completed and mailed to the GIDEP Operations Center, Corona, California 91720-5000. The Operations Center will provide additional information to each agency applicant about using GIDEP.

a. *Safety, Health and other Considerations.* Information about any nonconforming product that could be harmful to employees or to public safety and health should be promptly transmitted to GIDEP. Cases of fraud or suspected fraud including counterfeit and misrepresented products should be referred to the appropriate authorities in accordance with existing agency procedures. Defective or ambiguous specifications should be referred to appropriate agency officials or to the Government's specifications manager. Other causes for nonconformance should be directed to the contractor through the countracting officer.

b. *Sensitive Information.* Agencies shall work through their respective Inspectors General or other appropriate offices and establish specific procedures and processes for receiving and disseminating sensitive information. Special procedures are being developed to permit GIDEP to disseminate sensitive information directly to designated agency contract points. Sensitive information concerns any person or entity that is under investigation or being considered for investigation as a result of the submission of nonconforming products to an agency. Agency procedures shall ensure the timely preparation and release of sensitive information about nonconforming products to GIDEP while assuring that such information is screened prior to release to prevent (1) compromising ongoing and future criminal/civil investigations and prosecutions, or (2) the release of privileged grand jury information or information under seal by a court. The requirements of this section do not supersede existing agency regulations or procedures concerning the release of sensitive information, and in no event shall sensitive information be provided to GIDEP unless authorized by law or agreement.

c. *Notifying the Supplier.* In addition to the actions specified in FAR Part 46.407, GIDEP procedures shall be followed regarding notification of suppliers of nonconforming products. Generally, these procedures require that the specific nonconforming features of a product be identified in writing and provided by letter to the supplier of the item. The supplier is given 15 days to respond to the agency notice. Notice of the nonconforming product together with the supplier's response, if any, shall be transmitted to GIDEP at the end of the 15 day period. Information about products that have a direct adverse impact on public safety or health shall be transmitted to GIDEP concurrent with the notification to the supplier. GIDEP will disseminate information about nonconforming products to all agency and private industry contact points.

6. *Use of GIDEP Information.* GIDEP information is intended for the protection of the Government and should not be relied on for the protection of third parties. While GIDEP is primarily intended to serve Federal agencies and contractors, some activities regulated by Federal agencies now participate in it. This Policy Letter does not preclude such participation.

7. *GIDEP Waiver.* If an agency because of the small size of its procurement program or for other specific agency unique reasons believes that participating in GIDEP would not be appropriate, the rationale for not participating shall be provided by letter from the agency's Senior Procurement Executive to the Administrator for Federal Procurement Policy. The Administrator will review such requests on a case-by-case basis.

8. *Use of FAR.* The initiation of any suspension or debarment action resulting from nonconforming products including use of the GSA listing of "Parties Excluded From Procurement Programs" shall continue to be governed by Part 9.4 of the FAR. Contracting officer decisions to accept or reject nonconforming products shall continue in accordance with part 46 of the FAR.

9. *Effective Date.* This Policy Leter is effective upon issuance.

10. *Information.* Questions or inquiries about this Policy Letter should be directed to Charles W. Clerk, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503, telephone (202) 395-6803.

Allan V. Burman,

Administrator.

Attachment 1

Agency Application for GIDEP Participation

We hereby apply for participation in the Government-Industry Data exchange Program (GIDEP).

We agree to govern our participation in accordance with current requirements as set forth in the GIDEP Policies and Procedures Manual.

Our initial participation will be in the Failure Experience Data Interchange. Our agency title is:

_____

_____

Our appointed GIDEP representative is:
Name (including middle initial):

_____

Phone number (including area code):

_____

FAX number (including area code):

_____

Mailing Address:

_____

_____

_____

Participation in GIDEP is requested by:
Name: _____
Phone: _____
Title: _____
Signature: _____
Date: _____

If you have any questions please contact:
GIDEP Operations Center at (714) 736-4677 (Autovon 933-4677)
GIDEP Program Manager at (703) 602-2369 (Autovon 332-2369)

[FR Doc. 91-8704 Filed 4-12-91; 8:45 am]

BILLING CODE 3110-01-M

Policy Letter on Service Contracting

AGENCY: Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: The Office of Federal Procurement Policy (OFPP) is issuing a policy letter dealing with service contracting.

SUMMARY: This OFPP policy letter establishes policy for the Government's acquisition of services by contract. It promotes quality, economy and innovation through the use of performance-based contracting methods.

Each year the Government contracts for a significant amount of services. During FY 1990, for example, service contracting by Government agencies amounted to over $80 billion. However, the Government may not be obtaining sufficient performance for the money expended, due to the use of inappropriate contracting methods.

Problems commonly found with service contracts result from:

• Unnecessarily vague statements of work, which increase costs or make it difficult to control costs;

• Insufficient use of fixed price and incentive fee pricing arrangements for repetitive requirements, resulting in increased costs and inadequate incentive to improve performance; and

• Nonexistent or inadequate contract administration plans, which lead to unauthorized commitments by the Government and delayed contract completion.

Performance-based service contracting methods prescribed by the Policy Letter should improve the Government's ability to acquire services of the requisite quality and to assess contractor performance and price. Such methods focus on:

• Defining statements of work to describe "what" work should be performed rather than "how" it should be performed. This approach encourages bidders/offerors to develop innovative, efficient and cost effective means for performing the required level of service. It concentrates on achieving results rather than on documenting a contractor's activities. "How to" statements of work can result in contractors complying with contractual requirements, but failing to accomplish the desired end results in an efficient, economical manner.

• Developing formal measurement criteria to assess actual performance against predetermined performance standards and assigning contractors full responsibility for quality performance. This approach facilitates the use of fixed price contracts, with the concomitant benefit of reducing the Government's risk and contract administration burden. Nonexistent or inadequate quality assurance plans make it impossible for the Government to accurately assess contractor performance and provide effective incentives.

• Using evaluation and selection procedures which emphasize attracting the most competent contractors in addition to obtaining the lowest price. Such procedures should provide offerors maximum flexibility in proposing efficient and innovative methods of performance. Inattention to quality-related factors leads to the selection of contractors with marginal capability who submit the lowest prices but then perform at unsatisfactory levels.

• Incorporating incentive provisions and quality assurance deduction schedules into contracts to motivate contractors to perform at maximum efficiency. Lack of such terms discourage the most competent entities from competing, competitors from dedicating their best personnel, and awardees from putting forth their best efforts.

In view of the diversity of services acquired by the Government, no single acquisition strategy or set of performance-based contracting methods can be universally applied. The proper acquisition strategy depends on the level of expertise needed, the agency's ability to state its requirements objectively, and the contractor's ability to manage risk. In implementing performance-based service contracting practices, the prevailing strategy for many acquisitions of "lowest price and minimal acceptable quality" will be replaced by an approach that emphasizes quality of performance along with price.

This policy letter is published pursuant to the authority of section 6.(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 405), which authorizes the Administrator, OFPP, to prescribe Government-wide procurement policies.

SUPPLEMENTARY INFORMATION: A proposed policy letter and request for comments was published in the September 14, 1990 **Federal Register** (55 FR 37991). OFPP received thirty-seven responses to the **Federal Register** notice. Of the responses, fourteen were from Government agencies and twenty-three were from the private sector. Significant comments received and OFPP responses to the comments are below.

1. Duplication of Existing Regulations

Several agencies commented that many of the principles addressed in the policy letter are already contained in various parts of the Federal Acquisition Regulation (FAR), and are, therefore, redundant. Examples cited were: perference for functional specifications (Part 10); selection of evaluation factors (Part 15); selection of contract type (Part 16); use of multiyear contracting (Part 17); and promotion of quality assurance survillance (Part 46).

OFPP recognizes that many of the principles contained in the policy letter are not new. However, the FAR does not provide an overarching approach to contracting for services, and several of the aforementioned FAR provisions were drafted with a primary focus on supply contracts. The lack of an overarching approach is a primary reason behind the performance and cost control problems described in Paragraph 4. Background, of the policy letter. The policy letter intentionally addresses these principles within the overarching goal of structuring service contracting around the purpose of the work to be performed.

2. Emphasis on Quality in Service Contracting

A few private sector commenters remarked that the Policy Letter does not sufficiently prescribe an overall requirement to emphasize quality in the acquisition of services. It is OFPP's intent to emphasize the importance of quality in service contracting. Accordingly, we articulated this emphasis in the proposed draft policy letter at: Paragraph 1. Purpose; Paragraph 4. Background; and Subparagraphs 5(b) Quality assurance, 5(c) Selection procedures, and 5(d) Contract type. OFPP also believes that contracts for services should set forth the expected levels of performance quality. We placed this requirement under Subparagraph 5(b) Quality Assurance. Nevertheless, in view of the comments, the emphasis on quality in the policy letter has been increased by providing modified and/or added language to Paragraphs 1 and 4, and Subparagraph 5(c).

3. Services Performed Under Supply Contracts

A few agencies commented that services performed under supply contracts are often a relatively minor part of the acquisitions in terms of cost or level of effort, and, therefore, should not be subject to the requirements of the Policy Letter. OFPP does not consider predominance of the requirement to be an adquate justification for exempting these services from coverage. The failure to adequately define services under supply contracts, select the contractors who can best perform them, and assure expected performance levels can lead to the same problems as in pure service contracts and impair the overall acquisitions.

4. Definition of Architect-Engineer Services

One private sector commenter stated that the policy letter's exclusion of architect-engineer services from the definition of "services" was ambiguous, and that the exclusion should be clarified by referring specifically to the Brooks Act Pub. L. 92–582, as amended) regarding such services. OFPP's intent in excluding architect-engineer services from coverage by the draft policy letter was to avoid inconsistency with the requirements of the Brooks Act. Therefore, we have revised the definition accordingly.

5. Complex and Technical Services

One private sector commenter recommended that Paragraph 4. Background provide examples of complex and technical services to provide a baseline against which more routine services can be compared to determine how to best implement the tenents of the policy letter. OFPP agrees with this comment and has revised Paragraph 4 of the policy letter accordingly.

6. Performance-Based Contracting Methods

Two commenters concluded that OFPP intended to define "performance-based contracting methods" as the subjects addressed in Subparagraphs 5(a)-(f) of the policy letter, but stated that this intent was not sufficiently clear. OFPP believes that the term is adequately defined by Subparagraphs 5(a)-(f). Nevertheless, Paragraph 5. Policy has been amended to clearly link the term to the Subparagraphs.

7. Justifications for the Use of Other Than Performance-Based Contracting Methods

Many agencies commented that requirement to justify and document the use of other than performance-based contracting methods is burdensome and unnecessary. OFPP is sensitive to the many time-consuming paperwork burdens imposed on the Federal acquisition process. Nevertheless, the significance of this policy letter to the Federal acquisition process and the magnitude of problems it is aimed at correcting require an enforcement mechanism to ensure compliance. During the development of the policy letter many agencies were encouraged to offer alternative methods of enforcement, but none were forthcoming. In addition, no alternatives were provided during the comment period. Accordingly, the justification requirement has been retained.

8. Emphasis on Competitive Negotiations

Many agencies commented that the requirement to use competitive negotiations when the quality of performance over the minimum acceptable level is considered to be worth a corresponding increase in cost (a) violates the Competition in Contracting Act (CICA) as implemented by FAR part 6.4, and (b) improperly restricts the authority of the contracting officer to select the most appropriate method of contracting.

OFPP disagrees with the assertion that the policy letter conflicts with CICA. FAR 6.4 requires that competitive negotiations be used when any one of four prescribed conditions for the use of sealed bidding has not been met. One of these conditions is that the award will be made solely on the basis of price and other price-related factors. The policy letter, when addressing circumstances where quality-related factors are to be used in addition to price, is a clear variation from this condition and, therefore, a call for competitive negotiations.

OFPP also disagrees with the assertion that the policy letter improperly restricts contracting officers. A major contributor to the problems which led to the development of this policy letter was the tendency by several agencies to use sealed bidding for requirements where the quality of performance over the minimum acceptable level was desirable. The policy letter is directed at improving agency understanding and compliance with the conditions contained in FAR 6.4. It is not intended to restrict the discretion of agencies to make determinations regarding these conditions.

9. Evaluation Factors

Several private sector commenters recommended that the policy letter prescribe evaluation criteria to be used in the acquisition of professional and technical services. Specifically mentioned were "cost realism" and, in one case, "past performance." These commenters specifically recommended that "cost realism" be made a mandatory evaluation factor for professional and technical services.

OFPP is opposed to mandating specific evaluation factors. A primary objective of the policy letter is to move agencies away from the tendency to overly standardize their service contracting methods to the point where their ability to select the best contractors becomes impaired. To prescribe a given set of evaluation factors for such a wide range of services would overly restrict agency discretion, and would contribute to the problem of over-standardization.

The policy letter does require consideration of quality-related evaluation criteria for the acquisition of virtually all professional and technical services. "Cost realism" and "past performance" are two such criteria. "Cost realism" becomes an especially important consideration when evaluating proposals that include uncompensated overtime for employees not covered by the Fair Labor Standards Act or other controlling statutes. This point was acknowledged in the FY 1991 Defense Authorization Act and by the Deputy Under Secretary of Defense for Acquisition in a memorandum to all military departments and defense agencies. In view of the number of comments received and the significance of the actions taken regarding Department of Defense acquisitions, the policy letter has been revised to set out "cost realism" and "past performance" as examples of quality-related factors and to emphasize their importance to the acquisition of professional and technical services.

10. Evaluation Process

One private sector commenter recommended that Subparagraph 5(a) Selection procedures require agencies to apply the evaluation factors contained in the solicitations in order to ensure accuracy and equity in proposal evaluation and to avoid technical leveling. OFPP agrees with this comment and has revised Subparagraph 5(c) of the policy letter accordingly.

11. Draft Solicitations

A few private sector commenters recommended that draft solicitation documents be issued for highly technical or complex services to refine the scope of the proposed efforts and to support market research. OFPP agrees that the issuance of draft solicitations in certain circumstances is desirable; and has revised Subparagraph 5(c) Statement of work accordingly.

12. Opportunities for Oral Discussions and Proposal Revisions

Several agencies commented that the requirement to limit the number of opportunities for oral discussions and resulting proposal revisions could be misinterpreted as discouraging such discussions. They further stated that technical leveling and technical transfusion stem from the content, rather than the number, of the discussions.

OFPP does not wish to suppress oral discussions of proposals. We believe that such discussions are a vital and necessary aspect of competitive negotiations, especially for technical, complex, or unique services. We also agree with the statement that the content of the discussions is the cause of technical leveling and technical transfusion. It is for these reasons the policy letter has avoided prescribing the number of opportunities for discussions and proposal revisions. However, any increase in the number of discussions correspondingly increases the opportunities for improper conveyance of information, and so agencies have been requested to limit these opportunities to the minimum number considered necessary. This problem has been already recognized by the Department of Defense, which has instituted controls over second or subsequent requests for best and final offers.

13. Award Fee Contracting

Several commenters inquired into the policy letter's intent toward award fee

contracting. The policy letter requires the use of incentive provisions where practicable. Award fee is one type of incentive contracting described in FAR 16.4. Accordingly, agencies may use award fee contracts when they consider this method to be appropriate.

14. Termination Schedules

One agency questioned whether the Policy Letter's use of the term "termination schedules" when addressing multiyear contracting conflicts with the FAR 17.1 term of "cancellation ceilings". We have eliminated the reference to avoid creating confusion.

15. Implementation Timetables

Some agencies commented that (a) the timetable to revise the FAR to implement the policy letter is too short, and/or (b) requiring agencies to implement the Policy Letter prior to revision of the FAR may promote a proliferation of unnecessary or misdirected agency level guidance.

OFPP believes the purpose of the policy letter is sufficiently important to warrant its implementation as quickly as possible. Additionally, the Defense Acquisition Regulatory Council has been working on revising FAR part 37. Thus, while the FAR revision timetable may be tight, we do not believe it is unreasonable.

However, we acknowledge that premature agency implementation may result in confusion and duplicative effort. Insofar as the deadline for the FAR revision can be maintained, agencies may determine that formal implementation would be best served by waiting until after the FAR is revised. Accordingly, we have revised the Policy Letter to encourage, rather than require, immediate implementation by agencies.

DATES: The policy letter is effective on or before May 15, 1991. It directs that Government-wide regulations be promulgated to implement the policies contained therein in the first Federal Acquisition Circular issued after 120 days after the policy letter's effective date.

FOR FURTHER INFORMATION CONTACT: Stanley Kaufman, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395-6803.

Dated: April 9, 1991.

Allan V. Burman,

Administrator.

Policy Letter 91-2

To the Heads of Executive Agencies and Departments

Subject: Service Contracting

1. *Purpose.* This Policy Letter establishes policy for the Government's acquisition of services by contract. It emphasizes the use of performance requirements and quality standards in defining contract requirements, source selection, and quality-assurance. This approach provides the means to ensure that the appropriate performance quality level is achieved, and that payment is made only for services which meet contract standards.

2. *Authority.* This Policy Letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. section 405.

3. *Definitions.*

a. *Performance-based contracting* means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

b. *Services* are defined as the performance of identifiable tasks rather than the delivery of an end item of supply. "Services" also include tasks that are delivered under a contract where the primary purpose of the contract is to provide supplies. For the purpose of this Policy Letter, requirements for architect-engineer services acquired in accordance with the Brooks Act (Pub. L. 92-582, as amended) and for construction are excluded.

4. *Background.* Each year the Government contracts for a significant amount of services. Such services range from the routine maintenance of facilities or equipment to highly sophisticated technical and management assistance such as the design, development and furnishing of systems, or expert assistance for management and program activities. Attempts to apply contracting methods which are inappropriate to the services being acquired have often resulted in unsatisfactory performance and contract administration problems, as reflected in several internal agency investigations and evaluations, General Accounting Office Reports, and OFPP studies. These reports criticized unnecessarily vague statements of work, insufficient use of firmer pricing arrangements, the lack of quantifiable performance standards, and the inadequacy of quality assurance surveillance. In addition, there is concern that the Government underemphasizes quality vs. price in the acquisition of services. The use of performance-based service contracting methods enhances the Government's ability to acquire services of the requisite quality and to ensure adequate contractor performance.

5. *Policy.* It is the policy of the Federal Government that (1) agencies use performance-based contracting methods to the maximum extent practicable when acquiring services, and (2) agencies carefully select acquisition and contract administration strategies, methods, and techniques that best accommodate the requirements. In addition, agencies shall justify the use of other than performance-based contracting methods when acquiring services, and document affected contract files. Performance-based contracting methods consist of the following:

a. *Statement of work.* When preparing statements of work, agencies shall, to the maximum extent practicable, describe the work in terms of "what" is to be the required output rather than "how" the work is to be accomplished. To assist in refining statements of work, consideration shall be given to issuing draft solicitations.

b. *Quality assurance.* Agencies shall, to the maximum extent practicable, assign contractors full responsibility for quality performance. Agencies shall develop formal, measurable (i.e., in terms of quality, timeliness, quantity, etc.) performance standards and surveillance plans to facilitate the assessment of contractor performance and the use of performance incentives and deduction schedules. Agencies shall, to the maximum extent practicable, avoid relying on cumbersome and intrusive process-oriented inspection and oversight programs to assess contractor performance.

c. *Selection procedures.* Agencies shall use competitive negotiations for acquisitions where the quality of performance over and above the minimum acceptable level will enhance agency mission accomplishment and be worth the corresponding increase in cost. This approach will apply to most technical and professional services. In such instances, contracting activities shall give careful consideration to developing evaluation and selection procedures that utilize quality-related factors such as: technical capability; management capability; cost realism; and past performance. These factors shall receive increased emphasis to the extent requirements are more complex and less clearly defined. The desired relative importance among these factors and between these factors and price shall be determined, and they shall be applied as stated in the solicitations. To ensure application of cost realism, cost proposals shall be reviewed to assess offerors' understanding of the requirements and consistency with their technical proposals. Special attention shall be directed to limiting opportunities for technical leveling and technical transfusion. Technical leveling and technical transfusion discourage offerors from proposing innovative methods of performance and often result from repeated discussions and the submission of revised offers based on these discussions. Opportunities for discussions and revisions of offers shall be limited to the extent practicable. Sealed bidding shall be used when the goal of the acquisition is to achieve the desired service at the lowest price with minimum stated acceptable quality.

d. *Contract type.* Contract types most likely to motivate contractors to perform at optimal levels shall be chosen. Fixed price contracts are appropriate for services that can be objectively defined and for which risk of performance is manageable. In most instances, services that are routine, frequently acquired, and require no more than a minimal acceptable level of performance fall into this category. For such acquisitions, performance-based statements of work and measurable performance standards and surveillance plans shall be developed and fixed price contracts shall be preferred over cost reimbursement contracts. Cost reimbursement contracts are

appropriate for services that can only be defined in general terms and for which the risk of performance is not reasonably manageable. Complex or unique services for which quality of performance is paramount frequently fall into this category. Furthermore, to the maximum extent practicable, contracts shall include incentive provisions to ensure that contractors are rewarded for good performance and quality assurance deduction schedules to discourage unsatisfactory performance. These provisions shall be based on measurement against predetermined performance standards and surveillance plans.

e. *Repetitive requirements.* When acquiring services which previously have been provided by contract, agencies shall rely on the experience gained from the prior contract to incorporate performance-based acquisition methods. For such follow-on requirements, statements of work shall further describe the services in terms of "what" is to be performed, and performance standards and surveillance plans shall be more definitive than those for the prior acquisition. Where appropriate, conversion from a cost reimbursement to fixed price arrangement shall be accomplished and, whenever possible, incentative provisions and quality assurance deduction schedules shall be introduced.

f. *Multiyear contracting.* Agencies with statutory multiyear authority shall consider the use of such authority when acquiring services. The use of such authority will increase competition by offering a more stable, long-term contracting environment. It will also encourage offerors to invest in the development and implementation of innovative and efficient methods of performance by ensuring recoupment of these investments.

6. *Responsibilities.*

a. *Federal Acquisition Regulatory Council.* The Federal Acquisition Regulatory Council shall ensure that Government-wide regulations to conform to the policies established herein are promulgated in the first Federal Acquisition Circular issued 120 days after the effective date of this Policy Letter. These regulations shall include a framework for individually tailoring the source selection method, type of contract, and contract administration techniques to fit the requirement, and for agencies to document the reason(s) for not using performance based contracting methods as prescribed by that framework.

b. *Heads of Agencies.* Heads of agencies are encouraged to implement the policies established herein and initiate any necessary staff training upon the effective date of this Policy Letter.

7. *Information Contact.* For information regarding this Policy Letter contact Stanley Kaufman, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503, telephone (202) 395-6803.

8. *Effective Date.* This Policy Letter is effective on or before May 15, 1991.

Allan V. Burman,

Administrator.

[FR Doc. 91-8744 Filed 4-12-91; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29053; File No. 4-208]

Joint Industry Plan; Filing of Amendments to the Intermarket Trading System Plan Relating to Pre-Opening Application and Dispute Resolution

On December 13, 1990, the participants in the Intermarket Trading System ("ITS") submitted copies of amendments to the restated ITS Plan created pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act") for the purpose of creating and operating an Intermarket Communication Linkage ("ITS Plan").[1] The amendments were submitted pursuant to section 11A of the Act and rule 11Aa3-2 thereunder.

I. Description of the Amendments

The purpose of the proposed amendment to the ITS Plan is: (A) To require use of the Pre-Opening Application following Trading Halts in certain prescribed situations, (B) to provide for a process by which participants involved in an ITS-related dispute can obtain non-binding opinions from other participants as to the appropriate resolution and (C) to delete provisions governing pre-opening experiment authority.

A. Pre-Opening Application

The proposed amendment modifies section 7(a) of the Plan [2] by repealing the requirement of using the Pre-Opening Application after a regulatory halt and substituting the broader requirement of using the Pre-Opening Application following all defined trading halts. The proposed amendment defines trading halt to include both an operational halt due to order influx, order imbalance or equipment changeover (exchange system, equipment, communication or other technical problem with respect to such security) and a regulatory halt due to news pending or news dissemination.

The amendments to section 7(a) would also trigger the Pre-Opening Application whenever an "indication of interest" is sent to the CTA Plan Processor prior to the opening of trading in an ITS security or reopening following a trading halt, even if the anticipated price change is not greater than the "applicable price change," as defined in the Plan. Under the revised Plan and rule, the indication to the consolidated last sale reporting system would constitute the notice required under the Pre-Opening Application. Market makers would be expected to continue the practice of sending notifications through ITS whenever an indication is sent through CTS. Isolated failures to do so would not obviate that the rule's notification requirement is met with the indication being sent to CTS.

The amendments to section 7(a) also provide that a market maker must accept only those pre-opening responses sent to that Participant market by market makers in other Participant markets that have not yet opened trading in that security or, in the case of a trading halt, that halted trading in the security contemporaneously with the halted market and that had not resumed trading when the pre-opening response is sent. However, where a market maker receives such a pre-opening response, he may, in his discretion, accept this pre-opening response. The amendments also include a general provision that market makers should not respond if they already opened or reopened their markets.

In the event that a Participant market opens or resumes trading after a market maker in that Participant market has sent a pre-opening response but before the opening or reopening on the Participant market that halted trading, the market maker who sent the pre-opening response to that Participant market must confirm the response by sending an administrative message through the system. If the responding market maker fails to confirm the pre-opening response, the receiving market maker need not, but may in his discretion, accept the original response for the purpose of inclusion in the opening or reopening transaction. The model rule states that the market in a security is opened (or reopened) with either a trade or quotation, if trades are being reported to the Consolidated Tape System ("CTS") and quotes are being disseminated to the Consolidated Quotation System ("CQS"), respectively. The purpose of this provision is to afford the opening market maker the ability to independently rely on firm quotations being disseminated via CQS or transactions being reported via CTS as a means of determining whether other markets are open.

[1] The ITS Plan and subsequent amendments are contained in File No. 4-208.

[2] Section 7(a) of the Plan sets forth the substance of the Pre-Opening Application, whereby a market maker in a Participant market who wishes to open his market in an ITS stock may obtain any pre-opening interest in that stock of other market-makers registered in that stock in other Participant markets.

B. Dispute Resolution

The proposed amendment replaces section 4(e) with a new section 4(e), which provides for a procedure by which Participants can obtain a non-binding opinion on a dispute between ITS Participants on the application or interpretation of the ITS Plan and model rules. The current section 4(e), which grants pre-opening experiment authority to the ITS Operating Committee, is being deleted; the authority granted under the provision expired on December 31, 1981.

Under this procedure, disputes will be presented by the members of the ITS Operating Committee representing the affected Participants to one or more other agreed upon Committee members for non-binding, non-precedent setting opinion. The dispute must pertain to an ITS trade situation involving a minimum loss of $5,000.00 which must have been established pursuant to the ITS Plan and rules (including applicable mitigation provisions). All routine self-regulatory organization ("SRO") surveillance reviews respecting the initial ruling must be completed before parties can seek assistance pursuant to this procedure. Opinions would be subject to periodic review by the ITS Operating Committee.

II. Implementation of the Amendments

The revisions to Exhibit A of the Plan require that each participant adopt the uniform rule revisions included as part of the amendments to their own rules. Each participant has filed implementing rules with the Commission.[3]

III. Analysis of Impact on Competition

In their submissions to the Commission, the participants stated that they believe that the implementation of the amendments will impose no burden on competition. Further, they believe that the resolution of the various concerns of the participants embodied in the amendments will promote fair competition among the participants and their members and improve the ITS linkage, as anticipated by 1934 Act sections 11A(a)(1) (C)(ii) and (D).

IV. Request for Comment

Interested persons are invited to submit written comments on the amendments. Persons making written submissions should file six copies with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Copies of the submissions and related items, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC 20549. All communications should refer to the File No. 4-208 and should be submitted by May 6, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Dated: April 5, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8756 Filed 4-12-91; 8:45 am]

BILLING CODE 8010-01-M

[3] See Securities Exchange Act Release No. 29052.

[Release No. 34-29052; File Nos.SR-Amex-90-27; SR-BSE-90-18; SR-CBOE-91-04; SR-CSE-91-01; SR-MSE-91,-02; SR-NASD-91-11; SR-NYSE-90-56; SR-Phlx-90-37; SR-PSE-90-40]

Self-Regulatory Organizations; Proposed Rule Changes by the American Stock Exchange, Inc., et al.; Relating to the Pre-Opening Application in the Intermarket Trading System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the American Stock Exchange, Inc., the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Midwest Stock Exchange, Inc. ("MSE"), [1] the National Association of Securities Dealers, Inc., ("NASD"), the New York Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Pacific Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in items I, II, and III, below, which items have been prepared by the self-regulatory organizations.[2] The Commission in publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The self-regulatory organizations propose to amend their rules governing the pre-opening application following trading halts in certain situations in the Intermarket Trading System ("ITS"). The text of the proposed rule changes is available at the offices of the self-regulatory organizations and at the Commission.

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concering the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organizations prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The purpose of the proposed rule change is to enhance the operation of the ITS Pre/Opening Application Rule.

These rules set forth procedures relating to the Pre-Opening Application under section 7(a) of the ITS Plan, which has been filed with and approved by the Commission for the purpose of creating and operating an intermarket communications linkage pursuant to section 11A(a)(3)(B) of the act. The current rules contain basic definitions pertaining to ITS, prescribe the sorts of transactions that may be effected through ITS and the pricing of commitments to trade, and specify the procedures pertaining to the "Pre-Opening Application." The Pre-Opening Application procedures enable a market maker in any ITS Participant market who wishes to open his market in an ITS security to obtain any pre-opening interest of other market markers registered in that stock in other Participant markets.

The rules provide that whenever a specialist [3] anticipates that an opening transaction in an ITS security on the exchange will be at a price that represents a change formthe security's previous day's consolidated closing price of more than the "applicable price change," then the specialist must notify other ITS Participant markets by sending a "pre-opening notification"

[1] The MSE proposes to delete its existing rule in its entirety and replace it with the proposed rule.

[2] The proposed rule changes were filed on November 23, 1990, November 19, 1990, February 8, 1991, February 27, 1991, January 9, 1991, February 19, 1991, December 12, 1990, December 14, 1990, and December 18, 1990, respectively.

[3] On the CBOE, the provision applies to Order Book Officials, as well as specialists, and on the NASD, to ITS/CAES market makers.

through the System. The applicable price changes are:

Security	Consolidated closng price	Applicable price change (more than)
Network A	Under $15	⅛ point.
	$15 or over [1]	¼ point.
Network B	Under $5	⅛ point.
	$5 or over	¼ point.

[1] If the previous day's consolidated closing price of the stock exceeded $100 and the stock does not underlie an individual stock option contract listed and currently trading on a National Securities Exchange, the "applicable price change" is one point.

The Pre-Opening Application currently applies where a market maker reopens trading in a security following a regulatory halt as defined in the CTA Plan. As they are proposed to be amended, the rules will also mandate the use of the Pre-Opening Application whenever an "indication of interest" is sent to the CTA Plan Processor prior to the opening of trading in an ITS security or reopening following a trading halt—even if the anticipated price change is not greater than the "applicable price change," as defined in the Plan. The proposed rules define trading halt to include both an operational halt due to order influx, order imbalance, or equipment changeover and a regulatory halt due to news pending or news dissemination.

Following a trading halt on the exchange and compliance with Pre-Opening Application procedures, a specialist must accept only those pre-opening responses sent to the exchange from other participant markets that halted trading in the security at the same time as the exchange and that had not resumed trading when the pre-opening response is sent. If a specialist receives responses from markets that either never halted, or have opened trading in the security, he may use his discretion to include or exclude them at the opening.

Currently all market centers, including the NASD, have the authority to halt trading for regulatory purposes; the NASDAQ market is not authorized to halt trading for operational reasons, however, and NASD rules prohibit withdrawal of quotations in recognition of an operational trading halt. Thus, the NASD is also proposing to amend its authority to halt trading so that ITS/CAES market makers may participate in the Pre-Opening after an operational trading halt. The NASD's proposed rule change would allow the NASD to withdraw quotations and halt trading in listed securities traded through ITS/CAES in recognition of a primary market operational halt, thereby enabling ITS/CAES market makers to receive and respond to pre-opening indications. If all ITS/CAES market makers remain closed during the primary market's operational halt, all will be permitted to participate in the pre-opening, application; if one or more ITS/CAES market makers reopen prior to the primary market's reopening, this action will preclude all ITS/CAES market makers from participating in the pre-opening application, unless the primary market specialist elects to accept pre-opening responses. The NASD notes, however, that trading effected by market makers that are not ITS/CAES market makers will not jeopardize the ITS/CAES market makers' ability to respond to pre-opening applications.

(2) The proposed rule changes are consistent with section 6(b) of the Act in general and further the objectives of section 6(b)(5) in particular in that they are designed to promote just and equitable principles of trade. In addition, the NASD stated that it believes that its proposed rule change is consistent with section 15A(b)(6) of the Act because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market. Finally, the participants stated that the proposed rule changes are consistent with section 11A(a)(1)(D) of the Act, which calls for the linking of all markets for qualified securities.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The self-regulatory organizations believe that the proposed rule changes will impose no burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The self-regulatory organizations neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve the proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating thereto, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC 20549. Copies of the filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by May 6, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 5, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8757 Filed 4-12-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29056; Filed No. SR-MSE-91-8]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc. To Amend to Its Membership Dues and Fees by (1) Implementing a New Transaction Fee Schedule and (2) Adding a New Fee for Its Profit and Loss Report Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 25, 1991, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE, pursuant to rule 19b–4 of the Act, submitted a proposed rule change to amend the Transaction Fee Schedule of its Membership Dues and Fees by implementing a new fee schedule. The Exchange also proposes to add fee information to its Membership Dues and Fees for the MSE profit and loss report service which is available to, but not mandatory for, Exchange specialists and brokers.

The text of the proposed rule change is available at the MSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed changes to the transaction fee schedule is to eliminate fees based on value and to utilize a per share approach. The proposed changes also will expand monthly discounts on share volume as well as discounts for floor operations; provide for maximum fees per trade; and expand the credits to member firms for round lot orders entered through MAX, the MSE's automated execution system. As a convenience for Exchange customers, the new transaction fees incorporate both Exchange fees and applicable trade recording fees, per the Midwest Clearing Corporation's ("MCC") "Services and Schedule of Charges" bulletin.

The Exchange believes this approach will simplify the back office effort of Exchange customers, i.e., streamlining the billing, review and payment functions for those firms, by including all applicable trade charges in a single fee and included on a single account statement. The Exchange believes that the new fee schedule is price competitive, and proves incentives for institutional investors to utilize the MSE with minimum impact on retail business.

The Exchange proposes to charge Round lot/Mixed lot transaction fees at a rate of $.45 per 100 shares for trades in dually-traded New York Stock Exchange listed issues with a $100 maximum per trade. The $.45 transaction fee includes both the Exchange transaction fee and the associated MCC trade recording fee.

Round lot/Mixed lot MCC trade recording fees are charged at an initial base rate of $.20 for trades of 100 to 199 shares. An additional $.03 is added to the $.20 base rate for each 100 share increment, or part thereof, up to 999 shares. For example, a 100 share trade would incur a $.20 trade recording fee; a 200 share trade a $.23 fee; a 300 share trade a $.26 fee; and a 350 share trade also would incur a $.26 trade recording fee.

At the 1,000 to 1,499 share level, the trade recording base rate fee is $.47. An additional $.17 is added to that base rate for each 500 share increment, or part thereof, up to 5,000 shares, resulting in a maximum trade recording fee per trade of $1.83. For example, a 1,200 share trade would incur a trade recording fee of $.47; a 1,500 share trade a $.64 fee; a 2,000 share trade a $.81 fee; and a 2,450 share trade also would incur a $.81 trade recording fee.

The Exchange transaction fees, excluding the MCC trade recording fees, are charged according to the following schedule:

Trade size	Base rate	Incremental rate per 100 shares
100–1099	$.25	$.42 on shares over 100.
1100–1499	4.03	$.45 on shares over 1100.
1500–1999	6.11	$.45 on shares over 1500.
2000–2499	8.19	$.45 on shares over 2000.
2500–2999	10.27	$.45 on shares over 2500.
3000–3499	12.35	$.45 on shares over 3000.
3500–3999	14.43	$.45 on shares over 3500.
4000–4499	16.51	$.45 on shares over 4000.
4500–4999	18.59	$.45 on shares over 4500.
5000+	20.67	$.45 on shares over 5000.

Odd lot transaction fees will be fixed at $.35 per trade with a MCC trade recording fee of $.20 for trades of 1 to 99 shares and an exchange transaction fee of $.15 per trade, with a $400 maximum monthly fee.

The Exchange also proposes to add the fee schedule for the MSE P&L system, which is an automated reporting system for specialist trading positions and profit and loss computations.

The proposed rule change is consistent with section 6(b)(4) of the Act in that the proposed fees provide for the equitable allocation of reasonable dues, fees and other charges among MSE's members using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. Section 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to file no. SR–MSE–91–8 and should be submitted by May 6, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 8, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8754 Filed 4-12-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29051; File No. SR-MSRB-91-2]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to the Activities of Financial Advisors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 14, 1991, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing proposed amendments to rule G-23, on activities of financial advisors (hereafter referred to as the "proposed rule change"). The proposed rule change requires disclosure by an underwriter to the issue of any corporate affiliation with the issue's non-dealer financial advisor and places recordkeeping requirements on dealers subject to this provision.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G-23 establishes disclosure and other requirements for dealers that act as financial advisors to issuers of municipal securities.[1] The rule is designed principally to minimize the *prima facie* conflict of interest that exists when a municipal securities dealer acts as both financial advisor and underwriter with respect to the same issue. Specifically, it requires a financial advisor to alert the issuer to the potential conflict of interest that might lead the dealer to act in its own best interest as underwriter rather than the issuer's best interest.

The Board has been asked whether rule G-23 applies in two situations: (i) When a non-dealer bank acts as financial advisor and a broker-dealer affiliate of the bank wishes to underwrite the issue, or (ii) when a non-dealer subsidiary of a dealer bank acts as a financial advisor and the dealer bank wishes to underwrite the issue. Since the bank and the non-dealer affiliate are not dealers in these instances, they are not subject to the requirements of the rule; however, the Board has stated that disclosure by the dealer to the issuer of its affiliation with the financial advisor would be advisable in these circumstances.

The Board has determined to codify this recommendation into the requirements of rule G-23. The Board believes that the issuer should be aware of any corporate affiliation between the financial advisor and the dealer, even if the financial advisor is not a dealer; however, the Board does not believe that it is necessary for the underwriter to comply with all of the disclosure requirements of rule G-23 in this instance. The proposed rule change requires disclosure by an underwriter to the issuer of any corporate affiliation with the issues's non-dealer financial advisor. In addition, the proposed rule change places recordkeeping requirements on dealers subject to this provision.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(I) of the Act, which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and, in general, to protect investors and the public interest.

[1] Rule G-23 does not apply when, in the course of acting as an underwriter, a municipal securities dealer renders financial advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it applies equally to all brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board solicited comments on the proposed rule change in an exposure draft published in October 1990.[2] The Board received three comment letters on the exposure draft. Only one commentator commented specifically on the proposed rule change and it noted its support of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the

[2] The exposure draft also asked for comments on draft amendments to rule G-23 which would treat placement agents the same as negotiated underwriters. These draft amendments are still being considered by the Board.

Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 6, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 5, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8755 Filed 4-12-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18081; 812-7616]

Application for Exemption; MAS Pooled Trust Fund, et al.

April 8, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: MAS Pooled Trust Fund (the "Fund"), Miller Anderson & Sherrerd (the "Adviser") and all future portfolios of the Fund which are advised by the Adviser.

RELEVANT 1940 ACT SECTIONS: Order sought under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting each of the portfolios of the Fund, and all future portfolios of the Fund which are advised by the Adviser, to pool their daily uninvested cash balances in a joint account for the purpose of entering into one or more repurchase agreements in a total amount equal to the aggregate daily balance of the joint account.

FILING DATE: The application was filed on November 1, 1990, amended on March 22, 1991, and supplemented by letter on April 4, 1991.

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 May 3, 1991, 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. On behalf of Applicants: Vanguard Financial Center, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney at (202) 504-2274, or Max Berueffy, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: 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 Fund is a no-load open-end investment company, consisting of seventeen portfolios ("Portfolios") offering investment alternatives for institutional clients. These include the Equity, International Equity, Fixed Income, Tax-Exempt Fixed Income, Mortgage-Backed Securities, Cash Reserves, Short/Intermediate Fixed Income, High Yield Securities, Small and Medium Size Growth Stock, Value, Small Capitalization Value and Growth Portfolios, the Fixed Income Portfolio II and the Select Equity, Select Fixed Income, Select Value and Select Growth Portfolios.

2. The Adviser acts as investment adviser to the Fund and each of its Portfolios. The Adviser provides investment counseling services to employee benefit plans, endowment funds, foundations and other institutional investors.

3. The Vanguard Group, Inc. ("Vanguard") provides the Fund with administrative, dividend disbursing and transfer agency services. Vanguard acts as transfer agent for each of the Portfolios of the Fund and, in this capacity, processes all orders for the purchase of shares of each Portfolio of the Fund.

4. At the end of most trading days each of the Portfolios has cash balances in its custodian bank which would not be otherwise invested by its portfolio manager in portfolio securities. Presently, each Portfolio must separately pursue, secure, and implement such investments. This has resulted in certain inefficiencies, and may limit the return which some or all Portfolios achieve. By this application, the Portfolios seek permission to deposit their remaining uninvested cash balances into a single joint account, the daily balance of which would be used to enter into one or more large repurchase agreements in a total amount equal to the aggregate daily balance in the account.

5. Applicants believe the joint account would save the Portfolios substantial amounts in yearly transaction fees, allow the Portfolios to negotiate higher rates of return, reduce the possibility of errors by reducing the number of trade tickets, and allow the Portfolios greater flexibility in investing excess cash near the end of each trading day. Applicants estimate that, if the joint account is put in place, the Portfolios would experience aggregate annual savings of approximately $50,400 in transaction fees.

6. The proposed joint account would not be distinguishable from any other accounts maintained by a Portfolio with its custodian bank except that monies from the Portfolio could be deposited into it on a commingled basis. The accounts would not have any separate existence which would have indicia of a separate legal entity. Each Portfolio would automatically transfer its uninvested cash remaining after the conclusion of its daily trading activity into the custodian joint account. The sole function of the joint account would be to provide a convenient way of aggregating what otherwise would be the one or more individual daily transactions for each Portfolio necessary to manage the daily uninvested cash balances of each Portfolio.

7. Each Portfolio is presently authorized to invest in repurchase agreements and, in connection with the use of repurchase agreements collateralized by U.S. Government securities, each of the Portfolios has established the same systems and standards. These include quality standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreements will be at least 100% collateralized at all times. These uniform systems and standards will apply to the joint transactions contemplated herein. All joint repurchase agreement transactions contemplated herein will also be effected in accordance with the guidelines set forth in Investment Company Act Release Nos. 10666 (April 18, 1979), and 13005 (February 3, 1983), and with any other existing and future positions taken by the Commission or its staff by rule, release, letter or otherwise relating to such transactions.

8. Each Portfolio will participate in the joint account on the same basis as every other Portfolio in conformity with its fundamental investment objective and

restrictions. Any future Portfolios that participate in the joint account will be required to do so on the same terms and conditions as the existing Portfolios have set forth in the application.

9. Vanguard will have no monetary participation in the joint account, but will be responsible for investing the amounts in the account, establishing accounting and control procedures and ensuring the equal treatment of each Portfolio. The assets of the Portfolios will continue to be held under proper bank custodial procedures.

10. Applicants believe that any Portfolio's investment in the joint account will not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceedings, or of any other participant Portfolio in the joint account. Moreover, each Portfolio's liability on any repurchase agreement purchased by the joint account will be limited to its interests in such repurchase agreement.

11. The Trustees of the Fund have satisfied themselves that the proposed joint account and the use of such account by each Portfolio will be beneficial to each Portfolio and that the proposed method of operating the joint account will not result in any conflicts of interest between any of the Portfolios or between a Portfolio and the Adviser. They believe that there does not appear to be any basis on which to predicate greater benefit to one Portfolio than to another. They have considered the fact that although the Administrator will gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries will be the Portfolios because the joint account will be a more efficient way of administering these daily investment transactions.

12. The Trustees believe that the operation of the joint account will be free of any inherent bias favoring one Portfolio over another and the anticipated benefits flowing to each Portfolio will fall within an acceptable range of fairness. Further, they believe that any future participation in such joint trading account by one or more portfolios which do not presently exist would not alter the conclusions with respect to participation by the present Portfolios and that it will be desirable to permit such future participation without the necessity of applying for an amendment to the requested Order.

Applicants' Legal Conclusions

Applicants conclude that, for the reasons set forth in the application as summarized above, (1) Granting the requested order would be consistent with the provisions, policies and purposes of the Act and (2) participation in the proposed joint account by each Portfolio will not be on a basis different from or less advantageous than that of any other Portfolio pariticipant, and participation by the Adviser would be ministerial only, so that the criteria for issuance of an order under section 17(d) of the 1940 Act and rule 17d-1 thereunder are met.

Applicants' Condition

As an express condition to issuance of the exemptive order, Applicants agree to operate the joint account in accord with the following procedures:

1. A separate custodian cash account will be established into which each Portfolio will cause its uninvested net cash balances to be deposited daily.

2. Cash in the joint account will be invested solely in repurchase agreements which are collateralized by suitable U.S. Government obligations, and which satisfy the uniform standards set forth by the Portfolios for such investments. Any repurchase agreement will have, with rare exceptions, an overnight or over-the-weekend duration, and in no event will it have a duration of more than seven days.

3. Particular United States government obligations to be held as collateral will be identified and the Fund's Custodian Bank will be notified. The securities will either be wired to the account of the Custodian Bank at the proper Federal Reserve Bank, transferred to a subcustodian account of the Fund at another qualified bank or redesignated and segregated on the records of the Custodian Bank if the Custodian Bank already is the record holder of the collateral for the repurchase agreement.

4. All investments held by the joint account will be valued on an amortized cost basis. Each Portfolio which is subject to an exemptive order permitting valuation of its securities on an amortized cost basis or which relies on rule 2a-7 under the Act will use the average maturity of the joint account for the purpose of computing the Portfolio's average portfolio maturity with respect to the portion of its assets held in the joint account on that day.

5. In order to assure that there will be no opportunity for one Portfolio to use any part of a balance of the joint account credited to another Portfolio, no Portfolio will be allowed to create a negative balance in the joint account for any reason, although it will be permitted to draw down its entire balance at any time.

6. Each Portfolio's decision to invest in the joint trading account will be solely at the Portfolio's option and no Portfolio will be obligated to invest in such account or to maintain any minimum balance in the account. In addition, each Portfolio will retain the sole rights of ownership of any of its assets, including interest payable on such assets invested in the account.

7. Each Portfolio's investment in the joint account will be documented daily on the books of the Fund as well as on the books of the Portfolio's custodian.

8. Each Portfolio will participate in the income earned or accrued in the joint account and all instruments (i.e., cash and U.S. Government securities) held in the joint account on the basis of the percentage of the total amount in the account on any day represented by its share of the account.

9. The Adviser will determine the amount of any uninvested cash balances, constituting a part of each Portfolio's assets, to be invested in the joint account, as part of its duties under its existing or any future investment advisory contract with each Portfolio, and will not collect any additional fee for the management of the joint account. (The Adviser will collect its fees based upon the net assets of each separate Portfolio as provided in each respective investment advisory agreement.) The investment of cash balances in the joint account will be administered by officers and employees of Vanguard without payment by the Portfolios of any fee or compensation.

10. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g-1 thereunder. The Board of Trustees of the Fund will evaluate the account arrangements annually and will continue the account only if it determines that there is a reasonable likelihood that the account will benefit the Portfolios which participate in the joint account and their shareholders.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8758 Filed 4-12-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18082; 813-87]

Merrill Lynch KECALP Growth Investments Limited Partnership 1983, et al.; Application

April 8, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Merrill Lynch KECALP Growth Investments Limited Partnership 1983, Merrill Lynch KECALP L.P. 1984, Merrill Lynch KECALP L.P. 1986, Merrill Lynch KECALP L.P. 1987, Merrill Lynch KECALP L.P. 1989 (the "Partnerships"), KECALP Inc. (the "General Partner"), Merrill Lynch Interfunding Inc. ("MLIF"), Merrill Lynch & Co., Inc. ("ML & Co.").[1]

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(b) and 17(b) permitting certain transactions that are prohibited by section 17(a) and under section 6(b) and rule 17d-1 exempting certain transactions from the provisions of section 17(d) and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order under sections 6(b) and 17(b) of the 1940 Act and rule 17d-1 thereunder to amend a previous order of the Commission that granted certain relief from the provisions of sections 17(a) and 17(d) of the 1940 Act and rule 17d-1 thereunder (Investment Company Act Release No 12363 (Apr. 8, 1982)) (the "KECALP Order"). Specifically, applicants seek to amend the KECALP Order to provide an exemption from (a) Section 17(d) to permit certain joint transactions involving leveraged buyout and other investments, including transactions involving restructurings and recapitalizations (collectively, "Merrill Lynch Investments"), in which ML & Co. and/or its affiliates and the Partnerships are participants and (b) section 17(a) to permit (i) certain sales of Merrill Lynch Investments to the Partnerships by ML & Co. and its affiliates within 30 days from the date the investments are acquired by ML & Co. and/or its affiliates; (ii) certain sales or tenders of securities issued by a particular portfolio company back to such company where the company is affiliated with ML & Co. or the Partnerships; and (iii) the General Partner and MLIF to sell to the Partnerships certain Merrill Lynch Investments, purchased prior to the date of any order on the application, that the General Partner and MLIF are holding as nominees for the Partnerships.

FILING DATE: The application was filed on March 13, 1989, and amendments were filed on June 8, 1990 and March 11, 1991. Applicants intend to file an additional amendment no later than April 16, 1991. *See* n. 1, *supra*.

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 May 6, 1990, 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, North Tower, World Financial Center, 250 Vesey Street, New York, New York 10281-1327.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Partnership is a Delaware limited partnership that is registered under the 1940 Act as a non-diversified, closed-end, management investment company. Each Partnership also is an "employees' securities company," as defined in section 2(a)(13) of the 1940 Act, and is exempt from certain provisions of the 1940 Act pursuant to the KECALP Order. Under the KECALP Order, limited partnership interests in the Partnerships were offered exclusively to certain employees of ML & Co. and its subsidiaries and to non-employee directors of ML & Co. The KECALP Order contemplated the organization of additional limited partnerships for employees of ML & Co. and its subsidiaries. Applicants request that any relief be applicable to future partnerships that operate under the terms of the KECALP Order.

2. MLIF is an indirect, wholly owned subsidiary of ML & Co. that engages in commercial financing transactions, including leveraged buyout transactions.

3. The General Partner is an indirect, wholly owned subsidiary of ML & Co. that was organized as a Delaware corporation in June 1981 to act as the general partner of the Partnerships. All investments and dispositions of investments by each Partnership are approved by the board of directors of the General Partner. In considering investments for the Partnerships, the board of directors of the General Partner receives the advice of an advisory committee (the "Advisory Committee"), presently consisting of seven individuals who are former members of the General Partner's board of directors.

4. The General Partner invests the assets of each Partnership as fully as possible prior to the offering of the next Partnership. To the extent that one Partnership has assets available for new investments when the next Partnership is offered, the General Partner may deem it appropriate to have the earlier offered Partnership purchase the investment or, if the size of the new investment makes it inappropriate for such Partnership to purchase the entire investment, may allocate the investment between the two Partnerships. Such allocations will be based on the amounts of assets that the two Partnerships have available for investment and diversification considerations.

5. The Partnerships have invested primarily in venture capital and leveraged buyout investments. Leveraged buyout investments generally have been made available to the Partnerships by ML & Co. and its affiliates that have participated in the structuring and/or capitalization of the leveraged buyout transactions. Applicants expect that the Partnerships will invest in transactions involving restructurings and recapitalizations of operating corporations and that these investments also will be made available to the Partnerships by ML & Co. and its affiliates.

6. The Partnerships have obtained limited prospective exemptive relief from certain provisions of sections 17(a) and 17(d) of the 1940 Act in the KECALP Order. The Partnerships and certain affiliated partnerships that are business development companies under the 1940 Act also have obtained limited prospective exemptive relief from the provisions of sections 17(d) and 57(a)(4) of the 1940 Act. Investment Company Act Release No. 16551 (Sept. 7, 1988). The prospective relief that the Partnerships have obtained permits the Partnerships to invest in partnerships or other investment vehicles offered by subsidiaries of ML & Co., to purchase securities from such investment vehicles, and to engage in certain transactions with entities in which ML & Co. or any of its subsidiaries, or officers,

[1] By letter dated April 5, 1991, counsel for applicants informed the staff of the Division of Investment Management that applicants intended to amend the application to include ML & Co. as a party to the application no later than April 16, 1991.

directors, or employees of the General Partner, have a partnership interest. The relief does not extend to transactions in which the Partnerships co-invest directly with ML & Co. and/or its affiliates in Merrill Lynch Investments. Thus, the Partnerships have filed a number of applications for transactional exemptions under the 1940 Act in connection with specific Merrill Lynch Investments. This application process has been expensive to the Partnerships and has required significant expenditures of time on the part of the staff of the SEC. In addition, the time required for the review of these applications has had certain significant adverse consequences for the Partnerships.

7. For example, the delay of the Partnerships' acquisition of an approved Merrill Lynch Investment from ML & Co. and/or its affiliates can result in adverse tax consequences. The longer the review process takes, the greater the risk that the entity being invested in will undergo significant restructuring. Determining the tax consequences of such a restructuring can be extremely complicated. In addition, the timing of the review process can result in adverse consequences for ML & Co. and its affiliates in connection with the holding of investments as nominees for the Partnerships. The formula for determining the purchase price of such investments places the market risk that the investment will decline in value on the nominees.

8. Subject to the conditions set forth below, applicants seek to amend the KECALP Order (a) pursuant to section 6(b) of the 1940 Act and rule 17d-1 thereunder to exempt applicants from the provisions of section 17(d) with respect to joint transactions involving Merrill Lynch Investments in which ML & Co. and/or its affiliates and the Partnerships are participants and (b) pursuant to sections 6(b) and 17(b) of the 1940 Act to exempt applicants from the provisions of section 17(a) with respect to (i) sales of Merrill Lynch Investments by ML & Co. and its affiliates to the Partnerships and purchases of such investments by the Partnerships within 30 days from the date the investments are acquired by ML & Co. and/or its affiliates [2] and (ii) certain sales or tenders of securities issued by a particular portfolio company back to such company where the company is affiliated with ML & Co. or the Partnership.[3]

9. In addition, subject to the conditions below, applicants seek an exemption pursuant to section 17(b) of the 1940 Act from the provisions of section 17(a) to permit the General Partner and MLIF (a) to sell to the Partnerships several Merrill Lynch Investments that the General Partner and MLIF are holding as nominees for the Partnerships and (b) to recover carrying costs related to such investments under certain circumstances.[4]

Applicants' Legal Conclusions

1. Applicants believe that the terms of the relief requested are consistent with the standards set forth in sections 6(b) and 17(b) of the 1940 Act and rule 17d-1 thereunder.

Pursuant to section 6(b) of the 1940 Act, the Commission shall, upon application, exempt any employees' securities company from the provisions of the 1940 Act if and to the extent that the exemption is consistent with the protection of investors. Applicants submit that the conditions set forth below are designed to insure that sales of Merrill Lynch Investments by ML & Co. and its affiliates to the Partnerships and purchases of such investments in joint transactions in which ML & Co. or an affiliate is a participant are consistent with the protection of the Partnerships' limited partners.

2. Applicants state that they are aware of the policies underlying sections 17(a) and 17(d) of the 1940 Act and rule 17d-1 thereunder and the potential conflicts that could arise in connection with the Partnerships' Merrill Lynch Investments involving ML & Co. and its affiliates. Applicants submit that the conditions provide an effective control with respect to those potential conflicts. Applicants note that the General Partner will receive and review written information regarding each Merrill Lynch Investment and will make an investment decision as soon as practicable but no more than 30 days after the date of the acquisition of the investment by ML & Co. or its affiliate. Thereafter, the General Partner's board of directors will make specified findings before purchasing any Merrill Lynch Investment on behalf of any Partnership from or with ML & Co. or an affiliate of ML & Co., and any such purchase will be made on terms at least as favorable as those applicable to ML & Co. or its affiliate.

3. Applicants further submit that any concern that granting the relief requested might lead to disadvantageous treatment of the Partnerships will be mitigated by the fact that ML & Co. and its affiliates are concerned with the relationship among themselves and the key employees and directors who invest in the Partnerships. Applicants believe that there is a community of interest that will reduce the risk of abuse in transactions involving a Partnership and ML & Co. or any of its affiliates. In addition, the limited partners of the Partnerships have been informed of the possible extent of the Partnerships' dealings with ML & Co. and its affiliates; as professionals employed in financial services businesses, the limited partners are able to evaluate the risks associated with those dealings. Moreover, the proposed conditions provide that the Partnerships' limited partners will receive ongoing disclosure of the Merrill Lynch Investments purchased by the Partnerships from or with ML & Co. and/or its affiliates, including the types and amounts of such securities owned by ML & Co. and/or its affiliates.

4. Applicants submit that the composition and operation of the board of directors of the General Partner and the Advisory Committee to the board

[2] As a result of scheduling or other logistical difficulties, the board of directors of the General Partner may not be able to meet to consider fully an investment before the investment is first made available or acquired by ML & Co. or its affiliate. Thus, the conditions require that the board of directors of the General Partner must approve the investment as soon as practicable but not more than 30 days after the time the investment first was acquired by ML & Co. or its affiliate. The conditions further require that each Partnership will make the investment on the same terms as ML & Co. or its affiliate, provided that the Partnership will not pay more than the lesser of the fair value of the investment on the date it is acquired by the Partnerships or the cost of such investment to ML & Co. or its affiliate.

[3] Applicants submit that relief permitting the sale or tender of securities back to a portfolio company is necessary to enable the Partnerships to deal with their investments in the manner that the General Partner deems most advantageous. For example, such relief would enable a Partnership, under certain circumstances, to restructure a prior investment, have securities redeemed, or tender its securities. Applicants further submit that condition 6 (set forth below) contains certain restrictions governing these transactions and provides safeguards to insure that the terms of any such transaction are reasonable and fair to the Partnership.

[4] As discussed in the application, the Partnerships have been granted several transactional exemptions from section 17(a) of the 1940 Act in connection with specific Merrill Lynch Investments. With respect to the Merrill Lynch Investments that are being held by the General Partner and MLIF as nominees for the Partnerships, separate exemptive applications have not been filed. After discussions with the staff of the SEC, applicants determined to refrain from filing additional exemptive applications for specific transactions pending the disposition of the instant application. If the requested relief is granted neither the General Partner nor MLIF will acquire investments as nominees for the Partnerships that they then will sell to the Partnerships. However, as described in paragraph 8 above, applicants seek relief to permit ML & Co. and other affiliates to acquire Merrill Lynch Investments as nominees for the Partnerships under limited circumstances.

also will mitigate any potential for disadvantageous treatment of the Partnerships. These bodies are comprised principally of individuals representing senior management of a diverse group of subsidiaries of ML & Co. who are selected on the basis of their substantive area of expertise. Most of these individuals are investors in the Partnerships.

Applicants' Conditions

Any relief granted on the application will be subject to the following conditions:

1. ML & Co. or one of its affiliates that is making a Merrill Lynch Investment available to the Partnerships will provide the General Partner with information regarding each such investment. Such information will be presented in written form and will include information as to the role of ML & Co. and any of its affiliates in structuring or financing the transaction and the types and amounts of investments that ML & Co. and any affiliate will acquire or have acquired, as well as the identity of and related investments being made by other investors, if such information is available to ML & Co. or its affiliate.

2. (a) To the extent that a Partnership has funds available for investment, the board of directors of the General Partner will review potential Merrill Lynch Investments, among others. The board of directors of the General Partner will make a determination as to whether each particular Merrill Lynch Investment meets applicable investment criteria and is consistent with the existing composition of the Partnerships' portfolio in terms of diversification of investments. The General Partner will maintain at the Partnerships' office written records describing the factors considered in any determination.

(b) In connection with its review of a particular investment, if the board of directors of the General Partner determines that the amount available to any Partnership is not sufficient to obtain an investment position it considers appropriate in the circumstances, that Partnership will not participate in the Merrill Lynch Investment. Similarly, a Partnership will not participate in an amount in excess of that which the board of directors of the General Partner determines to be appropriate in the circumstances. The General Partner will commit to purchase a Merrill Lynch Investment from or together with ML & Co. or an affiliate only if the board of directors of the General Partner, by a majority vote at a properly called and held meeting of the board of directors prior to making the investment, concludes, after consideration of all information deemed relevant, that:

(i) The terms of the Merrill Lynch Investment, including the consideration to be paid, are reasonable and fair to the limited partners of the Partnership and do not involve overreaching of the Partnership or such partners on the part of any person concerned;

(ii) The Merrill Lynch Investment is consistent with the interests of the limited partners of the Partnership and is consistent with the Partnerships' investment objectives and policies as recited in filings made by the Partnership under the Securities Act of 1933, as amended, its registration statement, and reports to its limited partners; and

(iii) The investment by ML & Co. or one or more other affiliates of ML & Co. in the Merrill Lynch Investment would not disadvantage the Partnership in the making of its investment, maintaining its investment position, or disposing of the investment and will be made on the same basis as the investment by ML & Co. and/or its affiliates.

The General Partner will maintain at the Partnerships' office written records of the factors considered in any decision regarding a Merrill Lynch Investment.

3. (a) Purchases of Merrill Lynch Investments by a Partnership from or together with ML & Co. and/or an affiliate shall consist of a class of securities also acquired by ML & Co. and/or its affiliate on the same terms (excluding terms as to aggregate purchase price, but including terms as to settlement date, registration rights, if any, and other rights provided to the purchasers of such investments). Except as provided in condition 3(b), investments made by the Partnerships together with ML & Co. or one of its affiliates will be acquired by the Partnerships on the same settlement date as ML & Co. or its affiliate; provided, however, that the Partnerships may acquire an investment on a date later than the settlement date on which ML & Co. or its affiliate acquired the investment to the extent that the investment determination of the board of directors of the General Partner takes place as soon as practicable but no more than 30 days after the date of the acquisition by ML & Co. or its affiliate, and payment by the Partnerships is made within five business days after approval by the board of directors of the General Partner. With respect to any Merrill Lynch Investment purchased from ML & Co. or an affiliate pursuant to this paragraph (a), the Partnerships will not pay more than the lesser of (i) The fair value of the Merrill Lynch Investment on the day it is acquired by the Partnerships (as determined in good faith by the General Partner's board of directors) ("Value") or (ii) the cost to ML & Co. or its affiliate of purchasing the investment ("Cost").

(b) With respect to Merrill Lynch Investments that the General Partner and MLIF are holding as nominee for the Partnerships at the date any order on the application is issued, the Partnerships may pay any carrying costs to the General Partner and MLIF, to the extent the Value of the investment exceeds its Cost, in addition to the purchase price of the Merrill Lynch Investment determined as set forth in paragraph (a); provided, however, that no such carrying costs will be paid in respect of the period prior to the later of (i) The date of acquisition of the Merrill Lynch Investment by the General Partner or MLIF or (ii) the date the General Partner approved the related Partnership's purchase of the Merrill Lynch Investment. For these purposes, carrying costs consist of interest charges computed at the lower of the prime commercial lending rate charged by Citibank, N.A. during the period for which carrying costs are permitted to be paid until the related Partnership acquires the Merrill Lynch Investment or the effective costs of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during this period.

(c) The General Partner will maintain at the Partnerships' office written records of the factors considered in any determination regarding the Value of a Merrill Lynch Investment.

(d) No investment will be made by a Partnership in any entity in which any other Partnership, ML & Co., or any affiliate thereof (such three categories being referred to as "Affiliates" for this paragraph 3(d)) has previously acquired an interest, provided that this prohibition shall not be applicable to (i) Any investment specifically permitted by this or any other order of the Commission, (ii) any investment in a publicly-traded security that is permissible under the 1940 Act or the rules thereunder, (iii) any investment in an entity in which one or more Affiliates have a prior investment if the securities offered are of the same or senior class of securities held by each such Affiliate and each such Affiliate invests in the subsequent offering on the same terms as a Partnership which does not have a prior investment in that entity, or (iv)

any investment by a Partnership in an entity in which an Affiliate has made a prior investment if an institutional investor with total assets of at least $100 million that is not an affiliated person of the Partnership makes an initial investment with the Partnership on the same terms as the Partnership making its initial investment in that entity.

4. If ML & Co. or one of its affiliates, including one or more of the Partnerships, elects to sell a Merrill Lynch Investment that also is held by one or more of the Partnerships, notice of the proposed sale will be given to the Partnership at the earliest practical time and the Partnership will be given the opportunity to participate in such sale on a proportionate basis on the same terms as those applicable to ML & Co. or such affiliate. Each Partnership will participate in such sale if such action is determined by a majority vote, at a properly called and held meeting of the board of directors of the General Partner, to be in the best interests of the Partnership. Each Partnership will bear its own expenses associated with the sale of a Merrill Lynch Investment. The General Partner will record in each Partnership's records the decision as to whether to participate in such sale, as well as the basis for the decision that such action is in the best interest of the Partnership.

5. If the board of directors of the General Partner, with respect to a Partnership, or ML & Co. or one of its affiliates determines to make a "follow-on" Merrill Lynch Investment (i.e., an additional investment in the same entity) in a particular portfolio company whose securities are held by one or more of the Partnerships or to exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to such Partnerships at the earliest practical time. Each Partnership owning securities in such an issuer in which the opportunity to make follow-on investments becomes available will participate in such a follow-on Merrill Lynch Investment if the board of directors of the General Partner determines, in the manner required by these conditions, that such action is in the best interests of such Partnership. The acquisition of follow-on investments as permitted by this condition 5 shall be subject to the other conditions set forth in this section. The General Partner shall record in each Partnership's records the decision as to whether to engage in a follow-on Merrill Lynch Investment with respect to that portfolio company, as well as the basis for such decision. For purposes of this condition, a follow-on Merrill Lynch Investment does not include an initial investment by a Partnership in a Merrill Lynch Investment in which another Partnership or ML & Co. or one of its affiliates already has made an investment.

6. (a) If the board of directors of the General Partner approves a transaction specified in this condition 6 in the manner specified in this paragraph with respect to securities owned by a Partnership, the Partnership may sell or tender securities in a portfolio company back to such entity where the entity is an affiliated person of ML & Co. or the Partnership, subject to compliance with the provisions of this condition. Sales or tenders by the Partnership to an issuer that is an affiliated person of the Partnership may be made only (i) Pursuant to a uniform offer by the issuer to purchase its securities on a pro rata basis made to all holders of the class of securities held by the Partnership (provided that the offer need not be made to employees of the issuer) or (ii) pursuant to an offer made to fewer than all holders of the class of securities held by the Partnership, provided that the Partnership will not participate in such transaction unless a securityholder that is an institutional investor with total assets of at least $100 million and is not an affiliated person of the Partnership or ML & Co. participates in such sale or tender on the same terms as the Partnership.

(b) Prior to entering into any transaction specified in paragraph 6(a), the board of directors of the General Partner must determine, in the manner required by these conditions, that such action is in the best interests of the particular Partnership and does not involve overreaching of the Partnership on the part of any person. The General Partner shall record in each Partnership's records the basis for such decision. Transactions entered into pursuant to this paragraph must be effected on the same terms applicable to any affiliate participating in the transaction.

7. The board of directors of the General Partner will review quarterly all information concerning Merrill Lynch Investments made by the Partnerships purchased from or with ML & Co. and its affiliates to determine whether all Merrill Lynch Investments made during the preceding quarter complied with the conditions set forth above.

8. At least annually, the General Partner will provide to the Partnerships' limited partners a written list of Merrill Lynch Investments purchased from or with ML & Co. or its affiliates, including the type and amount of such securities owned by ML & Co. or its affiliate.

9. The board of directors of the General Partner will adopt procedures pursuant to which it will monitor potential conflicts of interest between the Partnerships and ML & Co. and its affiliates, including other partnerships that may invest in leveraged buyout investments for which Merrill Lynch MBP Inc. ("MBP"), an indirect wholly owned subsidiary of ML & Co., acts as general partner, in connection with the Partnerships' investments. Such procedures will provide that the officers of the General Partner will annually prepare and present to the General Partner's board of directors written information regarding all potential investments made available to the Partnership during the prior year, including Merrill Lynch Investments. The board of directors' findings regarding potential conflicts of interest, the specific factors considered, and any further actions to be taken based on or in order to implement the directors' findings will be recorded in each Partnership's records.

10. No person will serve as a member of the board of directors of the General Partner if such person also is a member of the board of directors of MBP.

11. The General Partner will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with the provisions of section 57(h) of the 1940 Act as if each Partnership were a business development company, all of which will be available for inspection by the limited partners of each respective Partnership. All records referred to or required under these conditions will be available for inspection by the Commission.

12. Applicants agree that (a) Any Partnership created in the future will not be offered to employees of ML & Co. and its subsidiaries who earned, or whose annualized salary was, less than $75,000 with respect to the calendar year preceding the offering of such Partnership and (b) no employee meeting the requirement of clause (a) will be permitted to invest more than 15% of his cash compensation from ML & Co. and its subsidiaries in any Partnership unless such employee is an "accredited investor," as defined in rule 501(a) promulgated under the Securities Act of 1933, as amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8759 Filed 4-12-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25292]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 5, 1991.

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 April 29, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicants(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.

IE Industries Inc., et al. (70-7795)

IE Industries, Inc. ("IE Industries"), 200 First Street, P.O. Box 351, Cedar Rapids, Iowa 52406, and Iowa Southern Inc. ("Iowa Southern"), 300 Sheridan Avenue, Centerville, Iowa 52544, both Iowa public-utility holding companies exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, have filed an application under sections 9(a)(2) and 10 of the Act and rule 51 thereunder.

IE Industries proposes to acquire directly all of the outstanding common stock of Iowa Southern and, through such acquisition, to acquire all of the outstanding common stock of Iowa Southern Utilities Company ("Iowa Southern Utilities") and Terra Comfort Corporation ("Terra Comfort"), both wholly-owned public-utility subsidiaries of Iowa Southern.

IE Industries will acquire the Iowa Southern common stock through a merger of IE Industries and Iowa Southern pursuant to an Agreement and Plan of Merger dated as of February 27, 1991 ("Merger Agreement"). IE Industries and Iowa Southern will submit the Merger Agreement for shareholder approval at their respective annual meetings and will solicit proxies pursuant to regulation 14A under the Securities Exchange Act of 1934, as amended. Under the Merger Agreement, Iowa Southern will merge with and into IE Industries, with IE Industries as the surviving corporation, and all of the issued and outstanding shares of Iowa Southern common stock will be converted into and exchangeable for 1.60 shares of IE Industries common stock. IE Industries will be renamed IES Industries Inc. and will claim an exemption from registration under section 3(a)(1) of the Act pursuant to rule 2.

IE Industries is engaged in the generation, transmission and distribution of electricity, and the distribution of natural gas at retail, through its wholly-owned public-utility subsidiary, Iowa Electric Light and Power Company ("Iowa Electric"). Iowa Electric supplies electricity at retail to approximately 210,000 customers in 55 counties in Iowa and at wholesale to 21 municipalities, one rural electric cooperative, and one other utility, all in Iowa. Iowa Electric supplies natural gas at retail to approximately 123,500 customers in 117 cities and communities in the state.

Iowa Southern Utilities supplies electricity at retail to approximately 94,500 customers in 24 counties in Iowa, and at wholesale to seven communities and one Federal installation. Iowa Southern Utilities also distributes natural gas at retail to approximately 38,500 customers in 14 counties in the state. Terra Comfort is engaged in the generation and sale of electric power at wholesale.

As of December 31, 1990, IE Industries reported consolidated assets of $1,061,252,000, of which 89.6% represented the public-utility assets of Iowa Electric. Iowa Southern reported consolidated assets of $337,110,000, of which 93.5% represented the public-utility assets of Iowa Southern Utilities and Terra Comfort. As of December 31, 1990, IE Industries had 24 million authorized shares of common stock, no par value, of which 14,721,631 shares were outstanding. As of December 31, 1990, Iowa Southern had 15 million authorized shares of common stock, $5.00 par value, of which 5,783,407 shares were outstanding.

American Electric Power Company, Inc., et al. (70-7796)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its wholly owned service company subsidiary, American Electric Power Service Corporation ("Service"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a declaration under sections 6(a), 7 and 12(b) of the Act and rules 45 and 50(a)(5) thereunder.

Service proposes to issue and sell up to $90 million principal amount of secured notes ("Notes") in two series: (1) $20 million principal amount of 9% Mortgage Notes (Series D) due December 15, 1999, and (2) $70 million principal amount of 9.6% Mortgage Notes (Series E) due December 15, 2008. The Notes will be issued under an existing Trust Indenture and Open-End Mortgage dated as of December 13, 1983, as supplemented by the First Indenture Supplement thereto (collectively, "Mortgage"), which grants a first mortgage and lien on an office building owned by Service. Service proposes to issue and sell the Series E Notes pursuant to an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereunder.

AEP proposes to unconditionally and irrevocably guarantee Service's obligations under the Notes, including payment of the principal of, premium (if any), and interest on the Notes, and payment of all other amounts payable by Service pursuant to the Mortgage and any applicable note purchase agreements.

The proceeds of the sale of the Notes will be used to prepay $18.9 million of the $21.6 million principal amount outstanding of 12.25% Mortgage Notes (Series B) due December 13, 1998 ("Series B Notes") and $64 million of the $66 million principal amount outstanding of 13% Mortgage Notes (Series C) due December 13, 2008 ("Series C Notes"), the issuance and sale of which were authorized by Commission order dated December 5, 1983 (HCAR No. 23150). The Series B and Series C Notes would be prepaid together with accrued interest to the date of payment and a premium of $2,030,750 and $7,360,000, respectively. The unpaid $2.7 million principal amount of Series B Notes and $2 million principal amount of Series C Notes would be paid without premium on December 13, 1991 in accordance with their amortization schedules. The

Notes will be sold to the same two insurance companies which are the holders of the Series B and Series C Notes.

The estimated present value savings derived from the net difference between interest payments on the Notes and interest payments on the Series B and Series C Notes will be, on an after-tax basis, greater than the present value of all redemption and issuing costs, using as a discount rate the estimated after-tax rate on the Notes. Service proposes to treat the premiums which would be paid in connection with prepayment of the Series B and Series C Notes as an issuance expense to be amortized over the average life of the Notes.

National Fuel Gas Company (70–7833)

National Fuel Gas Company, 10 Lafayette Square, Buffalo, New York 14203 ("National"), a registered holding company, Empire Exploration, Inc., 14 Lafayette Square, Buffalo, New York 14203, Penn-York Energy Corporation, RD 1, Peete Road, Wellsville, New York 14895, Seneca Resources Corporation, M Corp. Plaza, 333 Clay Street, suite 4150, Houston, Texas 77002, and National Fuel Gas Distribution Corporation ("Distribution"), National Fuel Gas Supply Corporation, Enerop Corporation, Highland Land & Minerals, Inc. and Data-Track Account Services, Inc., each of 10 Layfayette Square, Buffalo, New York 14203, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and rules 45, 50(a)(5), 90 and 91 thereunder.

National proposes to acquire all of the 10,000 authorized shares of common stock of National Fuel Resources, Inc. ("Resources") for $3.5 million in cash. Resources, a newly-created New York corporation, will engage in the business of marketing natural gas and related activities, which Resources may pursue independently and/or through a partnership, as discussed below.

National also seeks authority for Resources to enter into a partnership with Citizens Gas Supply Corporation ("Citizens Gas"), a subsidiary of Citizens Energy Corporation, an independent gas marketing company that engages in the business of gathering, purchasing, transporting and marketing natural gas. The name of the partnership will be Citizens National Gas Co. ("Partnership"). Resources will acquire a 50% interest in the Partnership for $1.5 million in cash, and Citizens Gas will acquire a 50% interest in the Partnership in exchange for substantially all of its assets and business (but not its stock), valued in excess of $1.5 million. The Partnership is assuming all the obligations of Citizens Gas arising on or after December 1, 1990. The Partnership will operate pursuant to a proposed partnership agreement ("Partnership Agreement"), and will engage in purchasing, storing, transporting and marketing natural gas and the acquisition of related assets.

Distribution, a wholly owned subsidiary of National, proposes to provide services at cost to Resources which are incidental to the carrying out of Resources' marketing and related activities.

National also seeks authority for Resources to participate in the National Fuel System Money Pool ("Money Pool") as authorized by orders dated December 27, 1989 and March 5, 1991 (HCAR Nos. 25013 and 25265, respectively). Resources seeks authority to participate in, and make borrowings from, the Money Pool in a maximum principal amount at any one time outstanding of $20 million through December 31, 1991. Resources' $20 million Money Pool borrowings will be a part of, and not in addition to, the present Money Pool authorization of $350 million.

National also seeks authority for Resources to make available to the Partnership, through December 31, 1991, one or more loans aggregating up to $10 million. The funds for these loans to the Partnership will be derived from Resources' Money Pool borrowings and working capital. The loans will be evidenced by one or more security agreements and the issuance of one or more notes ("Notes") by the Partnership to Resources. The Notes will bear interest at the same rate as Resources, Money Pool borrowings, will be dated as of the date of their issuance (on or before December 31, 1991), and will be repaid over a term not exceeding ten years. The proposed $10 million authorization will be used by Resources for potential investments to be made jointly with Citizens Gas by and through the Partnership, as defined by the Partnership Agreement.

National requests an exception from the competitive bidding requirements of rule 50 pursuant to subsection (a)(5) thereunder regarding the issuance of the Notes.

National states that its acquisition of Resources, Resources' acquisition of a 50 percent interest in the Partnership and the activities of Resources and the Partnership are acquisitions and activities involving the transportation and/or storage of natural gas within the meaning of section 2(a) of the Gas Related Activities Act of 1990, Public Law 101–572 ("GRAA"), and/or are acquisitions and activities involving the supply of natural gas within the meaning of section 2(b) of the GRAA, and, as such, are deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of the integrated public utility system of the National system.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–8764 Filed 4–12–91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2487]

Hawaii; Declaration of Disaster Loan Area

The island of Oahu, Honolulu County, in the State of Hawaii constitutes a disaster area as a result of damages caused by heavy rains and flooding which occurred March 19–23, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 29, 1991 and for economic injury until the close of business on December 30, 1991 at the address listed below: Disaster Area 4 Office, Small Business Administration, P. O. Box 13795, Sacramento, CA 95853–4795 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

	Percent
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 248706 and for economic injury the number is 728600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 30, 1991.

Pat Saiki,

Administrator.

[FR Doc. 91-8737 Filed 4-12-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2482]

Mississippi With Contiguous Counties in Arkansas, Tennessee, Alabama, & Louisiana; Amendment #2; Declaration of Disaster Loan Area

The above-numbered declaration is hereby amended in accordance with an amendment dated March 21, 1991, to the President's major disaster declaration of March 5, to establish the incident period for this disaster as beginning on February 17, 1991 and continuing through March 21, 1991.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 3, 1991, and for economic injury until the close of business on December 5, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59003).

Dated: April 3, 1991.

Michael E. Deegan,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-8738 Filed 4-12-91; 8:45 am]

BILLING CODE 8025-01-M

[Application Number: 08/08-0148]

CI Capital Group, Inc.; Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661, et seq.) has been filed by CI Capital Group, Inc., 60 East South Temple, Suite 2200-3, Salt Lake City, Utah 84111 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1990).

The Management and Ownership of the Applicant, a Utah Corporation are as follows:

Name	Title or relationship	Percent of equity
Christopher Black Cannon, 875 East 1600 North, Mapleton, Utah 84663.	President/ Director (Chairman).	100
Scott Lionel Crowley, 12031 S. Bluff View, Sandy, Utah 84092.	Executive V.P./ Director.	0
Darral Glen Clarke, 4102 Quail Run Drive, Provo, Utah 84604.	Director	0
Robert Henry Daines, 3018 Comanche Lane, Provo, Utah 84604.	Director	0
K. Fred Skousen, 4175 North 200 East, Provo, Utah 84604.	Director	0
Cannon Industries, Inc., 60 East South Temple, suite 2200, Salt Lake City, Utah 84111.	Investment Advisor.	0

Mr. Christopher Black Cannon, the President and Director of the Applicant wholly owns the Applicant. The Investment Advisor of the Applicant is Cannon Industries, Inc., a Utah corporation, wholly owned by Christopher Black Cannon.

The Applicant will begin operations with private capital of $1 million. The Applicant will conduct its activities principally within the state of Utah.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the Applicant under their management including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication shall be addressed to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Salt Lake City, Utah.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 3, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-8739 Filed 4-11-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of InterAmerican Affairs

[Public Notice No. 1375]

Delegation of Authority No. 189; Foreign Assistance Act of 1961 and Certain Related Acts

By virtue of the authority vested in me by Delegation of Authority No. 145-5 of January 22, 1988, 53 FR 5072, pursuant to Executive Order 12163 of September 29, 1979, 44 FR 56673, as amended, and the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 *et seq.*, I hereby delegate to the Assistant Administrator for Latin America and the Caribbean of the Agency of International Development functions conferred on the President by section 534(b)(3)(A), (B), and (C) for the purpose of including law enforcement agencies and personnel in activities financed by the Agency for International Development to strengthen the administration of justice. All such activities shall be implemented in coordination with the International Criminal Investigative Training Assistance Program of the U.S. Department of Justice. Funds made available in any fiscal year for such assistance shall not exceed $500,000.

Dated: April 4, 1991.

Bernard Aronson,

Assistant Secretary for InterAmerican Affairs.

[FR. Doc. 91-8710 Filed 4-12-91; 8:45am]

BILLING CODE 4710-29-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Transportation Personnel Training and Qualifications Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting

of the Federal Aviation Administration Air Transportation Personnel Training and Qualifications Advisory Committee.

DATES: The meeting will be held on April 25, 1991, at 9 a.m.

ADDRESS: The meeting will be held in the MacCracken Room, 10th Floor, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), 800 Independence Avenue SW., Washington, DC. 20591, telephone (202) 267-9683.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Air Transportation Personnel Training and Qualifications Advisory Committee to be held on April 25, 1991, at the FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC. 20591. The agenda for this meeting will include progress reports from the Pilot Training Subcommittee, Air Carrier Working Group, General Aviation Working Group, Ab Initio Working Group, and Cabin Safety and Operations Subcommittee. In addition the FAA will provide he current status of the Joint Government/Industry Task Force on Flight Crew Performance. Also, the FAA will brief on its new Aviation Rulemaking Advisory Committee and its relationship to the Air Transportation Personnel Training and Qualifications Advisory Committee.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Because of increased security in Federal buildings, members of the public who wish to attend are advised to notify the FAA in advance of their plans. Furthermore, it is recommended that attendees arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on April 10, 1991.

John S. Kern,

Executive Director, Air Transportation Personnel Training and Qualifications Advisory Committee.

[FR Doc. 91-8804 Filed 4-12-91; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket No. P-004]

Wilmington Trust Co.; Application for Transfer of Vessel to Foreign Registry

Notice is hereby given that Wilmington Trust Company, owner of the U.S.-flag vessel, Brooklyn (Official No. 553648), not in its individual capacity but solely as Owner Trustee under a Trust Agreement dated December 1, 1973, for the benefit of General Electric Credit Corporation, has filed an application, dated February 6, 1991, for authorization to transfer the Brooklyn to foreign registry and flag. Approval of the Maritime Administration for the requested transfer is required under section 9 of the Shipping Act of 1916 (46 App. U.S.C. 808).

The Brooklyn is also subject to the provisions of a construction-differential subsidy (CDS) contract, which was granted pursuant to title V of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1151, *et seq.*) (the Act). The vessel was delivered in 1973. Section 503 of the Act, which has been incorporated into the CDS contract (article 9(a)), requires that upon delivery, the vessel "shall be documented under the laws of the United States * * * [and] shall remain documented under the laws of the United States for not less than [twenty years] * * *."

In June 1986, the owner of the Brooklyn repaid to the United States Government the unamortized portion of the CDS with interest and the CDS contract was amended to remove the domestic trading restrictions mandated by section 506 of the Act. The applicant has concluded that repayment of CDS with interest effectively terminated all operational restrictions, including the U.S.-flag documentation requirement.

The applicant asserts that there is no available employment for the vessel under U.S. flag, and the vessel is likely to be scrapped. On the other hand, the applicant asserts that, if the vessel is allowed to be registered under a foreign flag, the vessel can continue to operate, and remain available to the United States in a national emergency.

The criteria for approving section 9 applications in general has been an assessment of the military utility of the vessel proposed to be transferred, based on advice from the Navy. With regard to the Brooklyn, the Navy has advised that it has no objection to the transfer; however, the Navy requested that if the vessel were allowed to transfer to foreign registry, the Brooklyn be retained under effective United States control. The applicant, which would continue to own the vessel, has agreed to such condition.

The Maritime Administration is inviting public comment on whether the application should be granted. This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to express views thereon, may file written comments in triplicate with the Secretary, Maritime Administration, room 7300, 400 Seventh Street, SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on May 3, 1991. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-differential Subsidies).

By Order of the Maritime Administrator/ Maritime Subsidy Board.

Dated: April 10, 1991.

James E. Saari,

Secretary.

[FR Doc. 91-8786 Filed 4-12-91; 8:45 am]

BILLING CODE 4910-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 9, 1991.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0202.

Form Number: 5310 and 6088.

Type of Review: Resubmission.

Title: Application for Determination Upon Termination—Form 5310; Distributable Benefits From Employee Pension Benefit Plans—Form 6088.

Description: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.

Respondents: Businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Response/Recordkeeping:

	Form 5310	Form 6088
Recordkeeping	52 hrs., 8 mins.	7 hrs., 10 mins.
Learning about the law or the form.	3 hrs., 37 mins.	42 mins.
Preparing, copying, assembling, and sending the form to IRS.	7 hrs., 2 mins.	51 mins.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 1,072,350 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-8770 Filed 4-12-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 9, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1058.

Form Number: 8655.

Type of Review: Extension.

Title: Reporting Agent Authorization.

Description: Form 8655 allows a taxpayer to designate a reporting agent to file certain employment tax returns on magnetic tape, and to submit Federal tax deposits. This form allows IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized reporting agents. Reporting agents are persons or organizations preparing and filing magnetic tape equivalents of Federal tax returns and/or submitting Federal tax deposits.

Respondents: Businesses or other for-profit, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 10,000 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-8771 Filed 4-12-91; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 11-91]

Treasury Notes of April 15, 1998, Series F-1998

Washington, April 4, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $8,500,000 of United States securities, designated Treasury Notes of April 15, 1998, Series F-1998 (CUSIP No. 912827 A4 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated April 15, 1991, and will accrue interest from that date, payable on a semiannual basis on October 15, 1991, and each subsequent 6 months on April 15 and October 15 through the date that the principal becomes payable. They will mature April 15, 1998, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, April 10, 1991, prior to 12 noon, Eastern Daylight Savings time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, April 9, 1991, and

received no later than Monday, April 15, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, April 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, April 11, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 91-8740 Filed 4-10-91; 10:44 am]

BILLING CODE 4810-40-M

Departmental Offices

Privacy Act of 1974: Proposed New System of Records

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of a proposed new system of records subject to the Privacy Act.

SUMMARY: Departmental Offices proposes to add one new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). The Drug-Free Workplace Program records system is being established to maintain records relating to the selection and testing of Departmental employees for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812.

DATES: Comments must be received no later than May 15, 1991. The new system of records will become effective June 14, 1991, unless comments dictate otherwise.

ADDRESSES: Send any comments to Personnel Resources Division, Workforce Effectiveness, room 1325 MT, Department of the Treasury, Departmental Offices, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Telephone (202) 535-9501.

FOR FURTHER INFORMATION CONTACT: Curtis Brookshire, Chief, Workforce Effectiveness, room 1325 MT, Personnel Resources Division, Department of the Treasury, Departmental Offices, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Operations in the House of Representatives, the Committee on Governmental Affairs in the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Treasury/DO .202

SYSTEM NAME:

Drug-Free Workplace Program Records.

SYSTEM LOCATION:

Records are located within Personnel Resources, Workforce Effectiveness, room 1325 MT, Department of the Treasury, Departmental Offices, 1500 Pennyslvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Departmental Offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to selection, notification, testing of employees, drug test results, and related documentation concerning the administration of the Drug-Free Workplace Program within Departmental Offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100-71; 5 U.S.C. 7301 and 7361; 21 U.S.C. 812; Executive Order 12564, "Drug-Free Federal Workplace".

PURPOSE(S):

The system will be established to maintain records relating to the selection, notification, and testing of Departmental Offices' employees for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812. The records will be used by the Medical Review Officer; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials having authority to take adverse personnel action against such employee, or to advise management on such actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be disclosed to a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records consist of paper records maintained in file folders and magnetic media.

RETRIEVABILITY:

Records are retrieved by name of employee, position title, Social Security Number, I.D. number (if assigned), or any combination of these.

SAFEGUARDS:

Records will be stored in secure containers, e.g., safes, locked filing cabinets, etc. Access to such records is restricted to individuals having direct responsibility for the administration of the agency's Drug-Free Workplace Program. Procedural and documentary requirements of Pub. L. 100-71 and the Department of Health and Human Services Guidelines will be followed.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed by shredding, burning, or, in the case of magnetic media, erasure. Written records and test results may be retained up to five years or longer when necessary due to challenges or appeals of adverse actions by the employee.

SYSTEM MANAGER AND ADDRESS:

Departmental Offices Drug Program Coordinator, Department of the Treasury, 1500 Pennsylvania Avenue, room 1325 MT, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the attention of the Assistant Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Avenue NW., room 1054 MT, Washington, DC 20220.

Individuals must furnish their full name, Social Security Number, the title, series, and grade of the position they occupied, the month and year of any drug test(s) taken, and verification of identity as required by 31 CFR part 1 subpart C, appendix A.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the attention of the Assistant Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Avenue, NW, Room 1054 MT, Washington, DC 20220.

Individuals must furnish their full name, Social Security Number, the title, series, and grade of the position they occupied, the month and year of any drug test(s) taken, and verification of identity as required by 31 CFR part 1 subpart C, appendix A.

CONTESTING RECORD PROCEDURES:

The Department of the Treasury rules for accessing records, for contesting contents, and appealing initial determinations by the individual concerned are published in 31 CFR part 1, subpart C, appendix A.

RECORD SOURCE CATEGORIES:

Records are obtained form the individual to whom the record pertains; Departmental Offices employees involved in the selection and notification of individuals to be tested; contractor laboratories that test urine

samples for the presence of illegal drugs; Medical Review Officers; supervisors and managers and other Departmental Offices officials engaged in administering the Drug-Free Workplace Program; the Employee Assistance Program, and processing adverse actions based on drug test results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 7, 1991.

Linda M. Combs,

Assistant Secretary (Management).

[FR Doc. 91-8772 Filed 4-12-91; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on April 24 & 25, 1991. 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 8:30 a.m. on Wednesday, April 24, and 10:30 a.m. on Thursday, April 25, 1991. The agenda will include the following topics:

Wednesday, April 24, 1991

1991 Filing Season
Compliance 2000
Standardized Information Returns and National Wage Reporting
Taxpayer Self-Audit
Return Preparer Penalty Regulations
Electronic Payment of Taxes/Electronic Funds Transfer
Legal & Ethical Standards Applying Corporate Return in House Preparers
Coordinated Examination Program

Thursday, April 25, 1991

Correspondence Task Team on Action 61
Q & A and News Items
Concluding Remarks

Note: Last minute changes to the day 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 Raiford Gaffney, Senior Program Analyst no later than April 15, 1991. Ms. Gaffney may be reached on (202) 566-3161 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Raiford Gaffney, Senior Program Analyst, Executive Secretariat, C:ES, room 3308, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Raiford Gaffney, Senior Program Analyst, (202) 566-3161 (not toll-free).

Fred T. Goldberg,

Commissioner.

[FR Doc. 91-8795 Filed 4-12-91; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 72
Monday, April 15, 1991

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).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 13708.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, April 16, 1991.

CHANGE IN THE MEETING: The Commodity Futures Trading Commission has changed the closed meeting to discuss enforcement matters to April 17, 1991 at 10:00 a.m. in the 8th floor conference room.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-8873 Filed 4-11-91; 11:05 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: April 8, 1991, 56 FR 14286.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: April 10, 1991, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAG-4 and PC-1 on the Agenda scheduled for April 10, 1991:

Item No., Docket No., and Company

CAG-4

RP90-119-000, Texas Eastern Transmission Corporation

PC-1

CP91-121-000, El Paso Natural Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 91-8942 Filed 4-11-91; 4:11 pm]

BILLING CODE 6717-02-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of April 15, 1991.

A closed meeting will be held on Tuesday, April 16, 1991, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the schedule l matters at a closed meeting.

Commissioner Lochner, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 16, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.

Formal orders of investigation.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Young at (202) 272-2300.

April 10, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-8894 Filed 4-11-91; 12:28 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 56, No. 72
Monday, April 15, 1991

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 AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

Temporary Subsistence Management Regulations for Public Lands in Alaska

Correction

In rule document 90-15264 beginning on page 27114 in the issue of Friday, June 29, 1990, make the following correction:

§ ---.24 [Corrected]

On page 27153, in the second column, in § ---.24(f), the paragraph designated "(4)" should be designated "(5)".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1715-006, et al.]

Hydroelectric Applications (Springville City Corp., Utah, et al.); Applications

Correction

In notice document 91-8104 beginning on page 14258 in the issue of Monday, April 8, 1991, make the following correction:

On page 14260, in the third column, in paragraph b., "110667-000" should read "11067-000".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M-0089]

Vision Technologies International; Premarket Approval of Models A21-A and A21-B Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses

Correction

In notice document 91-7516 beginning on page 13316, in the issue of Monday, April 1, 1991, make the following correction:

On page 13316, in the third column, under **DATES:**, in the second line, "May 1, 1990." should read "May 1, 1991."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M-0013]

Sola/Barnes-Hind; Premarket Approval of Fluorocon™ (Pafilufocon B) Rigid Gas Permeable Contact Lenses for Daily and Extended Wear (Clear and Tinted)

Correction

In notice document 91-7515 beginning on page 13315 in the issue of Monday, April 1, 1991, make the following corrections:

1. On page 13315, in the third column, the docket number should read as set forth above.

2. On the same page, in the same column, under **SUMMARY**, in the fifth line, "permarket" should read "premarket" and in the eighth line, "Premeable" should read "Permeable".

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095-AA04

Procedures for Transfer of Records to Federal Records Centers

Correction

In rule document 91-7968 beginning on page 14025, in the issue of Friday, April 5, 1991, make the following correction:

§ 1228.152 [Corrected]

On page 14026, in the 2nd column, in § 1228.152(e)(4), in the 16th line, "center" was misspelled.

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1801

[NASA FAR Supplement Directive 89-7]

RIN 2700-AB08

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

Correction

In rule document 91-7064 beginning on page 12457 in the issue of Tuesday, March 26, 1991, make the following correction:

§1801.402 [Corrected]

1. On page 12458, in the second column, in the amendment to § 1801.402, in the third line, "Order" should read "order".

BILLING CODE 1505-01-D

federal register

Monday
April 15, 1991

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 175, 176, and 177
Indian Electric Power Utilities; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 175,176, and 177

RIN 1076-AC24

Indian Electric Power Utilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is revising regulations governing the electric power portion (utilities) of the Colorado River, Flathead, and San Carlos Indian irrigation projects. The purpose of these revisions is to provide for the consistent administration of the utilities, to establish procedures for updating the practices and procedures of the utilities so as to better reflect those of the industry, and to establish procedures to adjust electric power rates and service fees. The regulations determine the format for updating the practices and procedures of the utilities and the procedures for adjusting electric power rates (as needed) and service fees, with public involvement, to cover the expense of power and providing of service.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Mort S. Dreamer, Supervisory General Engineer, Branch of Irrigation and Power, Division of Water and Land Resources, Bureau of Indian Affairs, Department of the Interior, 18th and C Street, NW., room 4559 MIB, Washington, DC 20240, Phone Number (202) 208-5696.

SUPPLEMENTARY INFORMATION: This rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

This action consolidates former parts 175, 176, and 177 into part 175 which is retitled "Indian Electric Power Utilities." Former parts 175, 176, and 177 regulated the utilities of the Colorado River, Flathead, and San Carlos Indian irrigation projects, respectively. The provisions of those parts did not reflect current practices and procedures of the electric utility industry and did not include procedures for setting electric power rates and services fees. Until this time, rate-setting has been accomplished by the time-consuming rule-making process, and if continued may cause financial instability within the utilities. This rule establishes procedures for the Area Directors to adjust electric power rates and service fees, includes public involvement in the rate-setting process, and provides procedures for updating the practices and procedures for the utilities.

The rule is intended to promote consistent administration of the utilities previously regulated by former parts 175-177, as well as other existing and future utilities of the Bureau of Indian Affairs. It is the policy of the Bureau of Indian Affairs to provide safe and reliable electric service, treat electric customers equitably, maintain fiscal integrity, and manage electric power utilities efficiently.

The policy of the Bureau of Indian Affairs is to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons were given until the close of business August 9, 1990 to submnit comments on the proposed rule published July 10, 1990 (55 FR 28229). Comments were received from 5 persons or organizations. Most of the comments were in favor of the proposed regulations as written. The favorable comments can be summarized as "We are in favor of the rule as proposed."

The only negative comment was from a party concerning the appeal process stating, "An appeal to the owner and/or operator of an entity allegedly causing or responsible for damage, injury, or injustice to the appellant is untenable for a public utility." Appeals are sought through an administrative judge who is not biased and can go from there into the U.S. Court system; therefore we feel that this rule is adequate. We did make a technical correction inserting the correct name of the appeal agency "Office of Hearings and Appeals Board of Indian Appeals".

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Since increases and decreases in the cost of electric power service will be paid by the approximately 5,000 customers served by the utilities, of which less than 15 percent comprise the small entities in the project service area. The Department also has determined that this document does not constitute a major Federal action significantly affecting the human environment, and that no detailed statement is required pursuant to the Environmental Policy Act of 1969. The information collection requirement contained in Section 175.22 has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and assigned clearance number 1076-0021. It takes about 30-minutes for an individual to respond to the information collection.

Authorship Statement

The primary authors of this document are: Ralph Esquerra, Project Manager, San Carlos Indian Irrigation Project, Bureau of Indian Affairs; Ross Mooney, Acting Land Operations officer, Colorado River Agency, Bureau of Indian Affairs; Warren McConkey, Power Division Manager, Flathead Agency, Bureau of Indian Affairs; Mort S. Dreamer, Supervisory General Engineer, Bureau of Indian Affairs; and Barbara Scott-Brier, Attorney-Advisor, Office of the Solicitor, Department of the Interior.

List of Subjects in 25 CFR Parts 175, 176 and 177

Administrative practice and procedure, Electric power, Indians-Lands, Irrigation, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, chapter I, of title 25 of the Code of Federal Regulation is amended by removing parts 176 and 177 and revising part 175 to read as follows:

PART 175—INDIAN ELECTRIC POWER UTILITIES

Subpart A—General Provisions

Sec.
175.1 Definitions.
175.2 Purpose.
175.3 Compliance.
175.4 Authority of area director.
175.5 Operations manual.
175.6 Information collection.

Subpart B—Service Fees, Electric Power Rates and Revenues

175.10 Revenues collected from power operations.
175.11 Procedures for setting service fees.
175.12 Procedures for adjusting electric power rates except for adjustments due to changes in the cost of purchased power or energy.
175.13 Procedures for adjusting electric power rates to reflect changes in the cost of purchased power or energy.

Subpart C—Utility Service Administration

175.20 Gratuities.
175.21 Discontinuance of service.
175.22 Requirements for receiving electrical service.
175.23 Customer responsibilities.
175.24 Utility responsibilities.

Subpart D—Billing, Payments, and Collections

175.30 Billing.
175.31 Methods and terms of payment.
175.32 Collections.

Subpart E—System Extensions and Upgrades

175.40 Financing of extensions and upgrades.

Subpart F—Rights-of-Way

175.50 Obtaining rights-of-way.
175.51 Ownership.

Subpart G—Appeals

175.60 Appeals to the area director.
175.61 Appeals to the Interior Board of Indian Appeals.
175.62 Utility actions pending the appeal process.

Authority: 5 U.S.C. 301; sec. 2, 49 Stat. 1039–1040; 54 Stat. 422; sec. 5, 43 Stat. 475–476; 45 Stat. 210–211; and sec. 7, 62 Stat. 273.

Subpart A—General Provisions

§ 175.1 Definitions.

Appellant means any person who files an appeal under this part.

Area Director means the Bureau of Indian Affairs official in charge of a designated Bureau of Indian Affairs Area, or an authorized delegate.

Customer means any individual, business, or government entity which is provided, or which seeks to have provided, services of the utility.

Customer Service means the assistance or service provided to customers, other than the actual delivery of electric power or energy, including but not limited to such items as: Line extension, system upgrade, meter testing, connections or disconnection, special meter-reading, or other assistance or service as provided in the operations manual.

Electric Power Utility or Utility means that program administered by the Bureau of Indian Affairs which provides for the marketing of electric power or energy.

Electric Service means the delivery of electric energy or power by the utility to the point of delivery pursuant to a service agreement or special contract. The requirements for such delivery are set forth in the operations manual.

Officer-in-Charge means the individual designated by the Area Director as the official having day-to-day authority and responsibility for administering the utility, consistent with this part.

Operations Manual means the utility's written compilation of its procedures and practices which govern service provided by the utility.

Power Rates means the charges established in a rate schedule(s) for electric service provided to a customer.

Service means electric service and customer service provided by the utility.

Service Agreement means the written form provided by the utility which constitutes a binding agreement between the customer and the utility for service except for service provided under a special contract.

Service Fees means the charge for providing administrative or customer service to customers, prospective customers, and other entities having business relationships with the utility.

Special Contract means a written agreement between the utility and a customer for special conditions of service. A special contract may include, but is not limited to, such items as: Street or area lights, traffic lights, telephone booths, irrigation pumping, unmetered services, system extensions and extended payment agreements.

Utility office(s) means the current or future facility or facilities of the utility which are used for conducting general business with customers.

§ 175.2 Purpose.

The purpose of this part is to regulate the electric power utilities administered by the Bureau of Indian Affairs.

§ 175.3 Compliance.

All utility customers and the utilities are bound by the rule in this part.

§ 175.4 Authority of area director.

The Area Director may delegate authority under this part to the Officer-in-Charge except for the authority to set rates as described in §§ 175.10 through 175.13.

§ 175.5 Operations manual.

(a) The Area Director shall establish an operations manual for the administration of the utility, consistent with this part and all applicable laws and regulations. The Area Director shall amend the operations manual as needed.

(b) The public shall be notified by the Area Director of a proposed action to establish or amend the operations manual. Notices of the proposed action shall be published in local newspaper(s) of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall contain: A brief description of the proposed action; the effective date; the name, address, and telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 30 days before the scheduled effective date of the operations manual, or amendments thereto.

(c) After giving consideration to all comments received, the Area Director shall establish or amend the operations manual, as appropriate. A notice of the Area Director's decision and the basis for the decision shall be published and posted in the same manner as the previous notices.

§ 175.6 Information collection.

The information collection requirements contained in § 175.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0021. This information is being collected to provide electric power service to customers. Response to this request is "required to obtain a benefit." Public reporting for this information collection is estimated to average .5 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, room 337–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs Project 1076–0021, Office of Management and Budget, Washington, DC 20502.

Subpart B—Service Fees, Electric Power Rates and Revenues

§ 175.10 Revenues collected from power operations.

The Area Director shall set service fees and electric power rates in accordance with the procedures in §§ 175.11 and 175.12 to generate power revenue.

(a) *Revenues.* Revenues collected from power operations shall be administered for the following purposes, as provided in the Act of August 7, 1946 (60 Stat. 895), as amended by the Act of August 31, 1951 (65 Stat. 254):

(1) Payment of the expenses of operating and maintaining the utility;

(2) Creation and maintenance of reserve Funds to be available for making repairs and replacements to, defraying emergency expenses for, and insuring continuous operation of the utility;

(3) Amortization, in accordance with repayment provisions of the applicable statutes or contracts, of construction

costs allocated to be returned from power revenues; and

(4) Payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law.

(b) *Rate and fee reviews.* Rates and fees shall be reviewed at least annually to determine if project revenues are sufficient to meet the requirements set forth in paragraph (a) of this section. The review process shall be as prescribed by the Area Director.

§ 175.11 Procedures for setting service fees.

The Area Director shall establish, and amend as needed, service fees to cover the expense of customer service. Service fees shall be set by unilateral action of the Area Director and remain in effect until amended by the Area Director pursuant to this section. At least 30 days prior to the effective date, a schedule of the service fees, together with the effective date, shall be published in local newspaper(s) of general circulation and posted in the utility office(s). The Area Director's decision shall be final for the Department of the Interior.

§ 175.12 Procedures for adjusting electric power rates except for adjustments due to changes in the cost of purchased power or energy.

Except for adjustments to rates due to changes in the cost of purchased power or energy, the Area Director shall adjust electric power rates according to the following procedures:

(a) Whenever the review described in § 175.10(b) of this part indicates that an adjustment in rates may be necessary for reasons other than a change in cost of purchased power or energy, the Area Director shall direct further studies to determine whether a rate adjustment is necessary and, if indicated, prepare rate schedules.

(b) Upon completion of the rate studies, and where a rate adjustment has been determined necessary, the Area Director shall conduct public information meetings as follows:

(1) Notices of public meetings shall be published in local newspapers of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall provide: The date, time, and place of the scheduled meeting; a brief description of the action; the name, the address, and the telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 15 days before the scheduled date of the meeting.

(2) Written and oral statements shall be received at the public meetings. The record of the public meeting shall remain open for the filing of written statements for five days following the meeting.

(c) After giving consideration to all written and oral statements, the Area Director shall make a decision about a rate adjustment. A notice of the Area Director's decision, the basis for the decision, and the adjusted rate schedule(s), if any, shall be published and posted in the same manner as the previous notices of public meetings.

(d) Rates shall remain in effect until further adjustments are approved by the Area Director pursuant to this part.

§ 175.13 Procedures for adjusting electric power rates to reflect changes in the cost of purchased power or energy.

Whenever the cost of purchased power or energy changes, the effect of the change on the cost of service shall be determined and the Area Director shall adjust the power rates accordingly. Rate adjustments due to the change in cost of purchased power or energy shall become effective upon the unilateral action of the Area Director and shall remain in effect until amended by the Area Director pursuant to this section. A notice of the rate adjustment, the basis for the adjustment, the rate schedule(s) shall be published and posted in the same manner as described in § 175.12(c) of this part. The Area Director's decision shall be final for the Department of the Interior.

Subpart C—Utility Service Administration

§ 175.20 Gratuities.

All employees of the utility are forbidden to accept from a customer any personal compensation or gratuity rendered related to employment by the utility.

§ 175.21 Discontinuance of service.

Failure of customer(s) to comply with utility requirements as set forth in this part and the operations manual may result in discontinuance of service. The procedure(s) for discontinuance of service shall be set forth in the operations manual.

§ 175.22 Requirements for receiving electrical service.

In addition to the other requirements of this part, the customer, in order to receive electrical service, shall enter into a written service agreement or special contract for electrical power services.

§ 175.23 Customer responsibilities.

The customer(s) of a utility subject to this part shall:

(a) Comply with the National Electrical Manufacturers Association Standards and/or the National Electrical Code of the National Board of Fire Underwriters for Electric Wiring and Apparatus as they apply to the installation and operation of customer-owned equipment;

(b) Be responsible for payment of al' financial obligations resulting from receiving utility service;

(c) Comply with additional requirements as further defined in the operations manual;

(d) Not operate or handle the utility's facilities without the express permission of the utility;

(e) Not allow the unauthorized-use of electricity; and

(f) Not install or utilize equipment which will adversely affect the utility system or other customers of the utility.

§ 175.24 Utility responsibilities.

A utility subject to this part shall:

(a) Endeavor to provide safe and reliable energy to its customers. The specific types of service and limitations shall be further defined in the operations manual;

(b) Construct and operate facilities in accordance with accepted industry practice;

(c) Exercise reasonable care in protecting customer-owned equipment and property;

(d) Comply with additional requirements as further defined in the operations manual;

(e) Read meters or authorize the customer(s) to read meters at intervals prescribed in the operations manual, service agreement, or special contract, except in those situations where the meter cannot be read due to conditions described in the operations manual;

(f) Not operate or handle customer-owned equipment without the express permission of the customer, except to eliminate what, in the judgment of the utility, is an unsafe condition; and

(g) Not allow the unauthorized use of electricity.

Subpart D—Billing, Payments, and Collections

§175.30 Billing.

(a) *Metered customers.* The utility shall render bills at monthly intervals unless otherwise provided in special contracts. Bills shall be based on the applicable rate schedule(s). Unless otherwise determined, the amount of energy and/or power demand used by

the customer shall be as determined from the register on the utility's meter at the customer's point of delivery. A reasonable estimate of the amount of energy and/or power demand may be made by the utility in the event a meter is found with the seal broken, the utility's meter fails, utility personnel are unable to obtain actual meter registrations, or as otherwise agreed by the customer and the utility. Estimates shall be based on the pattern of the customer's prior consumption, or on an estimate of the customer's electric load where no billing history exists.

(b) *Unmetered customers.* Bills shall be determined and rendered as provided in the customer's special contract.

(c) *Service fee billing.* The utility shall render service fee bills to the customer(s) as a special billing.

§ 175.31 Methods and terms of payment.

Payments shall be made in person or by mail to the utility's office designated in the operations manual. The utility may refuse, for cause, to accept personal checks for payment of bills.

§ 175.32 Collections.

The utility shall attempt collection on checks returned by the customer's bank due to insufficient funds or other cause. An administrative fee shall be charged for each collection action taken by the utility other than court proceedings. An unredeemed check shall cause the customer's account to become delinquent, which may be cause for discontinuance of service. Only legal tender, a cashier's check, or a money order shall be accepted by the utility to cover an unredeemed check and associated charges.

Subpart E—System Extensions and Upgrades

§ 175.40 Financing of extensions and upgrades.

(a) The utility may extend or upgrade its electric system to serve additional loads (new or increased loads).

(b) If funds are not available, but the construction would not be adverse to the interests of the utility, a customer may contract with the utility to finance all necessary construction.

(1) A customer may be allowed to furnish required material or equipment for an extension or upgrade or to install such items or to pay the utility for such installation. Any items furnished or construction performed by the customer shall comply with the applicable plans and specifications approved by the utility.

(2) The utility may arrange to refund all or part of a customer's payment of construction costs if additional customers are later served by the same extension or if the Area Director determines that the service will provide substantial economic benefits to the utility. All arrangements for refunds shall be stipulated in a special contract.

Subpart F—Rights-of-Way

§ 175.50 Obtaining rights-of-way.

Where there is no existing right(s)-of-way for the utility's facilities, the customer shall be responsible for obtaining all rights-of-way necessary to the furnishing of service.

§ 175.51 Ownership.

All rights-of-way, material, or equipment furnished and/or installed by a customer pursuant to this part shall be and remain the property of the United States.

Subpart G—Appeals

§ 175.60 Appeals to the area director.

(a) Any person adversely affected by a decision made under this part by a person under the authority of an Area Director may file a notice of appeal with the Area Director within 30 days of the personal delivery or mailing of the decision. The notice of appeal shall be in writing and shall clearly identify the decision being appealed. No extension of time shall be granted for filing a notice of appeal.

(b) Within 30 days after a notice of appeal has been filed, the appellant shall file a statement of reason(s) with the Area Director. The statement of reason(s) shall explain why the appellant believes the decision being appealed is in error, and shall include any argument(s) that the appellant wishes to make and any supporting document(s). The statement of reason(s) may be filed at the same time as the notice of appeal. If no statement of reason(s) is filed, the Area Director may summarily dismiss the appeal.

(c) Documents are properly filed with the Area Director when they are received in the facility officially designated for receipt of mail addressed to the Area Director, or in the immediate office of the Area Director.

(d) Within 30 days of filing of the statement of reason(s), the Area Director shall:

(1) Render a written decision on the appeal, or

(2) Refer the appeal to the Office of Hearings and Appeals Board of Indian Appeals for decision.

(e) Where the Area Director has not rendered a decision with 30 days of filing of the statement of reasons, the appellant may file an appeal with the Office of Hearings and Appeals Board of Indian Appeals pursuant to § 175.61.

§ 175.61 Appeals to the Interior Board of Indian Appeals.

(a) An Area Director's decision under this part, except a decision under § 175.11 or 175.13, may be appealed to the Office of Hearings and Appeals Board of Indian Appeals pursuant to the provisions of 43 CFR part 4, subpart D, except that a notice of appeal from a decision under § 175.12 shall be filed within 30 days of publication of the decision. The address for the Interior Board of Indian Appeals shall be included in the operations manual.

(b) Where the Area Director determines to refer an appeal to the Office of Hearings and Appeals Board of Indian Appeals, in lieu of deciding the appeal, he/she shall be responsible for making the referral.

(c) If no appeal is timely filed with the Office of Hearings and Appeals Board of Indian Appeals, the Area Director's decision shall be final for the Department of the Interior.

§ 175.62 Utility actions pending the appeal process.

Pending an appeal, utility actions relating to the subject of the appeal shall be as follows:

(a) If the appeal involves discontinuance of service, the utility is not required to resume such service during the appeal process unless the customer meets the utility's requirements.

(b) If the appeal involves the amount of a bill and:

(1) The customer has paid the bill, the customer shall be deemed to have paid the bill under protest until the final decision has been rendered on the appeal; or

(2) The customer has not paid the bill and the final decision rendered in the appeal requires payment of the bill, the bill shall be handled as a delinquent account and the amount of the bill shall be subject to interest, penalties, and administrative costs pursuant to section 3 of the Federal Claims Collection Act of 1966, As amended, 31 U.S.C. 3717.

(c) If the appeal involves an electric power rate, the rate shall be implemented and remain in effect subject to the final decision on the appeal.

Dated: December 28, 1990.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-8575 Filed 4-12-91; 8:45 am]

BILLING CODE 4310-02-M

federal register

Monday
April 15, 1991

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, 5, 8, et al.

Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 8, 9, 10, 14, 15, 16, 17, 19, 25, 27, 31, 35, 36, 42, 43, 44, 45, 49, and 52

RIN 9000-AC43, 9000-AE12, 9000-AD85, 9000-AE00, 9000-AD32, 9000-AE01, 9000-AD66, 9000-AD21, 9000-AD57, 9000-AD08, 9000-AE05, 9000-AD73, 9000-AD02, 9000-AD78, 9000-AD81, 9000-AD77, 9000-AD33,

[FAC 90-4]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rules with request for comment; and final rules.

SUMMARY: Federal Acquisition Circular (FAC) 90-4 amends the Federal Acquisition Regulation (FAR) with respect to the following: South African Trade; Prohibitions on Acquisitions of Supplies or Services from Iraq; Editorial Changes to FAR part 1; Changes to the Government Procurement Code; Procurement Priority of Federal Prison Industries; Multiple-Award Schedules/ Streamlined Source Selection Procedures; Definition of Contractor; Metric System of Measurement; Submission of Offers in the English Language/U.S. Currency; Equitable Adjustment Claims; Integrity of Unit Prices and Fuels Contracts; Streamlining Use of Options on Indefinite Quantity Requirements Contracts; Blind and Handicapped Organizations; Transfer of 8(a) Contracts; Determinations and Findings of Nonavailability; Restrictions on Procurement of Products and Services from Toshiba/Kongsberg; Thresholds and Clauses, FAR part 27; Foreign Selling Costs; Basic Agreements; Architect-Engineer Performance Evaluations; Contract Administration Functions; Bankruptcy; Thresholds, part 44; Inventory Schedules, Authority of Contractor's Representative; Termination for Default; Thresholds, part 42; and editorial corrections.

DATES: *Effective Date:* May 15, 1991 except for §§ 25.701, 25.702, 25.703(b), 25.704, and 25.225-11(a) (interim rule, Items I and II), which are effective April 15, 1991.

Comment Date: Comment on the interim rules, Items I and II (subpart 25.7 and 52.225-11(a)), should be submitted to the FAR Secretariat at the address shown below on or before June 14, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405. Please cite FAC 90-4 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-4.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administration of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Items I and II of FAC 90-4 as interim rules. It is determined that compelling reasons exist to promulgate these interim rules without prior opportunity for public comment. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to these interim rules will be considered in formulating the final rule.

B. Background

Item I. Executive Order 12532, dated September 9, 1985, prohibited trade and certain other transactions with South Africa, effective October 11, 1985. Thereafter, Congress enacted the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99-440) on October 2, 1986, which contains two pertinent provisions. Section 302 prohibits the importation of arms, ammunition, or military articles produced in South Africa or the importation of any manufacturing data for such articles. Section 314 contains a prohibition on U.S. Government procurement from South African government organizations (defined in the Act as a "parastatal organization", meaning a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa, but not including a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned). The Comprehensive Anti-Apartheid Act was implemented by Executive Order 12571 dated October 27, 1986.

To implement the restrictions imposed by the Anti-Apartheid Act of 1986, FAR subpart 25.7 and the clause at 52.225-11, Certain Communist Areas, are being revised. Existing coverage in subpart 25.7 is expanded to provide policy and procedures on acquisitions from foreign countries whose supplies or services cannot be lawfully imported into the United States or acquired by United States entities.

Item II. Executive Order 12722 and 12724, dated August 3, 1990, and August 13, 1990, respectively, prohibit the import into the United States or the purchase by any United States person of goods or services of Iraqi origin.

To implement the restrictions imposed by these Executive orders, FAR subpart 25.7 and the clause at 52.225-11, Restrictions on Certain Foreign Purchases, are revised.

Item III. The Office of the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management), no longer exists. This editorial change updates the FAR for class deviations processed by the DOD and NASA.

Item IV. A major renegotiation of the Governemnt Procurement Code necessitated changes to the FAR, primarily in subpart 25.4. Related changes were made in parts 5, 14, 15, 17, and 52.

Revisions to the FAR were published in the **Federal Register** on July 20, 1988 (53 FR 27460), as an interim rule with a request for comment. Twenty-one responses were received, consisting of 15 concurrences and no comments and six comments.

As a result of public comments received on the interim rule, changes made to this final rule include—(a) clarification of FAR 5.202(a)(12) to include the synopsis requirement when a determination is made that the Trade Agreements Act (TAA) applies to DOD procurements made and performed outside the U.S.; (b) clarification of FAR 14.408-1 and FAR 15.1001(c) to include the prompt notification of unsuccessful offerors under procurements subject to the TAA after award to avoid an adverse impact on protests; (c) inclusion of a reference in FAR 25.402(f) to the antidiscrimination policy application to Caribbean Basin countries; (d) revisions in FAR 25.405(a) to provide consistency between the changes in the Code and the publicizing requirements in part 5; (e) revision of the prescription in FAR 25.407(a) to clarify use of the clause at 52.225-9 when the TAA applies; (f) addition of FAR 25.407(c) to provide instruction to the contracting officer for those items in the schedule exempt from

the TAA; and (g) revision of the clause at 52.225–9, Buy American Act-Trade Agreements Act-Balance of Payments Program, to correct omissions from the interim rule.

Item V. Clarification of the FAR concerning Federal Prison Industries' (FPI's) priority status in the acquisition of services has been requested. There is an apparent discrepancy between the coverage on FPI's priority status in the acquisition of services and the requirements of the governing statute, 18 U.S.C. 4121, *et seq.* In addition, the FAR coverage concerning possible addition of items to FPI's Schedule is clarified. Other changes are being made to provide consistency in terminology. FAR 8.605(c) is revised to change "Director of the Office of Management and Budget" to "President" and reflect the current language of 18 U.S.C. 4124.

Item VI. The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council approved this change because existing FAR coverge implies that ordering offices must review all available price lists. The number of available price lists may be inordinate in view of the value and number of items being ordered. Also, the ordering office is currently required to justify, in the contract file, orders placed at other than the lowest price for items exceeding $1,000. This low threshold is not cost-effective. The principle behind the requirement to justify purchasing other than the lowest priced item is the requirement and threshold for price reasonableness at FAR 13.106.

Item VII. A proposed rule was published in the **Federal Register** on May 1, 1990 (52 FR 18296), to clarify perceived ambiguities in the definition of "contractor" which occasionally arise in relation to investigations and suspension and debarment proceedings. The revision clarifies that the definition includes persons or entities that contract with the Government indirectly through others or who may reasonably be expected to act as agents or representatives for another contractor. Public comments were received and considered in preparing the final rule. One comment expressed concern that this proposed change in the definition might adversely affect the rights of affiliates in FAR 9.406–1(b) and 9.407–1(c). No such effect is intended and affiliates shall continue to be entitled to the protection of those sections.

Item VIII. A new paragraph (c) is added to FAR 10.002 to encourage the use of the metric system of measurement in formulating Government requirements.

Item IX. These changes arose as a result of the Defense Management Review Regulatory Reform initiative. It was found that coverage contained in FAR supplements would be useful for all Federal contracting activities. Therefore, the Councils have added coverage to the FAR to provide for submission of offers in the English language and to require offers in terms of U.S. dollars.

Revisions to the FAR were published in the **Federal Register** (55 FR 24208, June 14, 1990) as a proposed rule with a request for comment.

Sixteen responses were received, consisting of 13 concurrences and no comments, and three comments.

Changes made to the final rule based on the accepted comments include—(a) the addition of 14.201–6(x) and 15.407(1) to prescribe a new provision at 52.214–34 for the submission of offers in the English language; (b) the addition of 14.201–6(y) and 15.407(m) to prescribe a new provision at 52.214–35 for the submission of offers in U.S. currency; (c) the addition of 25.407(d) to require these two provisions in all solicitations subject to the Trade Agreement Act; and (d) the addition of a new provision at 52.214–34, Submission of Offers in the English Lanaguage, and a new provision at 52.214–35, Submission of Offers in U.S. Currency.

Item X. A review of requests for equitable adjustments submitted against construction contracts revealed requests far in excess of actual incurred costs. These revisions reiterate the requirement for contractors to identify all incurred costs as a part of any cost proposal submitted on a Standard Form (SF) 1411, and to state that contracting officers may include a clause in construction contracts requiring contractors to separately account for changed work if the estimated cost of the change or series of changes exceeds $100,000.

A proposed rule was published in the **Federal Register** July 11, 1989. Thirty-two letters of comment were received and considered in the development of this final rule.

Item XI. The revision regarding petroleum products is made to codify a deviation granted to the Defense Logistics Agency in May 1986 and to extend it to all agencies in view of the manner in which petroleum product prices are determined. The revisions extending the exemption for commercial products to all agencies, in lieu of solely to DOD and NASA, are made in light of the prohibition in section 501 of Public Law 98–577 from requiring cost or pricing data not otherwise required by law.

Item XII. A proposed rule was published in the **Federal Register** on January 23, 1990, to remove the implied proscription on the use of requirements contracts and indefinite quantity contracts for other than commercial or commercial-type products and to clarify policy concerning options for items available on the open market. Public comments were received and considered in drafting this final rule.

Item XIII. This finalizes amendments to FAR 19.508 which were made by an interim rule published in the June 12, 1989, **Federal Register** (54 FR 25060) and further revises FAR 19.501, thus authorizing participation of public or private organizations for the handicapped in small business set-asides during fiscal years 1989 through 1993. The provisions provide for self-certification by the public or private organization for the handicapped but provide for challenge of the certification by interested parties. The provisions also provide notice that small business concerns which experience severe economic injury as a result of a set-aside award to a public or private organization for the handicapped may file an appeal with the Small Business Administration through the contracting officer.

Item XIV. These amendments implement section 407 of Public Law 100–656, Business Opportunity Development Reform Act of 1988, which requires termination of an 8(a) contract when ownership or control of the 8(a) concern is transferred. The Administrator of the Small Business Administration may waive the termination requirement under certain conditions.

Item XV. This case arose as a result of an agency's determination of nonavailability under the Buy American Act for hand file sets (Swiss pattern).

Item XVI. An interim rule was published in FAC 84–46 in the **Federal Register** on May 8, 1989 (54 FR 19812), to implement section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100–418) and Executive Order 12661, dated December 27, 1988.

Twelve letters of comment were received in response to the interim rule. The interim rule has been revised to make several clarifications.

Item XVII. A notice of the proposed rule to increase the threshold in FAR 52.227–3, Patent Indemnity, Alternate III, and to delete FAR 52.227–8, Reporting of Royalties (Foreign) was published in the **Federal Register** on June 27, 1990 (55 FR 26343). The final rule results from recommendations made by the Logistics

Management Institute after its review of FAR part 27 thresholds. FAR 52.227-3, Alternate III, applies only to subcontracts for communications services when the services are not regulated and are not priced by a regulatory body. The rule raises the existing threshold of $5,000, established in 1971, to $25,000. The Councils also determined to delete FAR 52.227-8 as unnecessary because the requirements are covered adequately by FAR 52.227-6 Royalty Information. Related editorial changes are made to 27.204-1, 27.204-2, and 27.204-4 to reflect the deletion of 52.227-8.

Item XVIII. A notice of the proposed rule to implement the requirements of Public Law 100-456 within the FAR was published in the **Federal Register** on January 16, 1990 (55 FR 1554). Similar rules were previously published in the Defense Federal Acquisition Regulation Supplement (DFARS) in order to meet the statutory implementation deadline.

Item XIX. FAR 35.015(b)(3) has required each agency to furnish to the FAR Secretariat, as of September 30 of each year, a list of its basic agreements pertaining to research and development. The list of these agreements had become outdated, and upon review of the requirement, it was determined by the Councils to delete it from the FAR. No known need for continuation of the requirement in the regulation was identified.

Item XX. A proposed rule was published in the **Federal Register** on April 14, 1989 (54 FR 15132), to allow the Government to complete a performance evaluation of the architect-engineer contract. Public comments were received and considered in drafting this final rule.

Item XXI. FAR 42.302(a) is revised to add an additional contract administration function pertaining to program support responsibilities. Currently, the listed functions do not adequately describe technical responsibilities associated with supporting critical programs. The additional program support function will provide assistance to program offices as a significant objective of contract administration.

Item XXII. Subpart 42.9, Bankruptcy, and a clause at 52.242-14 are added to provide guidance concerning the treatment of contractors who enter into bankruptcy. The purpose of such guidance is to enable the Government to deal with potentially significant events in a contractor's operation that could impact on the Government's ability to obtain the requisite contract performance and to provide procedural guidance for addressing such situations.

Item XXIII. Current threshold levels in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation were recently reviewed to determine their appropriateness. Several changes were recommended as a result of the study. This rule represents adoption of recommendations pertaining to FAR part 44 thresholds.

Item XXIV. Federal Acquisition Regulation (FAR) 45.606-1(b) is amended by deleting the parenthetical "(which tenders title to the property)," and adding a new second sentence that requires the contractor's inventory schedule certificate be signed by a representative having the authority to commit the contractor in contractual matters. The Defense Contract Management Command initiated this amendment and the change is considered important to ensure that contractual obligations implied by the schedules are understood and accepted by the contractor's management.

Item XXV. FAR 49.402-7(b) provides for the recoupment of damages suffered by the Government as a result of a termination for default. Government administrative costs associated with reprocurement should be part of the Government's demand. As a result of a request for clarification of the existing policy with respect to administrative costs, paragraph (b) has been revised to include administrative costs in the damages the Government may demand as a result of termination for default.

Item XXVI. Regulatory dollar thresholds were reviewed for currency and appropriateness. The dollar threshold in the clause at 52.242-2, Production Progress Reports, was established in 1970. Inflation would yield a present value of $32,400. For consistency with other FAR dollar thresholds, the threshold is now increased to $25,000. The change was published as a proposed rule on February 5, 1990 (55 FR 3798).

C. Regulatory Flexibility Act

Items I and II. DOD, GSA, and NASA certify that the interim rules in FAC 90-4 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because the proposed rule applies to the internal operating procedures of the Government by providing restrictions on acquisitions from foreign countries whose supplies or services cannot lawfully be imported into the United States or acquired by United States entities. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAC 90-4, Items I and II, and will be considered in the formulation of a final rule.

Items VI, VIII, XV, XIX, XXIV, XXV, and XXVI. The Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1, *i.e.*, it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or have a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Public Law 98-525 and section 302 of Public Law 98-577 pertaining to publication of proposed regulations (as implemented in FAR subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR sections will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite the reference 5 U.S.C. 610 in correspondence pertaining to the appropriate item in FAC 90-4.

Items III, IV, V, VII, IX, X, XI, XVI, XVII, XVIII, XXI, XXII, and XXIII. DOD, GSA, and NASA certify that these final rules in FAC 90-4 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because:

Item III. It is merely an editorial change and imposes no requirements of any kind upon small entities.

Items IV and IX. No actual impact on small entities was anticipated.

Item V. The rule applies to the internal operating procedures of the Government.

Item VII. It merely clarifies a definition and imposes no requirements of any kind upon small entities.

Items X and XXII. No comments from small entities concerning the affected FAR subpart were received in response to the **Federal Register** notice.

Item XI. Most contracts awarded to small entities are awarded on a competitive fixed-price basis and the policies affected do not apply.

Item XVI. The restrictions apply on procurements from Toshiba/Kongsberg.

Item XVII. The small entities do not hold a majority of contracts subject to the requirements which are being changed.

Item XVIII. Most contracts awarded to small businesses are awarded on a competitive, fixed-price basis and the cost principles do not apply.

Item XXI. The change does not impose any new requirements on contractors and it affects only the internal operating procedures of the Government.

Item XXIII. It merely increases certain thresholds pertaining to prior Government review of certain subcontracts.

Item XII. The Regulatory Flexibility Act does apply because the rule will remove unnecessarily restrictive regulatory requirements and provide for commercial buying practices, where appropriate. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite the reference 91-610 (FAR Case 89-83) in correspondence.

Item XIII. The change to 19.508 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it authorizes participation of handicapped organizations in small business set-asides. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

Item XIV. The requirements of the Regulatory Flexibility Analysis were addressed by the Small Business Administration in its development of its regulations which implement the "Business Opportunity Development Reform Act of 1988, "Public Law 100-656 (54 FR 12054, March 23, 1989).

Item XX. The change to 36.604 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it may impact on small business firms who compete for architect-engineer contracts. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

D. Paperwork Reduction Act

All items except XI and XXII. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules and the amendment to the interim rule do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The Paperwork Reduction Act (Pub. L. 96-511) does not require approval of the revisions because there is no change in paperwork burden involved. The revision to the Change Order Accounting clause policies adds nothing that is not already permitted by the FAR. Contracting officers have always been permitted to insert the Change Order Accounting clause in construction contracts. The revision to the Table 15-2 at 15.804-6 likewise has not changed any existing policies to provide cost or pricing data in order to comply with the Truth in Negotiations Act. Identification of actual costs incurred prior to submittal of a proposal as addressed by the final rule falls within the definition of cost or pricing data and submittal of this information has always been required by the FAR.

Item XI. A revised information collection requirement was submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and was approved under OMB Control Number 9000-0080.

Item XXII. The information collection requirements were submitted by OFPP to OMB for approval under the Paperwork Reduction Act and were approved under OMB Control Number 9000-0108.

E. Public Comments

The following list gives the dates and **Federal Register** citations that FAR cases included in this rule were published for public comment:

Item No.	FAR case	Publication date	Type of rule	FR citation
IV	88-31	July 20, 1988	Interim	53 FR 27460.
VI	90-40	July 26, 1990	Proposed	55 FR 30671.
VII	90-13	May 1, 1990	Proposed	55 FR 18296.
IX	90-28	June 14, 1990	Proposed	55 FR 24208.
XI	90-29	June 28, 1990	Proposed	55 FR 26600.
XII	89-83	January 23, 1990	Proposed	55 FR 2356.
XIII	89-43	June 12, 1989	Interim	54 FR 25060.
XIV	89-74	February 5, 1990	Interim	55 FR 3878.
XVI	89-30	May 8, 1989	Interim	54 FR 19812.
XVII	90-33	June 27, 1990	Proposed	55 FR 26342.
XVIII	89-90	January 16, 1990	Proposed	55 FR 1554.
XX	89-24	April 14, 1989	Proposed	54 FR 15132.
XXII	90-6	February 5, 1990	Proposed	55 FR 3794.
XXIII	90-9	March 5, 1990	Proposed	55 FR 7870.
XXVI	89-94	February 5, 1990	Proposed	55 FR 3798.

List of Subjects in 48 CFR Parts 1, 5, 8, 9, 10, 14, 15, 16, 17, 19, 25, 27, 31, 35, 36, 42, 43, 44, 45, 49, and 52

Government procurement.

Dated: April 8, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-4 is effective May 15, 1991.

Eleanor Spector,

Director of Defense Procurement, DOD.

Richard H. Hope, III,

Associate Administrator for Acquisition Policy, GSA.

Don G. Bush,

Deputy Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 90-4 amends the FAR as specified below:

Item I—South African Trade (FAR Case 90-66)

This interim rule revises FAR subpart 25.7, consisting of sections 25.701-25.704, and the clause at 52.225-11, Certain Communist Areas, to implement the restrictions imposed by the Anti-Apartheid Act of 1986, Public Law 99-440. Existing coverage in subpart 25.7 is expanded to provide policy and procedures on acquisitions from foreign countries whose supplies or services cannot be lawfully imported into the United States or acquired by United States entities.

Item II—Prohibitions on Acquisitions of Supplies or Services from Iraq (FAR Case 91-7)

This interim rule adds paragraph 25.702(c) and amends the clause at 52.225-11, Restrictions on Certain Foreign Purchases, by adding a new paragraph (c) and redesignating existing paragraph (c) and (d) to implement the restrictions imposed by Executive Orders 12722 and 12724. Existing coverage in subpart 25.7 is expanded to provide restrictions on acquisitions of supplies or services from Iraq.

Item III—Editorial Changes to FAR Part 1 (FAR Case 91-5)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have agreed to the following editorial change to the FAR: Section 1.404 is amended to remove the requirement for class deviations from the FAR, processed by the Department of Defense (DOD), to be controlled and approved by the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) (DUSDRE (AM)). Instead, class deviations will be controlled, processed, and approved in accordance with the Defense FAR Supplement. Similarly, the requirement for the National Aeronautics and Space Administration (NASA) to consult with the DUSDRE (AM) on class deviations is deleted.

Item IV—Changes to the Government Procurement Code (FAR Case 88-31)

Revisions are made to subparts 5.2, 14.4, 15.10, 25.4, and the clause at 52.225-9 as a result of a major renegotiation of the Government Procurement Code (Agreement on Government Procurement) by the United States Trade Representative and public comments received on the interim rule which was published in the **Federal Register** on July 20, 1988 (53 FR 27460). Changes include the following: (a) Clarification of FAR 5.202(a)(12) to include the synopsis requirement when a determination is made that the TAA applies to DOD procurements made and performed outside the U.S.; (b) clarification of FAR 14.408-1 and FAR 15.1001(c) to include the prompt notification of unsuccessful offerors under procurements subject to the TAA after award to avoid an adverse impact on protests; (c) inclusion of a reference in FAR 25.402(f) to the antidiscrimination policy application to Caribbean Basin countries; (d) revision to FAR 25.405(a) to provide consistency between the changes in the Code and the publicizing requirements in part 5; (e) revision of the prescription in FAR 25.407(a) to clarify use of the clause at 52.225-9 when the TAA applies; (f) addition of FAR 25.407(c) to provide instruction to the contracting officer for those items in the schedule exempt from the TAA; and (g) revision of the clause at 52.225-9, Buy American Act-Trade Agreements Act-Balance of Payments Program, to correct omissions to the interim rule.

Item V—Procurement Priority of Federal Prison Industries (FAR Case 91-8)

The Federal Acquisition Regulation is amended to provide consistency between the FAR coverage in 8.001(a)(1) and (2), 8.602(b), 8.603(a)(2), and 8.704(a)(2)(ii) and the Federal Prison Industries' (FPI) enabling statute by clarifying that FPI does not have a priority status over commercial sources in the acquisition of services. FAR 8.602(c) is revised to clarify the language concerning possible addition of items to the FPI Schedule. FAR 8.605(c) is revised to change "Director of the Office of Management and Budget" to "President" and reflect the current language of 18 U.S.C. 4124; 8.601, 8.605(a), and 8.606(d) have also been amended to reflect this language.

Item VI—Multiple Award Schedules/Streamlined Source Selection Procedures (FAR Case 90-40)

FAR 8.405-1(a) is revised to require ordering offices to review as many schedule price lists as are reasonably available, but at least three price lists from current schedule contractors that offer the required item. Further, the requirement to document the purchase of an item over $1,000 placed at other than the lowest price is changed to require justification if the item exceeds the price reasonableness verification threshold in FAR 13.106.

Item VII—Definition of Contractor (FAR Case 90-13)

The definition of "contractor" in 9.403 is changed to include persons or entities that contract with the Government indirectly through others or who may reasonably be expected to act as agents or representatives for another contractor.

Item VIII—Metric System of Measurement (FAR Case 90-60)

A new paragraph (c) is added to FAR 10.002 to encourage the use of the metric system of measurement in formulating Government requirements.

Item IX—Submission of Offers in the English Language/U.S. Currency (FAR Case 90-28)

These changes arose as a result of the Defense Management Review Regulatory Reform initiative. It was found that coverage contained in FAR supplements would be useful for all Federal contracting activities. Therefore, the Councils have added coverage to the FAR to provide for submission of offers in the English language and to require offers in terms of U.S. dollars.

Revisions to the FAR were published in the **Federal Register** (55 FR 24208, June 14, 1990) as a proposed rule with a request for comment. Sixteen responses were received, consisting of 13 concurrences and no comments, and three comments.

Changes made to the final rule based on the comments accepted include—(a) the addition of 14.201-6(x) and 15.407(l) to prescribe a new provision at 52.214-34 for the submission of offers in the English language; (b) the addition of 14.201-6(y) and 15.407(m) to prescribe a new provision at 52.214-35 for the submission of offers in U.S. currency; (c) the addition of 25.407(d) to require these two provisions in all solicitations

subject to the Trade Agreements Act; and (d) the addition of a new provision at 52.214-34, Submission of Offers in the English Language, and a new provision at 52.214-35, Submission of Offers in U.S. Currency.

Item X—Equitable Adjustment Claims (FAR Case 89-54)

FAR 15.804-6 has been revised to emphasize that actual costs incurred prior to submittal of a contract pricing proposal shall be identified. FAR 15.805-5 and 43.204 are revised to require contracting officers to provide a list of significant contract events when requesting a field pricing review of requests for equitable adjustment. The prescriptions at 43.205(f) and in the introduction at 52.243-6 have been revised to clarify that the clause at 52.243-6 may be used for construction contracts.

Item XI—Integrity of Unit Prices and Fuels Contracts (FAR Case 90-29)

FAR 15.812-1 (b) and (c) are being revised and 15.812-2(a)(5) is being added to exclude the clause at 52.215-26, Integrity of Unit Prices, from solicitations and contracts for petroleum products. Additionally, the exemption from application of the clause for supplies priced on the basis of a catalog or market price has been expanded to apply to all agencies. This latter revision is made after reevaluation of the authority and requirements included in section 501 of Public Law 98-577.

Item XII—Streamlining Use of Options on Indefinite Quantity Requirements Contracts (FAR Case 89-83)

FAR 16.503 and 16.504 are amended to remove the language which states that requirements contracts and indefinite quantity contracts are used only for commercial products or services. FAR 17.202 is amended to allow the use of options in contracts for supplies or services that are readily available on the open market and to clarify that options may be used with indefinite quantity or requirements contracts.

Item XIII—Blind and Handicapped Organizations (FAR Case 89-43)

FAR 19.501 and 52.219-15 are amended and revisions of FAR 19.508, published as an interim rule as Item I of FAC 84-48, are finalized to authorize participation of public or private organizations for the handicapped in small business set-asides during fiscal years 1989 through 1993. The revisions provide for self-certification by handicapped organizations, but provide for challenges of the certification by interested parties. The revisions also provide notice that small business concerns which experience severe economic injury as a result of a set-aside award to a public or private organization for the handicapped may file an appeal with the Small Business Administration through the contracting officer.

Item XIV—Transfer of 8(a) Contracts (FAR Case 89-74)

FAR 19.812(d) is revised to clarify that action must be taken to preserve the option of waiving the termination requirement when information is received that an 8(a) subcontractor is planning to transfer ownership or control to another firm. This item also finalizes the balance of the interim rule published as Item III of FAC 84-56, dated February 5, 1990.

Item XV—Determination and Findings of Nonavailability (FAR Case 90-63)

The Federal Acquisition Regulation is revised to incorporate the addition of hand file sets (Swiss pattern) to the Buy American List of Exempt Items in FAR 25.108(d)(1).

Item XVI—Restrictions on Procurement of Products and Services from Toshiba/Kongsberg (FAR Case 89-30)

FAR Subpart 25.10, Sanctions for Violations of Export Controls (sections 25.1001, 25.1003, and 25.1005), and related provisions and clauses at 52.225-12 and 52.225-13, are amended pursuant to section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100-418) enacted August 23, 1988, and Executive Order 12661, dated December 27, 1988.

Item XVII—Thresholds and Clauses, FAR Part 27 (FAR Case 90-33)

The threshold in FAR 52.227-3, Patent Indemnity, Alternate III, is raised from $5,000 to $25,000.

FAR 52.227-8, Reporting of Royalties (Foreign), is deleted. Requirements in the clause are adequately covered by FAR 52.227-6, Royalty Information. FAR 27.204-1 and 27.204-2 are amended and 27.204-4 is removed to reflect the deletion of 52.227-8.

Item XVIII—Foreign Selling Costs (FAR Case 89-90)

FAR 31.205-1 and 31.205-38 are amended to make allowable those costs involving a significant effort to promote the export of U.S. defense industry products, including related promotional activities (*e.g.*, trade shows), subject to a statutory ceiling of 110 percent.

Item XIX—Basic Agreements (FAR Case 91-4)

This final rule deletes from the FAR (35.015(b)(3)) the requirement for each agency to furnish to the FAR Secretariat a list of its basic agreements pertaining to research and development. The FAR Secretariat will no longer be responsible for preparing and publishing a list of all these agreements.

Item XX—Architect-Engineer (A-E) Performance Evaluations (FAR Case 89-24)

FAR 36.604(a) is revised to permit the Government to complete a performance evaluation of the A&E design after actual construction of the project in addition to the evaluation performed after the completion of the work under the A&E contract.

Item XXI—Contract Administration Functions (FAR Case 90-64)

An additional contract administration function is added to the list at FAR 42.302(a) pertaining to program support responsibilities. Currently, the listed functions do not adequately describe technical responsibilities associated with supporting critical programs. The additional program support function will provide assistance to program offices as a significant objective of contract administration.

Item XXII—Bankruptcy (FAR Case 90-6)

FAR subpart 42.9, Bankruptcy, and a clause at 52.242-13 are added to provide guidance concerning the treatment of contractors who enter into bankruptcy. The purpose of such guidance is to enable the Government to deal with potentially significant events in a contractor's operation that could impact on the Government's ability to obtain the requisite contract performance and to provide procedural guidance for addressing such situations. The approved OMB clearance number appears at § 1.105.

Item XXIII—Thresholds, Part 44 (FAR Case 90-9)

FAR 44.201-1 is amended in paragraph (d) by revising the introductory text, removing paragraph (1) and redesignating paragraphs (2) and (3) as (1) and (2); and the clause at 52.244-1 is being amended in the introductory text by changing "(b)(2) and (b)(3)" to read "(b)(1) and (b)(2)"; revising the date in the clause heading; and in paragraph (b) by removing paragraph (1) and redesignating the existing paragraphs (2) and (3) as (1) and (2). These amendments address

requirements pertaining to contractor notification of intent to enter into certain subcontracts. Thresholds are being increased from $25,000 to $100,000 for the contracting officer's prior review of certain subcontracts under fixed-price contracts.

Item XXIV—Inventory Schedules, Authority of Contractor's Representative (FAR Case 90-69)

FAR 45.606-1(b) is revised to require the contractor's inventory schedule certificate be signed by a representative having the authority to commit the contractor in contractual matters. This will ensure that contractual obligations implied by the schedules are understood and accepted by the contractor's management and that the data provided is accurate.

Item XXV—Termination for Default (FAR Case 90-61)

Paragraph (b) of 49.402-7, Other damages, is being revised to specifically include administrative costs in the damages which the Government may demand as a result of termination for default.

Item XXVI—Thresholds, Part 42 (FAR Case 89-94)

FAR 52.242-2, Production Progress Reports, is amended to increase the dollar amount a contracting officer may withhold from payment (from $10,000 to $25,000) when a contractor fails to submit a production progress report in accordance with the contract schedule.

Item XXVII—Editorial Corrections

1. FAR 9.207(a)(9) is revised to reflect the change of name of the Consolidated List of Debarred, Suspended, and Ineligible Contractors.

2. FAR 14.503-2(b) is amended by removing the parenthetical "(see 5.206(a)(2))" and inserting in its place "(see 5.207(a)(2))".

3. FAR 15.805-1 is amended in the last line of paragraph (c) by removing the parenthetical "(see 15.806(a))" and inserting in its place "(see 15.806-1(a)(2))".

4. The heading of Subpart 16.5 is corrected to read "Subpart 16.5—Indefinite-Delivery Contracts".

5. Looseleaf FAR pages for part 23 are reprinted to show text in 23.302(a) (2), (3), and (b) that was inadvertently omitted in the 1990 reissue.

6. FAC 84-55 is corrected in § 52.203-11 by amending the introductory text of paragraph (b) to remove the words "as of December 23, 1989, that" and insert in their place "that on or after December 23, 1989,- -".

7. Standard Form 26, which appeared as section 53.301-26 of the 1990 FAR reissue, is reprinted here in its 1985 revised edition. Previous editions should not be used.

Adoption of Interim Rules as Final Rules

The interim rules, Women-Owned Business Subcontract Reporting (SF 295), and Transfer of 8(a) Contract, in FAC 84-58, Items I and III, published in the **Federal Register** on June 21, 1990 (55 FR 25522), amending SF 295, are hereby adopted as final and further amended by revising 19.812(d) which was added at that time.

Therefore, 48 CFR parts 1, 5, 8, 9, 10, 14, 15, 16, 17, 19, 25, 27, 31, 35, 36, 42, 43, 44, 45, 49, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 1, 5, 8, 9, 10, 14, 15, 16, 17, 19, 25, 27, 31, 35, 36, 42, 43, 44, 45, 49, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended to add the entry "52.242-13 . . . 9000-0108" in FAR section order to the list of approved OMB control numbers.

3. Section 1.404 is amended by revising paragraphs (b) and (c) to read as follows:

1.404 Class deviations.

* * * * *

(b) For DOD, class deviations shall be controlled, processed, and approved in accordance with the Defense FAR Supplement.

(c) For NASA, class deviations shall be controlled and approved by the Assistant Administrator for Procurement. Deviations shall be processed in accordance with agency regulations.

PART 5—PUBLICIZING CONTRACT ACTIONS

4. Section 5.202 is amended in paragraph (a)(12) by adding a sentence at the end of the paragraph to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(12) * * * This exception does not apply to contract actions subject to the Trade Agreements Act (see subpart 25.4).

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.001 [Amended]

5. Section 8.001 is amended in paragraph (a)(1)(iv) by removing the word "products" and inserting in its place "supplies"; and paragraph (a)(2)(iv) is amended by removing the word "other".

6. Section 8.405-1 is amended by revising paragraph (a) introductory text to read as follows:

8.405-1 Ordering from multiple-award schedules.

* * * * *

(a) Orders should be placed with the schedule contractor offering the lowest delivered price available. The ordering office shall review the schedule price lists that are reasonably available at the ordering office. Where the ordering office has available fewer than three price lists from current schedule contractors that offer the required items, the ordering activity shall obtain additional price lists from schedule contractors listed in the GSA schedule for the required items. The ordering office shall fully justify in the contract file orders for a line item exceeding the price reasonableness verification threshold at 13.106(c) placed at other than the lowest price identified in its review. Justification for ordering a higher priced item may be based on such considerations as—

* * * * *

8.601 [Amended]

7. Section 8.601 is amended in paragraphs (b) and (c) by removing the word "products" and inserting in its place "supplies".

8. Section 8.602 is amended by revising paragraphs (b) and (c) to read as follows:

8.602 Policy.

* * * * *

(b) Subject to the priorities in 8.001 and 8.603, agencies are encouraged to use the facilities of FPI to the maximum extent practicable in purchasing (1) supplies that are not listed in the Schedule, but that are of a type manufactured in Federal penal and correctional institutions, and (2) services that are listed in the Schedule.

(c) If a supply not listed in the Schedule is of a type normally produced by Federal penal and correctional institutions, agencies are encouraged to suggest that FPI consider the feasibility of adding the item to its Schedule.

9. Section 8.603 is amended by revising paragraph (a)(2) (ii) and

removing paragraph (a)(2)(iii) to read as follows:

8.603 Purchase priorities.

(a) * * *

(2) * * *

(ii) Federal Prison Industries, Inc., or commercial sources.

* * * * *

8.605 [Amended]

10. Section 8.605 is amended in the first sentence of paragraphs (a) and (c) by removing the word "products" and inserting in its place "supplies"; and by removing in the second sentence of paragraph (c) the words "Director of the Office of Management and Budget" and inserting in their place "President".

8.606 [Amended].

11. Section 8.606 is amended in paragraph (d) by removing the word "products" and inserting in its place "supplies".

12. Section 8.704 is amended by revising paragraph (a)(2) (ii); and by removing paragraph (a)(2)(iii) to read as follows:

8.704 Purchase priorities.

(a) * * *

(2) * * *

(ii) Federal Prison Industries, Inc., or commercial sources.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

13. Section 9.207(a)(9) is revised to read as follows:

9.207 Changes in status regarding qualification requirements.

(a) * * *

(9) The source is on the list of Parties Excluded from Procurement Programs (see Subpart 9.4); or

* * * * *

14. Section 9.403 is amended by revising the definition "Contractor" to read as follows:

9.403 Definitions.

* * * * *

Contractor, as used in this subpart, means any individual or other legal entity that—

(a) Directly or indirectly (*e.g.,* through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

15. In section 10.002, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

10.002 Policy.

* * * * *

(c) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. It also requires that each Federal agency, by a date certain and to the extent economically feasible by the end of fiscal year 1992, use the metric system of measurement in its procurements, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

* * * * *

PART 14—SEALED BIDDING

16. Section 14.201–6 is amended by adding paragraphs (x) and (y) to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(x) The provision at 52.214–34, Submission of Offers in the English Language, may be included in solicitations not subject to the Trade Agreements Act (see 25.407(d)) when the contracting officer decides that it is necessary.

(y) The provision at 52.214–35, Submission of Offers in U.S. Currency, may be included in solicitations not subject to the Trade Agreements Act (see 25.407(d)) when the contracting officer decides that it is necessary.

17. Section 14.408–1 is amended by revising the introductory text of paragraph (a)(2) to read as follows:

14.408–1 Award of unclassified contracts.

(a) * * *

(2) For acquisitions subject to the Trade Agreements Act (see 25.405(e)), agencies shall promptly, but in no event later than 7 working days after award, give unsuccessful offerors from designated countries written notice stating—

* * * * *

14.503–2 [Amended]

18. Section 14.503–2 is amended in paragraph (b) by removing the parenthetical "(see 5.206(a)(2))" and inserting in its place "(see 5.207(a)(2))".

PART 15—CONTRACTING BY NEGOTIATION

19. Section 15.407 is amended by adding paragraphs (l) and (m) to read as follows:

15.407 Solicitation provisions.

* * * * *

(l) The provision at 52.214–34, Submission of Offers in the English Language, may be included in solicitations not subject to the Trade Agreements Act (see 25.407(d)) when the contracting officer decides that it is necessary.

(m) The provision at 52.214–35, Submisson of Offers in U.S. Currency, may be included in solicitations not subject to the Trade Agreements Act (see 25.407(d)) when the contracting officer decides that it is necessary.

20. Section 15.804–6 is amended in Table 15.2 of paragraph (b)(2) by redesignating existing paragraphs 3, 4, 5, 6, and 7 as 4, 5, 6, 7, and 8; adding a new paragraph 3; by revising the title of new paragraph 8B; and revising the sentence in 8B that begins with the words "Under Column (5)" to read as follows:

15.804–6 Procedural requirements.

* * * * *

(b) * * *

(2) * * *

TABLE 15–2 INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL

* * * * *

3. Whenever the offeror has incurred costs for work performed before submission of proposal, those costs must be identified in the offeror's cost/price proposal.

* * * * *

8. * * *

B. Change Orders, Modifications, and Claims.

* * * * *

Under Column (5)—Enter the offeror's estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the contracting officer, provide a full identification and explanation of them. When any of the costs in this column have already been

incurred, describe them on an attached supporting schedule.

21. Section 15.805–1 is amended in the last line of paragraph (c) by removing the parenthetical "(see 15.806(a))" and inserting in its place "(see 15.806–1(a)(2))".

22. Section 15.805–5 is amended by adding paragraph (c)(4) to read as follows:

15.805–5 Field pricing support.

* * * * *

(c) * * *

(4) When the contracting officer requires a field pricing review of requests for equitable adjustments, the contracting officer should provide the information listed in 43.204(b)(5).

* * * * *

23. Section 15.812–1 is amended by revising paragraphs (b) and (c) to read as follows:

15.812–1 General.

* * * * *

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public. A price is "based on" a catalog or market price only if the item is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.

(c) In addition, when contracting by negotiation without full and open competition, contracting officers shall require that offerors identify in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804–3(b)). The information need not be requested in connection with the award of contracts under the General Services Administration's competitive Multiple Award Schedule Program. The information shall not be requested for commercial items sold in substantial quantities to the general public when the prices are, or are based on, established catalog or market prices. Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in any other negotiated contracts when appropriate.

24. Section 15.812–2 is amended by adding paragraph (a)(5) to read as follows:

15.812–2 Contract clause.

(a) * * *

(5) Contracts for petroleum products.

* * * * *

25. Section 15.1001 is amended by revising paragraph (c)(2) to read as follows:

15.1001 Notifications to unsuccessful offerors.

* * * * *

(c) * * *

(2) For acquisitions subject to the Trade Agreements Act (see 25.405(e), the information in subparagraph (c)(1) of this section shall be provided to unsuccessful offerors from designated countries promptly, but in no event later than 7 working days after contract award.

* * * * *

PART 16—TYPES OF CONTRACTS

26. Section 16.503 is amended by revising paragraph (b) to read as follows:

16.503 Requirements contracts.

* * * * *

(b) *Application.* A requirement contract may be appropriate for acquiring any items or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period. Funds are obligated by each delivery order, not by the contract itself.

* * * * *

27. Section 16.504 is amended by revising paragraph (b) to read as follows:

16.504 Indefinite-quantity contracts.

* * * * *

(b) *Application.* An indefinite-quantity contract may be used when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. An indefinite-quantity contract should be used only when a recurring need is anticipated. Funds for other than the stated minimum quantity are obligated by each delivery order, not by the contract itself.

PART 17—SPECIAL CONTRACTING METHODS

28. Section 17.202 is amended by revising paragraph (b), and removing paragraphs (c)(1) and (c)(3) and redesignating existing paragraphs (c)(2), (c)(4), and (c)(5) as paragraphs (c)(1), (c)(2), and (c)(3) to read as follows:

17.202 Use of options.

* * * * *

(b) Inclusion of an option is normally not in the Government's interest when, in the judgment of the contracting officer—

(1) The foreseeable requirements involve—

(i) Minimum economic quantities (*i.e.*, quantities large enough to permit the recovery of startup costs and production of the required supplies at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery; or

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with options. However, this does not preclude the use of an indefinite quantity contract or requirements contract with options.

* * * * *

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

29. Section 19.501 is amended by revising paragraph (j) to read as follows:

19.501 General.

* * * * *

(j) Section 133 of Public Law 100–590 authorizes public and private organizations for the handicapped to participate for fiscal years 1989 through 1993 in acquisitions set-aside for small business concerns. Status as a small business concern is not accorded a public or private organization for the handicapped for the purposes of other preferential provisions available to small business concerns; *e.g.*, eligibility for certificates of competency or higher progress payment rates.

(1) The contracting officer shall rely on the offeror's self-certification in a specific bid or proposal that it is a public or private organization for the handicapped unless another offeror or interested party files a protest. An interested party may file a protest challenging an offeror's self-certification by forwarding the protest to the contracting officer by close of business on the fifth working day after bid opening or receipt of the 15.1001(b)(2)

notice from the contracting officer of the apparently successful offeror. Upon receipt of any protest, whether timely or untimely, the contracting officer shall promptly forward the protest and its supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration. Upon receipt of a protest, the SBA will notify the contracting officer and the protester of the date it was received, and that the status of the public or private organization for the handicapped being challenged is under consideration by the SBA. Within 10 working days after receiving a protest, the SBA will determine the eligibility of the public or private organization for the handicapped and notify the contracting officer, the protester, and the challenged offeror of its decision by certified mail, return receipt requested. The determination of the Associate Administrator for Procurement Assistance, SBA, is final. Award will be made based on this determination. After receiving a protest involving the status of a public or private organization for the handicapped, the contracting officer shall not award the contract until the SBA has made a status determination or 10 working days have expired since SBA's receipt of a protest, whichever occurs first. However, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) Any small business offeror which experiences or is likely to experience severe economic injury as a result of award to a public or private organization for the handicapped may file an appeal of the award with the contracting officer. The appeal must be received by close of business on the tenth working day after bid opening or receipt of the 15.1001(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any appeal, whether timely or untimely, or whether received before or after award, the contracting officer shall forward the appeal and supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration, whose decision shall be final. The contracting officer should, when practical, withhold award until expiration of the 10-day appeal period, or when an appeal is filed, withhold award until the contracting officer receives the SBA determination of appeal, unless delay would be disadvantageous to the Government. The SBA shall notify the contracting officer of the SBA determination and advise the agency or department to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

30. Section 19.812 is amended by revising paragraph (d) to read as follows:

19.812 Contract administration.

* * * * *

(d) Section 407 of Public Law 100-656 requires that an 8(a) contract be terminated for convenience if the 8(a) concern to which it was awarded transfers ownership or control of the firm, unless the Administrator of the SBA, on a nondelegable basis, waives the requirement for contract termination. This Administrator may waive the termination requirement only if certain conditions exist. Moreover, a waiver of the statutory requirement for termination is permitted only if the 8(a) firm's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control. The clauses in the contract entitled "Special 8(a) Contract Conditions" and "Special 8(a) Subcontract Conditions" require the SBA and the 8(a) subcontractor to notify the contracting officer when ownership of the firm is being transferred. When the contracting officer receives information that an 8(a) contractor is planning to transfer ownership or control to another firm, action must be taken immediately to preserve the option of waiving the termination requirement. The contracting officer should determine the timing of the proposed transfer and its effect on contract performance and mission support. If the contracting officer determines that the SBA does not intend to waive the termination requirement, and termination of the contract would severely impair attainment of the agency's program objectives or mission, the contracting officer should immediately notify the SBA in writing that the agency is requesting a waiver. Within 15 business days thereafter, or such longer period as agreed to by the agency and the SBA, the agency head shall either confirm or withdraw the request for waiver. Unless a waiver is approved by the SBA, the contracting officer shall terminate the contract for convenience upon receipt of a written request by the SBA. This statutory requirement for a convenience termination does not affect the Government's right to terminate for default if the cause for termination of an 8(a) contract is other than the transfer of ownership or control.

PART 25—FOREIGN ACQUISITION

25.108 [Amended]

31. Section 25.108 is amended in paragraph (d)(1) by adding the item "Hand file sets (Swiss pattern)." in alphabetical order.

32. Section 25.402, paragraph (f), is revised to read as follows:

25.402 Policy.

* * * * *

(f) Subject to the provisions of U.S. law and regulation, a supplier established in a designated country or a Caribbean Basin country shall not be accorded less favorable treatment than is accorded to another supplier established in that country on the basis of—

(1) Foreign ownership or affiliation; or

(2) Where the goods being supplied were produced, provided that the country of production is a designated country or a Caribbean Basin country.

33. Section 25.405 paragraph (a) is revised to read as follows:

25.405 Procedures.

* * * * *

(a) Contracting officers shall comply with the requirements of section 5.203, Publicizing and response time.

* * * * *

34. Section 25.407 is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

25.407 Solicitation provision and contract clause.

(a) The contracting officer shall insert—

(1) The provision at 52.225-8, Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate, in solicitations containing the clause at 52.225-9; and

(2) The clause at 52.225-9, Buy American Act—Trade Agreements Act—Balance of Payments Program, where the contracting officer has determined that the acquisition is subject to the Trade Agreements Act.

* * * * *

(c) The clause prescriptions at paragraph (a) of this section shall apply where any item under a multiple item solicitation is determined to be subject to the Act. If the Act does not apply to all of the items being solicited, the contracting officer shall indicate, in the schedule, those items exempt from the Act.

(d) The contracting officer shall insert the provisions at 52.214-34, Submission of Offers in the English Language, and 52.214-35, Submission of Offers in U.S.

Currency, in all solicitations subject to the Trade Agreements Act.

35. Subpart 25.7 is revised to read as follows:

Subpart 25.7—Restrictions on Certain Foreign Purchases

25.701 Definitions.

25.702 Restrictions.

25.703 Exceptions.

25.704 Contract Clause.

25.701 Definitions.

Parastatal organization, as used in the subpart, means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa. It does not include a corporation, partnership, or entity which previously received start up assistance from the South African Industrial Development Corporation but which is now privately owned and which is not owned, controlled, or subsidized by the Government of South Africa.

25.702 Restrictions.

(a) The Government does not acquire supplies or services from foreign governments or their organizations when these supplies or services cannot be imported lawfully into the United States. Therefore, except as provided in 25.703(a), agencies and their contractors and subcontractors shall not acquire—

(1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba (31 CFR 500);

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba (31 CFR 515); or

(3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles (22 U.S.C. 5052).

(b) In accordance with 22 U.S.C. 5064, agencies and their contractors and subcontractors shall not acquire supplies or services from the South African government or a parastatal organization of South Africa, except as provided in 25.703(b). Importation of these supplies and services is also prohibited (22 U.S.C. 5053). Questions concerning parastatal organization status should be referred to the Bureau of African Affairs, Department of State, Washington, DC 20520. Questions regarding whether particular supplies or services are covered by the restriction should be referred to the Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

(c) Agencies and their contractors and subcontractors shall not acquire supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq (E.O. 12722 and 12724). The effective date for Iraqi restrictions is August 2, 1990. Questions concerning these restrictions should be referred to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220 (Telephone No. (202) 566-2701).

25.703 Exceptions.

(a) In unusual situations, supplies and services restricted by 25.702(a) may be acquired for use outside the United States, its possessions, or Puerto Rico. Examples of an unusual situation are an emergency or when the supplies or services are not available from another source and a substitute is not acceptable. The approval level for this exception is not the contracting officer for small purchases, unless otherwise provided by the agency in the case, or the agency head for other than small purchases. A copy of the written approval shall be furnished to the contractor.

(b) The restriction in 25.702(b) does not apply to supplies or services necessary for diplomatic or consular purposes.

25.704 Contract clause.

The contracting officer shall insert the clause at 52.225-11, Restrictions on Certain Foreign Purchases, in solicitations and contracts.

36. Section 25.1001 is amended by revising the definitions "Finished product," "Information and technology," "Routine servicing and maintenance," and "Spare part," to read as follows:

25.1001 Definitions.

* * * * *

Finished product means any article which is usable for its intended function without being imbedded in or integrated into any other product.

Information and technology includes instructions, drawings, blueprints, technical data, plans, software, computer programs, and other forms of intellectual property in any form or medium. Technology also includes component parts, finished products, or other articles where the only way to gain access to required technology is to purchase a product or article produced by a sanctioned person.

Routine servicing and maintenance means customary servicing and maintenance, including repairs or installation of spare parts or component parts.

* * * * *

Spare part means any individual piece, part, or subassembly which is intended for the logistic support, repair, or upgrade of an existing function of a finished product and not as a finished product itself.

* * * * *

37. Section 25.1003 is amended by revising the introductory text of paragraph (c) and revising paragraph (d) to read as follows:

25.1003 Exceptions.

* * * * *

(c) The product or services of a sanctioned person are acquired from a nonsanctioned person and—

* * * * *

(d) Finished products of nonsanctioned persons contain components of a sanctioned person which have been substantially transformed during the manufacture of the finished product.

38. Section 25.1005 is revised to read as follows:

25.1005 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.225-12, Notice of Restrictions on Contracting with Sanctioned Persons, in all solicitations where the clause at 52.225-13 is used.

(b) The contracting officer shall insert the clause at 52.225-13, Restrictions on Contracting with Sanctioned Persons, in all solicitations and contracts, unless a determination has been made under 25.1003 (a) or (b) that an exception exists.

PART 27—PATENTS, DATA, COPYRIGHTS

39. In section 27.204-1, the first two sentences in paragraph (b) and the first sentence in paragraph (c) are revised to read as follows:

27.204-1 General.

* * * * *

(b) Any solicitations that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained (see FAR 15.804) should contain a provision requesting information relating to any proposed charge for royalties. If the response to a solicitation includes a charge for royalties, the contracting officer shall, before award of the contract, forward the information relating to the proposed payments of royalties to the office having cognizance of patent matters for the contracting activity concerned. * * *

(c) The contracting officer, when considering the approval of a

subcontract, shall require and obtain the same royalty information and take the same action with respect to such subcontracts in relation to royalties as required for prime contracts under paragraph (b) of this subsection. * * *

27.204-2 [Amended]

40. Section 27.204-2 is amended by removing the words "If it is expected that work may be performed in the United States, its possessions, or Puerto Rico, the" and inserting in their place "The".

27.204-4 [Removed]

41. Section 27.204-4 is removed.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

42. Section 31.205-1 is amended by revising paragraphs (d), (f)(1), (f)(2), and (f)(4); and by removing paragraphs (f)(8) and (g) to read as follows:

31.205-1 Public relations and advertising costs.

* * * * *

(d) The only allowable advertising costs are those that are—

(1) Specifically required by contract, or that arise from requirements of Government contracts and that are exclusively for—

(i) Recruiting personnel required for performing contractual obligations, when considered in conjunction with all other recruitment costs (but see 31.205-34);

(ii) Acquiring scarce items for contract performance; or

(iii) Disposing of scrap or surplus materials acquired for contract performance.

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding subparagraphs (f) (1) and (3), subdivision (f)(4)(ii), and subparagraph (f)(5) of this subsection, subject to the limits contained in 31.205-38(c)(2). However, such costs do not include the costs of memorabilia (*e.g.*, models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities which are primarily used for entertainment rather than product promotion.

* * * * *

(f) * * *

(1) All public relations and advertising costs, other than those specified in paragraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under 31.205-38(c)), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services.

(2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government.

* * * * *

(4) Costs of ceremonies such as (i) corporate celebrations and (ii) new product announcements.

* * * * *

43. Section 31.205-38 is amended by revising paragraph (b), removing paragraph (f), redesignating paragraphs (c) and (g) as (c)(1) and (f) respectively, and adding paragraph (c)(2) to read as follows:

31.205-38 Selling costs.

* * * * *

(b) Advertising costs are defined at 31.205-1(b) and are subject to the allowability provisions of 31.205-1 (d) and (f). Corporate image enhancement activities are included within the definitions of public relations at 31.205-1(a) and entertainment at 31.205-14 and are subject to the allowability provisions at 31.205-1 (e) and (f) and 31.205-14, respectively. Bid and proposal costs are defined at 31.205-18 and have their allowability controlled by that subsection. Market planning involves market research and analysis and generalized management planning concerned with development of the contractor's business. The allowability of long-range market planning costs is controlled by the provisions of 31.205-12. Other market planning costs are allowable to the extent that they are reasonable and not in excess of the limitations of subparagraph (c)(2) of this subsection. Costs of activities which are correctly classified and disallowed under cost principles referenced in this paragraph (b) are not to be reconsidered for reimbursement under any other provision of this subsection.

(c) * * *

(2) The costs of broadly targeted and direct selling efforts and market planning other than long-range, which are incurred in connection with a significant effort to promote export sales of products normally sold to the U.S. Government, including the costs of exhibiting and demonstrating such products, are allowable on contracts with the U.S Government provided—

(i) The costs are allocable, reasonable, and otherwise allowable under this subpart 31.2;

(ii) That, with respect to a business segment which allocates to U.S. Government contracts $2,500,000 or more of such costs in a given fiscal year of such business segment, a ceiling on allowable costs shall apply. The ceiling on the amount of allowable costs to be allocated over the appropriate base shall be 110 percent of foreign selling costs incurred by the business segment in the previous year; and

(iii) That, in order to comply with Public Law 100-456, the substance of this subparagraph (c)(2) shall also apply to all contracts and subcontracts of the contractor with the Department of Defense being performed by the contractor on the first day of the contractor's first full fiscal year that begins on or after December 22, 1988, whether or not a contract or subcontract contains this subparagraph (c)(2).

* * * * *

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.015 [Amended]

44. In section 35.015, paragraph (b)(3) is removed.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

45. Section 36.604 is amended by revising paragraph (a) to read as follows:

36.604 Performance evaluation.

(a) *Preparation of performance reports.* For each contract of more than $25,000, performance evaluation reports shall be prepared by the cognizant contracting activity, using the SF 1421, Performance Evaluation (Architect-Engineer). Performance evaluation reports may also be prepared for contracts of $25,000 or less.

(1) A report shall be prepared after final acceptance of the architect and engineer contract work or after contract termination. Ordinarily, the evaluating official who prepares this report should be the person responsible for monitoring contract performance.

(2) A report may also be prepared after completion of the actual construction of the project.

(3) In addition to the reports in subparagraphs (a)(1) and (2) of this section, interim reports may be prepared at any time.

(4) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written

comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(5) The head of the contracting activity shall establish procedures which ensure that fully qualified personnel prepare and review performance reports.

* * * * *

PART 42—CONTRACT ADMINISTRATION

46. Section 42.302 is amended by adding paragraph (a)(67) to read as follows:

42.302 Contract administration functions.

(a) * * *

(67) Support the program, product, and project offices regarding program reviews, program status, program performance and actual or anticipated program problems.

* * * * *

47. Subpart 42.9, consisting of sections 42.900 through 42.903, is added to read as follows:

Subpart 42.9—Bankruptcy

Sec.
42.900 Scope of subpart.
42.901 General.
42.902 Procedures.
42.903 Solicitation provision and contract clause.

Subpart 42.9—Bankruptcy

42.900 Scope of subpart.

This subpart prescribes policies and procedures regarding actions to be taken when a contractor enters into proceedings relating to bankruptcy. It establishes a requirement for the contractor to notify the contracting officer upon filing a petition for bankruptcy. It further establishes minimum requirements for agencies to follow in the event of a contractor bankruptcy.

42.901 General.

The contract administration office shall take prompt action to determine the potential impact of a contractor bankruptcy on the Government in order to protect the interests of the Government.

42.902 Procedures.

(a) When notified of bankruptcy proceedings, agencies shall, as a minimum—

(1) Furnish the notice of bankruptcy to legal counsel and other appropriate agency offices (*e.g.*, contracting, financial, property) and affected buying activities;

(2) Determine the amount of the Government's potential claim against the contractor (in assessing this impact, identify and review any contracts that have not been closed out, including those physically completed or terminated);

(3) Take actions necessary to protect the Government's financial interests and safeguard Government property; and

(4) Furnish pertinent contract information to the legal counsel representing the Government.

(b) The contracting officer shall consult the legal counsel, whenever possible, prior to taking any action regarding the contractor's bankruptcy proceedings.

42.903 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.242–13, Bankruptcy, in all solicitations and contracts exceeding the small purchase limitation in section 13.000.

PART 43—CONTRACT MODIFICATIONS

48. Section 43.204 is amended by adding paragraph (b)(5) to read as follows:

43.204 Administration.

* * * * *

(b) * * *

(5) When the contracting officer requires a field pricing review of requests for equitable adjustment, the contracting officer shall provide a list of any significant contract events which may aid in the analysis of the request. This list should include—

(i) Date and dollar amount of contract award and/or modification;

(ii) Date of submission of initial contract proposal and dollar amount;

(iii) Date of alleged delays or disruptions;

(iv) Performance dates as scheduled at date of award and/or modification;

(v) Actual performance dates;

(vi) Date entitlement to an equitable adjustment was determined or contracting officer decision was rendered, if applicable;

(vii) Date of certification of the request for adjustment if certification is required; and

(viii) Dates of any pertinent Government actions or other key events during contract performance which may have an impact on the contractor's request for equitable adjustment.

* * * * *

49. Section 43.205 is amended by adding a sentence at the end of paragraph (f) to read as follows:

43.205 Contract clauses.

* * * * *

(f) * * * The clause may be included in solicitations and contracts for construction if deemed appropriate by the contracting officer.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

50. Section 44.201–1 is amended in paragraph (d) by revising the introductory text; by removing paragraph (d)(1); and by redesignating existing paragraphs (d)(2) and (d)(3) as new (d)(1) and (d)(2) to read as follows:

44.201–1 Fixed-price prime contracts.

* * * * *

(d) Under prime contracts required to include the clause at 52.244–1, Subcontracts (Fixed-Price Contracts), consent is required under paragraph (c) of this subsection for any subcontract that is—

* * * * *

PART 45—GOVERNMENT PROPERTY

51. Section 45.606–1 is amended by revising paragraph (b) to read as follows:

45.606–1 Submission.

* * * * *

(b) The certificate on the inventory schedule must be executed when contractor inventory is reported. The person signing the certificate must have authority to contractually obligate the contractor. The prime contractor shall execute this certificate, except that for subcontractor termination inventory the subcontractor shall execute the certificate.

* * * * *

PART 49—TERMINATION OF CONTRACTS

52. Section 49.402–7(b) is revised to read as follows:

49.402–7 Other damages.

* * * * *

(b) If the Government has suffered any other ascertainable damages, including administrative costs, as a result of the contractor's default, the contracting officer shall, on the basis of legal advice, take appropriate action as prescribed in subpart 32.6 to assert the Government's demand for the damages.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

53. Section 52.203–11 is amended by removing in the title of the clause the

date "(JAN 1990)" and inserting in its place "(APR 1991)"; and revising the introductory text of paragraph (b) to read as follows:

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

* * * * *

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,—

* * * * *

54. Sections 52.214-34 and 52.214-35 are added to read as follows:

52.241-34 Submission of Offers in the English Language.

As prescribed in 14.201-6(x), 15.407(1), and 25.407(d), insert the following provision:

SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

52.214-35 Submission of Offers in U.S. Currency

As prescribed in 14.201-6(y), 15.407(m), and 25.407(d), insert the following provision:

SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

52.215-26 [Amended]

55. Section 52.215-26 is amended by removing in the heading of the clause the date "(APR 1987)" and inserting in its place "(APR 1991)"; removing in paragraph (b) the words "Department of Defense (DOD) or National Aeronautics and Space Administration (NASA)"; in paragraph (c) removing the words "for DOD and NASA contracts,"; removing in Alternate I the date "(APR 1987)" and inserting in its place "(APR 1991)"; and removing in paragraph (c) of the Alternate I the words "For DOD and NASA contracts,".

56. In section 52.219-15, the clause is amended in paragraph (a) by alphabetically adding the definition "Public or private organization for the handicapped"; by adding at the beginning of paragraph (b) the heading *"Certification."* and at the beginning of paragraph (c) the heading *"Agreement."*; and by removing the undesignated paragraph beginning "Public or private organization for the handicapped" which follows paragraph (c).

52.219-15 Notice of participation by organizations for the handicapped.

* * * * *

NOTICE OF PARTICIPATION BY ORGANIZATIONS FOR TH E HANDICAPPED (APR 1991)

(a) * * *

Public or private organization for the handicapped means one (1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (3) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

* * * * *

57. Section 52.225-9 is amended by removing in the heading of the clause the date "(MAY 1986)" and inserting in its place "(APR 1991)", and by revising paragraphs (b) and (c) of the clause to read as follows:

52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.

* * * * *

(b) The Contracting Officer has determined that the Trade Agreements Act applies to this acquisition. Unless otherwise specified, the Act applies to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate." An offer certifying that a designated country end product or a Caribbean Basin country end product will be supplied requires the Contractor to supply a designated country end product or a Caribbean Basin country end product or, at the Contractor's option, a domestic end product. Contractors may not supply a foreign end product for line items subject to the Trade Agreements Act unless the foreign end product is a designated country end product or a Caribbean Basin country end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(c) Offers will be evaluated in accordance with the policies and procedures of Subpart 25.4 of the FAR.

(End of clause)

58. Section 52.225-11 is revised to read as follows:

52.225-11 Restrictions on Certain Foreign Purchases.

As prescribed in 25.704, insert the following clause in solicitations and contracts:

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (APR 1991)

(a) *Parastatal organization*, as used in this clause, means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa. It does not include a corporation, partnership, or entity which previously received start up assistance from the South African Industrial Development Corporation but which is now privately owned and which is not owned, controlled, or subsidized by the Government of South Africa.

(b) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract—

(1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba;

(3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles; or

(4) Supplies or services from the South African Government or parastatal organizations of South Africa.

(c) The Contractor shall not acquire for use in the performance of this contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.

(d) The Contractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder.

(End of clause)

59. Section 52.225-12 is amended by revising the heading of the clause and paragraphs (a) and (b) to read as follows:

52.225-12 Notice of Restrictions on Contracting With Sanctioned Persons.

* * * * *

NOTICE OF RESTRICTIONS ON CONTRACTING WITH SANCTIONED PERSONS (APR 1991)

(a) Statutory prohibitions have been imposed on contracting with sanctioned persons, as specified in Federal Acquisition Regulation (FAR) 25.10 and in the clause at 52.225-13, Restrictions on Contracting with Sanctioned Persons.

(b) By submission of this offer, the Offeror represents that no products or services delivered to the Government under any contract resulting from this solicitation will be products or services of a sanctioned person, as defined in the clause referenced in paragraph (a) of this provision, unless one of the exceptions in subparagraphs (d)(1) or

(d)(2) of the clause referenced above applies or unless listed below.

* * * * *

(End of provision)

60. Section 52.225–13 is amended by revising the heading of the clause and paragraphs (a)(2) and (c) to read as follows:

52.225–13 Restrictions on Contracting With Sanctioned Persons.

* * * * *

RESTRICTIONS ON CONTRACTING WITH SANCTIONED PERSONS (APR 1991)

(a) * * *

(2) *Finished product* means any article which is usable for its intended function without being imbedded in, or integrated into, any other product.

* * * * *

(c) *Restriction.* Unless listed by the Contractor in its offer in the solicitation provision entitled Notice of Restrictions on Contracting with Sanctioned Persons, and unless approved by the Contracting Officer or one of the exceptions in paragraph (d) of this clause applies, the Contractor agrees that no products or services delivered to the Government under this contract will be products or services of a sanctioned person.

* * * * *

(End of clause)

52.227–3 [Amended]

61. In section 52.227–3, *Alternate III* of the clause is amended by removing the date "(APR 1984)" and inserting in its place "(APR 1991)", by removing the figure "$5,000" and inserting in its place "$25,000"; and by removing the derivation line following *Alternate III.*

52.227–8 [Removed and Reserved]

62. Section 52.227–8 is removed and reserved.

52.242–2 [Amended]

63. Section 52.242–2 is amended in the introductory text by inserting a colon after the word "clause" and removing the remainder of the sentence; by removing in the heading of the clause the date "(APR 1984)" and inserting in its place "(APR 1991)"; by removing in paragraph (b) the figure "$10,000" and inserting in its place "$25,000"; and by removing the derivation line following "(End of clause)."

64. Section 52.242–13 is added to read as follows:

52.242–13 Bankruptcy.

As prescribed in 42.903, insert the following clause:

BANKRUPTCY (APR 1991)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Contracting Office responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

52.243–6 [Amended]

65. Section 52.243–6 is amended in the introductory text by inserting a colon following the word "follows" and removing the remainder of the sentence.

52.224–1 [Amended]

66. Section 52.244–1 is amended in the second sentence of the introductory text by changing "(b)(2) and (b)(3)" to read "(b)(1) and (b)(2)"; by removing in the heading of the clause the date "(JAN 1986)" and inserting in its place "(APR 1991)"; by removing paragraph (b)(1), and by redesignating existing paragraphs (b)(2) and (b)(3) as new paragraphs (b)(1) and (b)(2).

[FR Doc. 91–8647 Filed 4–12–91; 8:45 am]

BILLING CODE 6820–34–M

federal register

Monday
April 15, 1991

Part IV

Office of Personnel Management

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed revisions to the Combined Federal Campaign (CFC) to change the distribution of undesignated money collected and to revoke its prohibition on dual solicitation. Many new groups have become eligible to participate in the CFC since the formula for the distribution of undesignated funds was established in 1988; therefore, OPM is proposing a new method for distributing these funds that will be more equitable to all participants. The U.S. District Court for the District of Columbia has held that the portion of the CFC regulations regarding the prohibition of dual solicitations is invalid. We modified it to conform to the Court's ruling.

DATES: Comments on this notice must be received by OPM no later than May 15, 1991.

ADDRESSES: Comments should be submitted to: Jeremiah J. Barrett, Director, CFC Operations, Office of Personnel Management, room 5532, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, Director, CFC Operations, 202-606-2564.

SUPPLEMENTARY INFORMATION:

Undesignated funds

As required by Public Law 100-202, undesignated funds are currently distributed by a formula mandated by Congress. The formula specifies that in 1990 these funds will be distributed to the below-named groups in the following percentages:

Local United Way—82 percent,
International Service Agencies federation—7 percent,
National Voluntary Health Agencies federation—7 percent, and
Other eligible agencies as determined by the Local Federal Coordinating Committee—4 percent.

As the Congress mandated, OPM reviewed the formula and our experience with it to see if a more equitable method of distribution of these funds is warranted.

OPM held a series of eight public meetings around the country to solicit the opinions and suggestions of all the various CFC participants regarding the distribution formula for undesignated money. These meetings were scheduled in various locations to give any interested parties, especially the Federal donors, the opportunity to present their views and suggestions. The Deputy Director of OPM chaired these meetings and appropriate local Federal officials were members of the panel in each location.

In addition to the 218 persons who addressed the panels, OPM received more than 2,000 written submissions. Even though there was an enormous amount of interest in this issue, the suggestions on the distribution of these funds were limited with certain minor modifications to: Keep the present formula; distribute undesignated funds in the same proportion as agencies receive designations; and change to an all-designation campaign.

OPM has given serious consideration to these suggestions and the arguments in favor of each position. OPM has developed the following proposed amendments for the distribution of these funds and is requesting comments.

Dual Soliciation

The U.S. District Court for the District of Columbia has held in the case of *Planned Parenthood of Metropolitan Washington* v. *Constance Horner* that the portion of the CFC regulations prohibiting dual solicitation is invalid. Therefore, that portion of the regulations is modified to conform to the Court's holding.

E.O. 12291, Federal Regulation

After a careful review of the proposed rulemaking, including the analysis set forth below for purposes of the Regulatory Flexibility Act, OPM has determined that this is not a major rule for purposes of Executive Order 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in the 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

(1) Reasons Why Action by Agency Is Being Considered.

OPM proposes these revisions because Executive Order 12404 and Public Law 100-202 require OPM to promulgate rules for charitable solicitation in the Federal workplace.

(2) Objectives and Legal Basis for Rule.

These revisions are issued under Executive Orders 12353 and 12404, and Public Law 100-202. The objective of these revisions is to establish a new and fairer method for the distribution of the undesignated funds raised in the CFC.

(3) Number of Small Entities Covered Under the Rule.

This revision would apply to all philanthropic groups that participate in the CFC.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule.

These revisions continue, for the most part, the reporting, recordkeeping, and other requirements that have been a part of the campaign operations since the 1984 CFC. The paperwork burden is kept to a minimum necessary to be consistent with the governing Executive Orders and the statute.

List of Subjects in 5 CFR Part 950

Charitable contributions, Government employees, Nonprofit organizations.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR part 950 as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

1. The authority citation for 5 CFR part 950 continues to read as follows:

Authority: E.O. 12353 (March 23, 1982), Charitable Fund Raising, 47 FR 12785; E.O. 12404 (February 10, 1983), Charitable Fund Raising, 48 FR 6685; and section 618 of the Treasury, Postal Service, and General Government Appropriations Act for FY 1983, Public Law 100-202.

2. In § 950.101, the definitions of "Local Designation Option" and "National Designation Option" are added alphabetically to read as follows:

§ 950.101 Definitions.

* * * * *

Local Designation Option means that the donor wishes that his or her gift be distributed to all local agencies in the same proportion as local agencies

received designations in their CFC. This option will have the code number "8888."

* * * * *

National Designation Option means that the donor wishes that his or her gift be distributed to all agencies in the same proportion as all agencies received designations in their CFC. This option will have the code number "9999."

* * * * *

3. Section 950.104 is amended by revising paragraph (c)(11) to read as follows:

§ 950.104 Local Federal Coordinating Committee.

* * * * *

(c) * * *

(11) Insuring that contributions are distributed in accordance with the method described in these regulations.

* * * * *

§ 950.204 [Amended]

4. In § 950.204, paragraph (e) is removed.

5. In § 950.401, paragraph (g)(1)(i) is revised; paragraph (g)(1)(v) is added; paragraphs (g)(2)(ii) and (iii) are revised; and paragraphs (g)(2)(iv), (v), (vi) and (vii) are added as set out below:

§ 950.401 Campaign and publicity materials.

* * * * *

(g) * * *

(1) * * *

(i) This will be the primary informational material distributed to the individual contributors. It will describe the CFC arrangement; explain the payroll deduction privilege; and explain the formula for the distribution of undesignated monies. It will clearly state and urge the Federal donor to direct his or her gift to specific voluntary agencies or groups of his or her choice by designating in the boxes provided, up to five organizations. It will further explain that failure to designate a specific agency or federation to receive the employee's gift will result in the donation being distributed in the same proportion as donors designated to the two options described in § 950.401(g)(2)(iv).

* * * * *

(v) It will include the following description of a federation: "A federation is a group of voluntary charitable human health and welfare agencies established for the purpose of providing common fund raising, administrative, and management services to its members. Federations may be either national, representing national or international agencies, or local, representing local or regional agencies. If you wish to designate all or some portion of your contribution to a federation, record that federation's corresponding code number in one of the boxes on your pledge card. Contributions designated to a federation will be shared by all of its member agencies."

* * * * *

(2) * * *

(ii) Each national federation and voluntary agency will be assigned a code number by OPM. Local federations and local voluntary agencies will be assigned code numbers by the LFCC. Each federation's name will begin its member agencies' listing. The federation's code number, 25-word statement, percent of administrative and fund raising expenses, and telephone number will only be listed once on the first page of the Agency Listing. See Appendix A to this subpart for a sample of this page.

(iii) Preceding any other listing of the eligible agencies, the Agency Listing will be a listing of all of the national and local federations and the two general designation options. Each federation listing will consist of its code number, 25-word statement, its administration and fund raising percent, and a toll-free telephone number. This information will be followed by the following statement, "Federation member agency listings begin on page ____."

(iv) There will be two options permitting an employee to designate either that his or her gift be shared by all agencies in the same proportion that they received designations in the campaign, or that his or her gift be shared by all local agencies in the same proportion that local agencies received designations in the campaign. Each of these two options will include the code number, which is "8888" for all agencies and "9999" for all local agencies, with an explanation of each option. They will be printed immediately after the federation listing.

(v) Immediately following the list of the federations and the two options, the following explanation of the distribution of undesignated funds will be included:

Even if you choose not to designate to a specific agency or federation, your contribution will still be accepted. These undesignated funds will be distributed in the same proportion as funds were designated by other Federal donors in your CFC in accordance with the options set forth immediately above, "8888" and "9999."

(vi) The listing of federations and the two options will be printed in the same format and font as the agencies listed in the brochure. No special prominence or emphasis may be placed on the federations listed.

(vii) All other requirements of § 950.401 will be followed.

* * * * *

6. In § 950.402, paragraph (b) is revised to read as follows:

§ 950.402 Miscellaneous.

* * * * *

(b) A national organization may waive its listing on the national list in favor of its local affiliate. The local affiliate must include in its application the written waiver from its national organization.

7. Appendix A to subpart D is added to read as follows:

Appendix A to Subpart D of Part 950—New First Page to the List of Eligible Charitable Organizations

This is a new first page to the list of eligible charitable organizations in the [1991] Combined Federal Campaign (CFC). This page includes listings for each of the National and Local Federations participating in your [1991] CFC and two new designation options.

A federation is a group of voluntary charitable human health and welfare organizations established for purposes of supplying common fundraising, administrative, and management services to its members. The 8 federations in the CFC representing "national" charitable organizations are listed in the left column and the federations representing "local" organizations are in the right column. If you wish to designate all or some portion of your contribution to a federation, please record that federation's corresponding code number on your pledge care. Contributions designated to a federation will be shared by all of its member agencies.

If you wish to designate to a specific agency or agencies affiliated with a federation, the page number in the campaign brochure where the listings of that federation's member agencies begins is provided.

CFC code number	CFC code number
National Federation Name	Local Federation Name
25-word description	25-word description
% of funds for administration and fund-raising	% of funds for administration and fund-raising
Toll free telephone number	Toll free telephone number
Page where list of member agencies begins	Page where list of member agencies begins
Information on other National Federations	Information on other Local Federations

You may wish to designate to a specific agency or agencies not affiliated with a federation (unaffiliated agencies). The listings of national unaffiliated agencies begins on

page XX and local unaffiliated agencies on page YY.

Two new options, described below, accommodate those federal donors who prefer not to designate their charitable gift to a specific group or groups. If you wish to have your contribution distributed in the method described in one of these options, please record its corresponding code number on your pledge card.

8888 I request that my gift be shared among all agencies in the same proportion as they received designations.	9999 I request that my gift be shared by all local agencies in the same proportion as donations to local groups were designated.

Even if you choose not to designate to a specific agency or federation, your contribution will still be accepted. These undesignated funds will be distributed in the same proportion as funds were designated by other Federal donors in your CFC in accordance with options set forth immediately above, 8888 and 9999.

8. § 950.501 is revised to read as follows:

§ 950.501 Applicability.

The distribution of undesignated funds described in § 950.401(g)(1)(vi) applies to all domestic area campaigns. It does not apply to the DOD Overseas Campaign.

§§ 950.502 & 950.503 [Reserved]

9. §§ 950.502 and 950.503 are removed and reserved.

§ 950.504 [Amended]

10. In § 950.504, paragraph (b) is revised to read as follows:

* * * * *

(b) To enforce the distribution method described in § 950.401(g)(1)(vi).

[FR Doc. 91-8790 Filed 4-12-91; 8:45 am]
BILLING CODE 6325-01-M

federal register

Monday
April 15, 1991

Part V

Department of Defense

48 CFR 214 et al.

Department of Defense Acquisition Regulations; Miscellaneous Amendments

DEPARTMENT OF DEFENSE

48 CFR Parts 214, 215, 219, 225, 226, 230, 231, 237, and 252

[Defense Acquisition Circular (DAC) 88-18]

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim rules with request for comments; and final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-18 amends the DoD FAR Supplement (DFARS) coverage on award without discussions, liquidated damages on small and small disadvantaged business subcontracting plans, restrictions on foreign anchor and mooring chain, night vision tubes, carbonyl iron powders, Indian incentive program, non-commercial cost principles, foreign selling costs, master agreements for contract advisory and assistance services, and miscellaneous editorial items.

DATES: *Effective Date:* April 16, 1991, except for §§ 214.201-9, 214.503-1, 215.406-5, 215.407, 215.605, 215.610, 215.612, and 252.251-7004 (Item I, Award Without Discussions) which were effective March 5, 1991; and §§ 219.702, 219.708, and 252.219-7016 (Item III, Liquidated Damages—Small Business Subcontracting Test Program) which were effective March 4, 1991.

Comment Date: Comments on the interim rules, §§ 214.201-9, 214.503-1, 215.406-5, 215.407, 215.605, 215.610, 215.612, and 252.215-7004 (Item I, Award Without Discussions); §§ 219.702, 219.708, and 252.219-7016 (Item III, Liquidated Damages—Small Business Subcontracting Test Program); and §§ 225.7016 and 252.225-7033 (Item VII, Restriction on Acquisition of Carbonyl Iron Powders) should be submitted to the address below by May 15, 1991, to be considered in formulating the final rule. Please cite DAR Case 90-302 for Item I, 90-336 for Item III, and 90-317 for Item VII in all correspondence on these rules.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory System, ATTN: Barbara Young (Item I); Alyce Sullivan (Items III or VII), OUSD(A), Room 3D139, The Pentagon, Washington, DC 20301-3000.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Hughes, telephone (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue Interim Rule

A determination has been made under authority of the Secretary of Defense to issue the regulations in Items I, II, and VII of DAC 88-18 as interim rules. Compelling reasons exist to promulgate these rules without prior opportunity for public comment. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to these interim rules will be considered in formulating the final rules.

B. Background

The DoD FAR Supplement is codified in chapter 2 title 48 of the Code of Federal Regulations.

The October 1, 1990, revision of the CFR is the most recent edition of that title. It includes amendments to the 1988 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 88-1 through 88-15.

C. Public Comments

DAC 88-18, Items I, III, and VII

These items are published as Interim rules. Public comment is invited.

DAC 88-18, Items II and IV

These items are for informational purposes and do not contain revisions to the DFARS.

DAC 88-18, Items V, VI, IX, X, and XII

Public comments were not solicited for these revisions because the revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88-18, Items VII and XI

These rules were published for public comment. The comments that were received were considered in development of the final rule:

Item VIII. A proposed rule was published in the **Federal Register** on November 21, 1990 (55 FR 48730).

Item XI. A proposed rule was published in the **Federal Register** on May 14, 1990 (55 FR 19967).

D. Regulatory Flexibility Act

DAC 88-18, Items I, V, VI, IX, X, and XII

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Public Law 98-577. However, comments from small entities concerning the affected DoD FAR Supplement subparts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 90-610 in correspondence.

DAC 88-18, Item VII

This interim rule is not expected to have a significant economic impact upon a substantial number of small entities because it imposes restrictions on the acquisition of foreign products and provides a preference for domestic items. A Regulatory Flexibility analysis has not been prepared. However, comments from small entities will be considered in formulating the final rule.

DAC 88-18, Item III

This interim rule is not expected to have a significant economic impact upon a substantial number of small entities because it is being used under a test program with very limited application. However, comments from small entities will be considered in formulating the final rule.

DAC 88-18, Item VIII

The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it has very limited application. There were no comments received in response to the November 21, 1990, notice (55 FR 48730) which addressed the Regulatory Flexibility Statement.

DAC 88-18, Item XI

This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because all entities are eligible to compete under this test program. There were no comments received in response to the May 14, 1990, notice (55 FR 19967) which addressed the Regulatory Flexibility statement.

E. Paperwork Reduction Act

DAC 88-18, Items I, III, V, VI, VII, VIII, IX, X, XI, and XII

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 214, 215, 219, 225, 226, 230, 231, 237, and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulatory System.

(Defense Acquisition Circular No. 88-18, dated April 16, 1991)

All DoD FAR Supplement and other directive material contained in this circular is effective April 16, 1991, unless otherwise specified in the Item summary. Material effective April 16, 1991, is to be used upon receipt. Solicitations issued before receipt of the circular do not have to be amended to include the new or revised clauses or forms. See the guidance in DoD FAR Supplement 201.301(S-70)(4).

Defense Acquisition Circular (DAC) 18 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1988 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Award Without Discussions

DFARS 214.201-6(e)(3), 214.503-1(a)(4), 215.4606-5(c), 215.407(d)(4) (S-70) and (S-71), 215.605(e), 215.610(a), 215.612(c)(4), and 252.215-7004 are added as a result of section 802 of the Fiscal Year 1991 DoD Authorization Act (Pub. L. 101-510). Section 802 amended 10 U.S.C. 2305(a)(2)(B)(ii) to require that solicitations for competitive proposals indicate whether award is intended to be made with or without discussions. It also removes the restriction on award without discussion in instances where the award does not result in the lowest overall cost to the Government. Section 802 further requires that solicitations for sealed bids and competitive proposals include a statement of significant evaluation subfactors and their relative importance. The revisions in this DAC supersede the revisions made under departmental letter 91-005 dated March 8, 1991, which were effective and required for use in solicitations issued after March 5, 1991. The revisions in the departmental may be used until receipt of this DAC.

Item II—Subcontracting With the Workshops for the Blind and Other Severely Handicapped

The Defense Acquisition Regulatory Council has unanimously approved a class deviation to Federal Acquisition Regulation (FAR) 19.703(a), 52.219-9, and the "Specific Instructions" for preparation of Standard Forms 294 and 295. This deviation authorizes military services and defense agencies to credit prime contractors with purchases made from workshops for the blind and other severely handicapped, as defined in FAR 8.701, in measuring progress toward meeting small business subcontracting goals. Contractors may rely on the written representation of an organization that it is a qualified workshop. The deviation implements section 8117 of the Fiscal Year 1991 Appropriations Act (Pub. L. 101-511) and is applicable only for the Fiscal Year 1991 reporting period.

Contracting officers should immediately notify prime contractors with Small and Small Disadvantaged Business Subcontracting Plans (FAR 52.219-9) of this deviation. Contractors may report these subcontracts and purchases in the small business achievement figures on the Standard Form 295, Summary Subcontract Report, and on the Standard Form 294, Subcontracting Report for Individual Contracts. Contractors should include a notation in the "Remarks" section of each form to identify amounts for qualified nonprofit agencies included in small business achievement totals.

Item III—Liquidated Damages—Small Business Subcontracting Test Program

DFARS 219.702(a) and 219.708(b)(2) are revised and the clause at 252.219-7016, Liquidated Damages—Small Business Subcontracting Plan, is deleted based on Section 402 of the Small Business Administration Reauthorization and Amendments Act of 1990. Section 402 suspended the application of liquidated damages to comprehensive subcontracting plans submitted under the test program described in DFARS 219.702. This revision was effective March 4, 1991, upon issuance of departmental letter 91-004.

Item IV—Prohibition on Acquisition of Foreign Supercomputers

Section 8034 of the Fiscal Year 1991 Defense Appropriations Act (Pub. L. 101-511) prohibits the use of Fiscal Year 1991 funds for the acquisition of any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the Armed Services and Appropriations Committees of Congress that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers.

Item V—Restriction on Acquisition of Anchor and Mooring Chain

DFARS 225.7014 and the clauses at 252.225-7025 and 252.225-7026 are revised and a new clause is added at 252.225-7031 as a result of section 8041 of Public Law 101-511. Section 8041 imposes additional restrictions on acquisition of welded shipboard anchor and mooring chain if acquired using FY91 funds.

Item VI—Restriction on Night Vision Tubes

DFARS 225.7015 and a clause of 252.225-7032 are added as a result of Public Law 101-165 and subsequent Appropriations Acts. The statutes restrict acquisition of foreign night vision image intensifier tubes or devices. A similar restriction was inlcuded as an informational item in DAC 88-14, Item XIV.

Item VII—Restriction on Acquisition of Carbonyl Iron Powders

DFARS 225.7016 and a clause at 252.225-7033 are added as a result of section 835 of the Fiscal Year 1991 DoD Authorization Act (Pub. L. 101-510). Section 835 requires that all carbonyl iron powders in supplies acquired by DoD be manufactured in the United States or Canada by an entity that is more than 50 percent owned by U.S. or Canadian citizens.

Item VIII—Indian Incentive Program

This finalizes without change the interim rule published as Item V of DAC 88-16. The rule added DFARS subpart 226.71, Indian Incentive Program, and a clause at 252.226-7002.

Item IX—Noncommercial Cost Principles

Item IX of DAC 88-16 implemented certain statutory prohibitions for contracts with educational institutions, State, local and Federally recognized Indian tribal governments, and nonprofit organizations. DFARS 231.1, 231.2, and the clause 252.231-7000 are revised to make a related change and ensure use of the clause at 252.231-7000 in contracts with noncommercial entities.

Item X—Foreign Selling Costs

DFARS 231.205-1 and 231.205-38 are deleted since Item XVIII of FAC 90-04 revises FARs 31.205-1 and 31.205.38 to make allowable those costs involving a significant effort to promote export of U.S. defense industry products.

Item XI—Master Agreements for Advisory and Assistance Services

DFARS 237.270 is added as a result of 10 U.S.C. 2304 which authorizes the DoD to enter into master agreements for certain contract advisory and assistance services for a 3-year test period. The test begins April 16, 1991 and will end April 15, 1994. All DoD contracting activities are authorized use of this authority.

Item XII—Editorial Revisions

(a) DFARS 252.603-70(b)(7) is amended by correcting the reference "paragraph (k)" to read "paragraph (j)."

(b) DFARS 252.7103(a)(2) is revised to correct the first reference to read "230.7102(d)(1)(ii)."

(c) DFARS 237.204 is correct to read "237.202."

1. The authority for 48 CFR parts 214, 215, 219, 225, 226, 230, 231, 237, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and FAR subpart 1.3.

Amendments to the DoD FAR Supplement

2. Section 214.201-9 is added to read as follows:

214.201-9 Simplified contract format.

(e)(3) Insert all evaluation factors for award.

3. Section 214.503-1 is amended by adding paragraph (a)(4) to read as follows:

214.503-1 Step one.

(a) * * *

(4) Include all factors and any significant subfactors.

4. Section 215.406-5 is added to read as follows:

215.406-5 Part IV—Representations and instructions.

(c) *Section M, evaluation factors for award.* When identifying evaluation factors and subfactors, include non-cost- or non-price-related factors and significant subfactors.

5. Section 215.407 is amended by adding paragraphs (d)(4)(S-70) and (d)(4)(S-71) to read as follows:

215.407 Solicitation provisions.

(d)(4)(S-70) Use the basis provision at FAR 52.215-16, Contract Award, with its Alternate II at 252.215-7004(a) when the contracting offficer intends that proposals will be evaluated with, and award made after, discussions with offerors.

(d)(4)(S-71) Use the basic provision at FAR 52.215-16, Contract Award, with its Alternate III at 252.225-7004(b) when the contracting officer intends that proposals will be evaluated, and award made, without discussions with the efferors.

* * * * *

6. Section 215.605 is amended by adding paragraph (e) to read as follows:

215.605 Evaluation factors.

(e) When stating the evaluation factors and significant subfactors, include non-cost or non-price related factors and subfactors.

7. Section 215.610 is added to read as follows:

215.610 Written or oral discussion.

(a) It is not necessary to conduct written or oral discussions when the contracting officer determines that discussions are not necessary, provided the solicitation contains the provision at 252.215-16, Contract Award, and its Alternate III at 252.215-7004. Once the Government states its intent to award without discussions, document the file with the rationale for any reversal of this determination.

8. Section 215.612 is added to read as follows:

215.612 Formal source selection.

(c) *Source selection plan.* (4) Also include a statement of any significant subfactors and their relative importance.

219.702 [Amended]

9. Section 219.702 is amended by adding at the end of paragraph (a) a sentence to read, "Section 402 of Public Law 101-574 suspends the application of liquidated damages to these plans for the period of the test program."

10. Section 219.708 is amended by revising paragraph (b)(2) to read as follows:

219.708 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(2) DoD contracting activities shall not use the clause at FAR 52.219-16, Liquidated Damages—Small Business Subcontracting Plan, in contracts with contractors who have comprehensive subcontracting plans approved under the test program authorized by section 834 of Public Law 101-189. (See 219.702(a).)

* * * * *

225.603-70 [Amended]

11. Section 225.603-70(b)(7) is amended by revising the reference in the last sentence to "paragraph (k)" to read "paragraph (j)."

12. Section 225.7014 is revised and §§ 225.7014-1 through 225.7014-4 are added to read as follows:

225.7014 Restriction on acquisition of anchor and mooring chain.

225.7014-1 Restriction for FY 1991.

(a) Under Public Law 101-511, section 8041, DoD appropriations may not be used to acquire welded shipboard anchor and mooring chain, four inches in diameter and under, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) This restriction may be waived by the Secretary of the service responsible for procurement, on a case-by-case basis, where sufficient domestic suppliers are not available to meet DoD requirements on a timely basis and the acquisition is necessary to acquire capability for national security purposes.

(1) Document the waiver in a written D&F containing—

(i) The factors supporting the waiver; and

(ii) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(2) Provide a copy of the D&F to the House and Senate Committees on Appropriations.

225.7014-2 Restriction for FYs 1989 and 1990.

Under Public Law 100-463, section 8089, and Public Law 101-165, section 9051, no Fiscal Year 1989 or 1990 funds shall be used to procure welded shipboard anchor and mooring chain (four inches in diameter and under) manufactured outside the United States.

225.7014-3 Restriction for FY 1988.

(a) Under Public Law 100-202, section 8125, no Fiscal Year 1988 funds shall be used to procure welded shipboard anchor and mooring chain (four inches in diameter and under) manufactured outside the United States, its territories of possessions, or Canada.

(b) When adequate domestic supplies of chain are not available to meet contract requirements on a timely basis, the chain may be procured from other countries on a case-by-case basis as determined by the head of the agency concerned.

225.7014-4 Contract clauses.

(a) Use the clause at 252.225-7031, Restriction on Foreign Anchor and Mooring Chain, in all solicitations and contracts—

(1) Using FY 1991 funds; and

(2) Requiring welded shipboard anchor or mooring chain of four inches in diameter or less.

(b) Use the clause at 252.225-7025, Restriction on Foreign Anchor and Mooring Chain (Fiscal Years 1989 and 1990) in all solicitations and contracts—

(1) Using Fiscal Years 1989 and 1990 funds; and

(2) Requiring welded shipboard anchor or mooring chain.

(c) Use the clause at 252.225-7026, Restriction on Foreign Anchor and Mooring Chain (Fiscal Year 1988), in all solicitations and contracts—

(1) Using Fiscal Year 1988 funds; and

(2) Requiring welded shipboard anchor or mooring chain.

13. Sections 225.7015 through 225.7015-3 are added to read as follows:

225.7015 Restriction on night vision image intensifier tubes and devices.

225.7015-1 Restriction.

Under Public Law 101-165 and subsequent Appropriations Acts, DoD appropriations may not be used to acquire second and third generation night vision image intensifier tubes and devices unless they are manufactured in the United States or Canada.

225.7015-2 Exception.

Second and third generation night vision image intensifier tubes and devices manufactured outside the United States or Canada may be acquired if—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The Secretary of the Service responsible for the acquisition certifies to the House and Senate Committees on Appropriations that the acquisition of tubes and devices manufactured outside the United States or Canada is necessary in order to acquire capability for national security purposes.

225.7015-3 Contract clause.

Use the clause at 252.225-7032, Restriction on Night Vision Image Intensifier Tubes and Devices, in all solicitations and contracts—

(a) Using FY 1990 or later funds; and

(b) Requiring second and third generation night vision image intensifier tubes and devices.

14. Sections 225.7016 through 225.7016-3 are added to read as follows:

225.7016 Restriction on acquisition of carbonyl iron powders.

225.7016-1 Restriction.

In accordance with 10 U.S.C. 2507(a), all carbonyl iron powders contained in supplies acquired by DoD shall be manufactured in the United States or Canada by an entity more than 50 percent of which is owned or controlled by citizens of the United States or Canada.

225.7016-2 Waiver.

The restriction may be waived by the Secretary of Defense if its application is determined not to be in the national interest.

225.7016-3 Clause.

Insert the clause at 252.225-7033, Restriction on the Acquisition of Carbonyl Iron Powders, in all solicitations and contracts which anticipate the acquisition of supplies which contain carbonyl iron powders.

230.7103 [Amended]

15. Section 230.7103(a)(2) is amended by revising the first reference to read "230.7102(d)(1)(ii)" in lieu of "230.7102(d)(2)(ii)."

16. Sections 231.100 and 231.100-70 are added to read as follows:

231.100 Scope of subpart.

231.100-70 Contract clause.

Use the clause at 252.231-7000, Supplemental Cost Principles, in all solicitations and contracts, except those which use the small purchase procedures of FAR part 13.

231.201 [Removed]

17. Section 231.201 is removed.

231.205-1 [Removed]

18. Section 231.205-1 is removed.

231.205-38 [Removed]

19. Section 231.205-38 is removed.

Subpart 237.2—[Amended]

20. Subpart 237.2 is amended by revising the title to read "Advisory and Assistance Services."

237.204 [Redesignated as 237.202]

21. Section 237.204 is redesignated as 237.202.

22. Section 237.270 is added to read as follows:

237.270 Master agreements.

Section 2304 of title 10, U.S.C., authorizes award of master agreements under which orders may be issued for specific contract advisory and assistance services (CAAS). The authority to award master agreements expires April 15, 1994.

(a) *Establishing agreements.* (1) Use this section only for types of advisory and assistance services described in FAR 37.203.

(2) Establish agreements using competitive procedures.

(3) Use the procedures for basic ordering agreements (see FAR 16.703) *except*—

(i) Synopsize solicitations for agreements as if they were service contracts expected to exceed $25,000;

(ii) Establish agreements with at least three of the sources submitting offers; and

(iii) Establish agreements for a period not to exceed two years, and do not extend them.

(b) *Ordering procedures.* (1) Ordering procedures for master agreements are the same as for basic ordering agreements, except that requests for proposals for individual orders need not be synopsized, nor is a justification and approval required.

(2) Before placing an order under a master agreement, the contracting officer:

(i) Must reasonably expect that at least two sources with established agreements will submit offers; otherwise, an order cannot be placed against an agreement;

(ii) Shall request offers from all agreements holders;

(iii) Shall ensure the statement of work clearly specifies the tasks to be performed;

(iv) Shall accept the offer most advantageous to the government, considering all relevant factors specified in the request for offers;

(v) Shall synopsize issued orders in accordance with FAR 5.302; and

(vi) Shall ensure orders have an identifiable deliverable.

(3) Orders under master agreements are an additional circumstance permitting full and open competition after exclusion of sources (FAR subpart 6.2).

(c) *Limitation.* The total value of orders issued under master agreements in a fiscal year by any contracting activity (as defined in 202.101 (a) and (b) shall not exceed 30 percent of the value of all contracts for advisory and assistance services awarded by that activity during fiscal year 1989. This limitation may be increased from 30 percent to not more than 50 percent if—

(1) The head of the contracting activity (HCA) waives the 30 percent limitation. Each waiver shall be in the form of a determination and finding prepared and processed in accordance with agency procedures. The determination and finding must specify that the use of master agreements is necessary to further the policy of acquiring advisory and assistance services on the basis of the task to be performed rather than on the basis of the number of hours provided; and

(2) The agency publishes a notice of the waiver in the **Federal Register** and 60 days have passed since the notice of the HCA waier appeared in the **Federal Register. Federal Register** notices shall be forwarded for publication in accordance with agency procedures.

(d) *Reporting requirements.* (1) Each department and agency shall provide an

annual report to OSD, Attn: OUSD(A)DP(CPA), not later than November 15 of each year. The first report is due by November 15, 1991. The Reports Control Symbol is DD-P&L(A)1849.

(2) The report shall include:

(i) The total number of master agreements awarded (with names of contractors and type of CAAS being procured) and estimated dollar value of each agreement;

(ii) The number of task orders awarded under each master agreement (by contractor) and dollar value of each (including modifications); and

(iii) The period covered by the report.

(3) Each department and agency shall centrally maintain the following information, for all master agreements expected to involve work in excess of $2,000,000 (including modifications), on a fiscal year basis, for the term of the test:

(i) The number of bid protests filed, number sustained, and number of awards terminated during the competition for master agreements and task orders;

(ii) The program's effect on the procurement administrative leadtime for CAAS;

(iii) Statements of work describing the services contracted for and the source evaluation criteria used to evaluate proposals for award;

(iv) The level of small business participation in the program; and

(v) The number of contracts where a contractor certified that a conflict of interest exists under the regulations implementing section 8141 of the National Defense Authorization Act for FY 89, the nature of the conflict of interest, and the steps taken to resolve such conflicts of interest among firms that qualify for master agreements.

23. Section 252.215-7004 is added to read as follows:

252.215-7004 Contract award.

(a) Alternate II (Mar 1991). As prescribed in 215.407(d)(4)(S-70), substitute the following paragraph (c) for paragraph (c) of the basic provision at FAR 52.215-16, Contract Award:

(c) The Government intends to evaluate proposals and award a contract after written or oral discussions with all responsible offerors who submit proposals within the competitive range.

(b) Alternate III (Mar 1991). As prescribed in 215.407(d)(4)(S-71), substitute the following paragraph (c) for paragraph (c) of the basic provision at FAR 52.215-16, Contract Award:

(c) The Government intends to evaluate proposals and award a contract without discussions with offerors (other than discussions conducted for the purpose of minor clarification). However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

252.219-7016 [Removed]

24. Section 252.219-7016 is removed.

25. Section 252.225-7025 is revised to read as follows:

252.225-7025 Restriction on foreign anchor and mooring chain (fiscal years 1989 and 1990).

As prescribed in 225.7014-4(b), insert the following clause:

Restriction on Foreign Anchor and Mooring Chain (Fiscal Years 1989 and 1990) (Apr 1991)

(a) Welded shipboard anchor and mooring chain (four inches in diameter and under) contained in items delivered under this contract shall be manufactured in the United States.

(b) This clause, including this paragraph (b), must be included in all subcontracts hereunder, unless items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

26. Section 252.225-7026 is revised to read as follows:

252.225-7026 Restriction on Foreign Anchor and Mooring Chain (Fiscal Year 1988).

As prescribed in 225.7014-4(c), insert the following clause:

Restriction on Foreign Anchor and Mooring Chain (Fiscal Year 1988) (Apr 1991)

(a) Welded shipboard anchor and mooring chain (four inches in diameter and under) contained in items delivered under this contract shall be manufactured in the United States, its territories or possessions, or Canada except as provided in paragraph (b) of this clause.

(b) The Contractor may request a waiver in accordance with DFARS 225.7014-3(b) if adequate domestic supplies of welded shipboard anchor and mooring chain are unavailable to meet the contract delivery schedule.

(c) This clause, including this paragraph (c), must be included in all subcontracts hereunder, unless items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

27. Section 252.225-7031 is added to read as follows:

252.225-7031 Restriction on Foreign Anchor and Mooring Chain

As prescribed in 225.7014-4(a), use the following clause:

Restriction on Foreign Anchor and Mooring Chain (Apr 1991)

(a) Welded shipboard anchor and mooring chain, four inches in diameter and under, delivered under this contract—

(1) Shall be manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the above requirements are not available to meet the contract delivery schedule.

(c) The Contractor shall include this clause, including this paragraph (c), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

28. Section 252.225-7032 is added to read as follows:

252.225-7032 Restriction on Night Vision Image Intensifier Tubes and Devices

As prescribed in 225.7015-3, use the following clause:

Restriction on Night Vision Image Intensifier Tubes and Devices (Apr 1991)

All second and third generation night vision image intensifier tubes and devices provided under this contract shall be manufactured in the United States or Canada.

(End of clause)

29. Section 252.225-7033 is added to read as follows:

252.225-7033 Restriction on Acquisition of Carbonyl Iron Powders.

As prescribed in 225.7016-3, use the following clause:

Restriction on the Acquisition of Carbonyl Iron Powders (Apr 1991)

(a) *Definition.* "Carbonyl iron powders" are particles produced from the thermal decomposition of iron penta carbonyl.

(b) *Restriction.* The Contractor agrees that all carbonyl iron powders contained in supplies provided under this contract shall be manufactured in the United States or Canada by an entity more than 50 percent of which is owned or controlled by Citizens of the United States or Canada.

(End of clause)

30. Section 252.231-7000 is revised to read as follows:

252.231-7000 Supplemental cost principles.

As prescribed in 231.100-70, insert the following clause:

Supplemental Cost Principles (Apr 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation,

allowability shall also be determined in accordance with part 231 of the DoD FAR Supplement, in effect on the date of this contract.

(End of clause)

Adoption of Interim Rule as Final Without Change

Parts 226 and 252 [Amended]

31. Accordingly, the interim rules amending 48 CFR parts 226 and 252 which were published at 55 FR 48730 on November 21, 1990, are adopted as final rules without change.

[FR Doc. 91-8656 Filed 4-12-91; 8:45 am]

BILLING CODE 3810-01-M

federal register

Monday
April 15, 1991

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 35, 905, 941, 965, and 968

Lead-Based Paint Hazard Elimination; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 35, 905, 941, 965, and 968

[Docket No. R-91-1523; FR-2583-I-01]

RIN 2577-AA78

Lead-Based Paint Hazard Elimination

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: In response to amendments to the Lead-Based Paint Poisoning Prevention Act (LPPPA) (42 U.S.C. 4821 to 4846) by section 1088 of the Stewart B. McKinney Homeless Assistance Amendments Act (McKinney Amendments, Public Law 100-628, approved November 7, 1988), HUD is amending its regulations regarding elimination of hazards due to lead-based paint in Public and Indian Housing. This regulation also references the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) for the Comprehensive Improvement Assistance Program (CIAP), and other Public and Indian Housing programs, published at 55 FR 14556, April 18, 1990, Part II, with an amendment of Chapter 8 and typographical clarifications at 55 FR 39874, September 28, 1990. This Interim rule amends 24 CFR part 941, Public Housing Development Program, subpart H in 24 CFR part 965, PHA-owned or Leased Projects—Maintenance and Operation, 24 CFR part 968, Comprehensive Improvement Assistance Program (CIAP), 24 CFR part 905, subpart A, Indian Housing, General, and 24 CFR part 905, subpart I, Indian Housing Comprehensive Improvement Assistance Program (CIAP). In addition, HUD has corrected a previous error in 24 CFR 35.24(b)(2)(i) wherein the Department failed to change the statutory cut-off date established by the 1987 Housing and Community Development Act from 1950 to 1978.

DATES: *Effective Date:* May 15, 1991. Comments must be received by June 14, 1991.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Management, Office of Public and Indian Housing, (202) 708-1800, Room 4136, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: HUD is amending its current regulations in response to amendments contained in section 1088 of the McKinney Amendments and to reference the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines). HUD has amended § 941.208(h) concerning the Public Housing Development program, to add a reference to the Lead-Based Paint Interim Guidelines regarding the testing and abatement of lead-based paint, and to confirm that the Major Reconstruction of Obsolete Projects (MROP) grant program is covered by LPPA requirements. Under part 965—PHA-Owned Projects—Maintenance and Operations, HUD has made minor changes to the definition of "lead-based paint" in § 965.702 and to § 965.703 regarding notice of lead-based paint. HUD has also removed (and reserved) § 965.705 concerning testing and abatement of lead-based paint during unit turnover. Sections 965.706 (c) and (d)(2), concerning testing and abatement procedures, and § 965.707, regarding tenant protection, have been amended to reference the Lead-Based Paint Interim Guidelines. Section 965.708 concerning disposal practices is also amended to add a reference to the Lead-Based Paint Interim Guidelines. The guidance indicates that PHAs are exposed to liability for any negligence on the part of hazardous waste transporters and treatment, storage, and disposal facilites. This liability extends to illegal or negligent disposal under the Resource Conservation and Recovery Act (RCRA). In addition, PHAs could be held jointly and severely liable for any subsequent remediation under Comprehensive Environmental Response Compensation and Liability Act (CERCLA). Section 965.709 is amended to indicate that if a unit or common area is tested or treated in accordance with current standards, re-testing or re-treatment is not necessary. Under part 968, HUD has created a new § 968.110(k) which harmonizes the CIAP rule issued on December 21, 1989 at 54 FR 52686, the McKinney Amendments and the Lead-Based Paint Interim Guidelines concerning the policies of the Department for lead-based paint. In addition, lead-based paint modernization as previously described in 53 FR 20790 (June 6, 1988) is established as a modernization type, so as to assist PHAs to meet the statutory testing deadline of December 6, 1994.

The provision for tenant relocation as discussed in the Lead-Based Paint: Interim Guidelines for Hazardous Identification and Abatement in Public and Indian Housing and as provided for in § 965.707 is deemed appropriate by the Department for public and Indian housing due to the low-income level of the residents and the large scale of rehabilitation work that is carried out in such housing on an annual basis e.g., $2.5 billion for FY 1991.

The Preamble to the Consolidated Indian Housing Regulations (part 905) published as an interim rule on June 18, 1990 (55 FR 24772) anticipated that a regulation implementing the McKinney Amendments would be published before the Indian Housing Regulations become final. The final Indian Housing Regulations when they are published, therefore, will adopt the lead-based paint regulation implementing the McKinney Amendments in its entirety. The subject Interim Rule amends 24 CFR part 905. In addition, the preamble to the Technical Amendment rule published on Januray 9, 1991 (56 FR 918), states that parts 35 and 965 concerning lead-based paint continue to apply to Indian Housing.

Under part 905, subpart A, HUD has amended § 905.120(i) for development to add a reference to the Lead-Based Paint Interim Guidelines regarding the testing and abatement of lead-based paint. HUD has also created a new § 905.120(j), subpart A, for IHA modernization which harmonizes the CIAP rule issued on December 29, 1989 of 54 FR 52686, the McKinney Amendments and the Lead-Based Paint Interim Guidelines concerning the policies of the Department for lead-based paint. In addition, lead-based paint modernization as previously described in 53 FR 20790 (June 6, 1988) is established as a modernization type, so as to assist IHAs to meet the statutory testing deadline of December 6, 1994.

The Department may revise §§ 968.110(k)(3) and 905.120(j)(3) at a later date to reflect language providing for the statutory option of allowing a PHA-IHA to use Atomic Absorption Spectroscopic Analysis (AAS) to abate lead-based paint and dust to a more stringent standard (*e.g.* the Consumer Products Safety Commission standard of .06 percent by weight) (section 1088(a)(4) of the McKinney Amendments). The McKinney Amendments created the option for PHAs/IHAs to abate lead-based paint and dust to a standard more

stringent than the standard in section 302(c) of the LPPPA (1 milligram per centimeter squared (1 mg/cm²), or other level set by the Secretary of HUD); at the same time, these amendments directed HUD, in its demonstration program (sections 1088(b)(2)(B) of the McKinney Amendments), to use public housing units to test the feasibility of testing and abating existing pre-1978 units to standards as low as the .06 percent by weight standard. Since this research is incomplete and no similar reliable studies exist, HUD has delayed implementation of such a testing and abatement standard until the results of the demonstration have been completed and analyzed. No CIAP or other program funding is authorized for abatement to lower than 1.0 mg/cm² or .5 percent by weight standard as set forth in the Lead-Based Paint Interim Guidelines. These standards are not expressly comparable because they involve different testing methodologies and state their results in different units. HUD has authorized the use of these standards because both have a statutory basis in the LPPPA and the use of either standard utilizing the appropriate testing methodology assures a reasonably acceptable level of protection of the health and safety of potential occupants. Any approved testing method will contain a measurement standard either in mg/cm² or percent by weight defining a positive finding for the presence of lead-based paint. Section 302(c) of the LPPPA specifies an XRF reading of 1 mg/cm² or higher using laboratory testing methods for the presence of lead-based paint.

Sections 968.203 and 905.102 are amended by revising the definition of "comprehensive modernization" and adding a definition of "lead-based paint modernization". Sections 968.205 and 905.605 are amended to make lead-based paint testing and abatement eligible costs. Sections 968.210, 905.610, 968.230 and 905.630 are also revised to amend the procedures for obtaining approval of a modernization program and the requirements for homeownership projects.

Other matters

HUD is publishing this Rule in Interim rather than proposed form because it concerns matters that were mandated by Congressional actions and, therefore, it is a regulation which does not involve substantial administrative discretion. However, HUD welcomes comments regarding this regulation and will consider all comments received within 60 days from the effective date of the rule. Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. on regular business days at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile [FAX] machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free telephone number.) Only comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202-708-2084).

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (The Regulatory Flexibility Act), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. HUD finds that there are not anticompetitive discriminatory aspects of the rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. This Finding relies in substantial part on an Environmental Assessment prepared for the Lead-Based Paint Interim Guidelines. The subject Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

OMB Control Number

Information collection requirements contained in §§ 965.706 (c) and (d)(2), 905.120(j) (2), (3) and (4), and 968.110(k) (2), (3) and (4) of this interim rule were approved by the Office of Management and Budget under control number 2577-0090.

Regulatory Impact Analysis

This interim rule does not constitute a "major rule" as that term is defined in Executive Order 12291. Analysis of the proposed rule indicates it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have 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.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this interim rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The function of this interim rule is limited to implementation of statutory changes to the Lead-Based Paint Poisoning Prevention Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule do not have federalism implications and, thus, are not subject to review under the Order. The function of this interim rule is limited to implementation of statutory changes to the Lead-Based Paint Poisoning Prevention Act and references to the Lead-Based Paint Interim Guidelines. Issuance of this interim rule in no way changes or affects existing Federal, State or local governmental relationships.

Semiannual Agenda of Regulations

This rule was listed as sequence number 1279 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530, 44566) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 35

Lead poisoning, Reporting and recordkeeping requirements, Grant programs—housing and community development, Mortgage insurance, Rent subsidies.

24 CFR Part 905

Grant programs—Indians, Low and moderate income housing, Aged, Grant—housing and community development, Handicapped, Indians,

Loan programs—housing and community development, Loan programs—Indians, Housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 968

Grant programs—housing and community development Loan programs—Housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 35, 905, 941, 965 and 968 are amended to read as follows:

PARTS 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation for part 35 continues to read as follows:

Authority: Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 35.24 [Amended]

2. In § 35.24, paragraph (b)(2)(i) is amended by removing "1950" and adding "1978".

PART 905—INDIAN HOUSING

3. The authority citation for part 905 continues to read as follows:

Authority: Secs. 201, 202, 203 and 205 of the U.S. Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. Law 100–358) (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee; sec. 7(b) Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 905.102 is amended by revising the definition of "comprehensive modernization" and by adding in alphabetical order the definition of "lead-based paint modernization" to read as follows:

§ 905.102 Definitions.

* * * * *

Comprehensive modernization. A modernization program for a project which provides for all needed physical and management improvements. Under CIAP, all modernization programs are comprehensive modernization, except those defined as emergency, homeownership, lead-based paint or special purpose.

* * * * *

Lead-based paint modernization. A modernization program for a family project that is limited to lead-based paint testing and lead-based paint hazard abatement as prescribed in § 905.120(j)(1)(ii)(C). For such projects, management improvements are not eligible modernization costs.

* * * * *

5. In § 905.120 paragraph (i) is revised and paragraph (j) is added to read as follows:

§ 905.120 Compliance with other Federal requirements.

* * * * *

(i) *Lead-based paint poisoning prevention.* With respect to development, all existing properties constructed prior to 1978 (or substantially rehabilitated prior to 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) shall be tested for lead-based paint on applicable surfaces (as defined at 24 CFR 965.702). It is strongly encouraged, but not required, that all such properties be tested in accordance with the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) drafted for the Comprehensive Improvement Assistance Program (CIAP), and other Public and Indian Housing programs, and issued and published at 55 FR 14555, April 18, 1990, Part II, with an amendment of Chapter 8 and typographical clarifications at 55 FR 39874, as periodically amended or updated, and with any other future outstanding official Departmental issuances related to lead-based paint, prior to any irrevocable commitment to acquire the property unless the properties have already been tested in accordance with the Lead-Based Paint Poisoning Prevention Act (LPPPA) as amended by the Housing and Community Development Act of 1987 or, the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines). If lead-based paint is found, the cost of testing and abatement shall be considered when:

(1) Making the cost comparison to justify new construction as well as

(2) Meeting maximum total development cost limitations.

If units containing lead-based paint are acquired, compliance with 24 CFR part 35 and 24 CFR part 965 subpart H is required, and abatement (as described in 24 CFR 965.706(d)(2)) shall be completed prior to occupancy. It is strongly encouraged that abatement be conducted as described in the Lead-Based Paint: Interim Guildelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines), or other future outstanding official Department issuances related to lead-based paint.

(j) *Lead-based paint poisoning prevention.*—(1) *General.* (i) With respect to modernization, the IHA shall comply with the Lead-Based Paint Poisoning Prevention Act (LPPPA) (42 U.S.C. 4821–4846) and HUD implementing regulations (24 CFR parts 35 and 965, subpart H). The five-year funding request plan for CIAP (as described in § 905.610) shall be amended to include the schedule for lead-based paint testing and abatement. Random testing shall be completed by December 6, 1994 (42 U.S.C. 4822(d)(2)(B)). Testing and abatement shall be completed with respect to all family projects constructed or substantially rehabilitated prior to 1978 approved for (or applications for) comprehensive and homeownership modernization (paragraphs (j)(1)(ii) (A) and (B) of this section); other pre-1978 family projects not undergoing comprehensive and homeownership modernization (paragraph (j)(1)(ii)(C) of this section); and special purpose modernization. Any previous testing or abatement work which was done in accordance with the June 6, 1988 regulation (53 FR 20790) or the Lead-Based Paint Poisoning Prevention Act as amended by the Housing and Community Development Act of 1987 shall not be redone in accordance with the requirements of this section.

(ii) The requirements for lead-based paint testing and abatement apply to the following three categories of special purpose modernization: Vacant unit reduction; accessibility for handicapped (for any dwelling in such housing in which any child who is less than 7 years of age resides or is expected to reside); and cost effective energy efficiency measures. In the case of funding for accessibility for the handicapped and cost-effective energy efficiency measures, LBP testing and abatement shall be performed only when the rehabilitiation involves removal of walls, doors and windows. The HUD Field Office may determine on a case-by-case basis whether lead-based paint testing and abatement should be allowed for an IHA requesting

special purpose modernization for physical improvements to replace or repair major equipment systems or structural elements (such as, the exterior of buildings). With regard to lead-based paint testing for special purpose modernization, if the project has already been randomly sampled before May 15, 1991, using the criteria found in the June 6, 1988 regulations or after May 15, 1991, using the criteria outlined in paragraph (j)(2) of this section, no further testing is necessary. If, however, the project was not a part of a random sample, then it will be necessary for the IHA to test for special purpose modernization in accordance with paragraph (j)(2) of this section. If lead-based paint is found as a result of previous random testing or current testing, it must be abated.

(A) *Comprehensive, Special Purpose, and Homeownership Modernization in Progress.* With respect to family projects approved for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the United States Housing Act of 1937) which may contain lead-based paint for which funds have been reserved by HUD: (*1*) IHAs that have awarded any construction contract (including A&E contracts) before April 1, 1990, the provisions regarding random testing and abatement in effect at that time of award shall apply and (*2*) IHAs that will advertise for bid or award a construction contract (including architectural and engineering (A&E) contracts) or plan to start force account work on or after April 1, 1990, excluding those contracts solely for emergency work items, shall not execute these contracts until random testing as described in this paragraph has taken place and any necessary abatement as described in paragraph (j) (2), (3) and (4) of this section is included in the modernization budget.

(B) *Applications for Comprehensive, Special Purpose, and Homeownership Modernization Projects.* With respect to applications for family projects for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the United States Housing Act of 1937) which may contain lead-based paint, no construction contracts awarded on or after April 1, 1990 (including architectural and engineering (A&E) contracts and force account work, excluding those contracts solely for emergency work items, shall be executed until random testing as described in paragraph (j) (2), (3) and (4) of this section has taken place and any necessary abatement as described in paragraph (j)(4) of this section is included in the modernization budget.

(C) *Lead-Based Paint Modernization; Other Family Projects Not Undergoing Comprehensive, Special Purpose, or Homeownership Modernization.* Any pre-1978 family projects (assisted under section 14 of the United States Housing Act of 1937) not undergoing comprehensive, special purpose, or homeownership modernization (as covered in paragraph (j)(1)(ii) (A) and (B) of this section) including pre-1978 family projects which *previously have been modernized* with comprehensive, special purpose or homeownership modernization grants under previous regulations shall be randomly tested as described in paragraph (j)(2) of this section and abated as described in paragraph (j)(4) of this section if lead-based paint is found, unless testing and abatement was previously done in accordance with paragraph (j)(1) of this section.

(2) *Random testing.* IHA's shall use random testing on family projects (including homeownership units) constructed prior to 1978 or substantially rehabilitated prior to 1978. It is strongly recommended, but not required, that IHA's use the random testing methodology set forth in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) drafted for the Comprehensive Improvement Assistance Program (CIAP), and other Public and Indian Housing programs, and issued and published at 55 FR 14555, April 18, 1990, part II, with an amendment of chapter 8 and typographical clarifications at 55 FR 39874, as periodically amended or upgraded, and other future outstanding official Departmental issuances in effect at the time of testing. Random testing shall be scheduled or prioritized by age of the family projects and whether the family projects are known to have lead-based paint or the presence of previous EBL's. If evidence of lead-based paint is found in units that were in the random sample, the IHA is required to:

(i) Test the corresponding surfaces where lead-based paint was found in other units of the universe being tested, or

(ii) Abate all like surfaces in that universe without further testing.

For scattered site family projects involving single unit structures that are not contiguous or were built and/or rehabilitated at different times, the IHA shall cause each unit to be tested for lead-based paint. Interior common areas to be sampled include IHA-owned or operated child care facilities. Testing, tenant protection, lead-based paint debris disposal, recordkeeping, and state and local law requirements as described in §§ 965.706, 965.707, 965.708, 965.709 and 965.710, of this chapter shall be followed. Random testing as described in this paragraph (j)(2) is an eligible cost under lead-based paint modernization and is a planning cost as described in § 905.605(d).

(3) *Testing methods.* Testing shall be preformed in accordance with § 965.706(c).

(4) *Abatement methods.* Abatement shall be performed in accordance with § 965.706(d)(2). Abatement within a comprehensive and homeowership modernization project should be prioritized in relation to the immediacy of the hazards to children under seven years of age.

7. In § 905.605, new paragraphs (h) and (i) are added to read as follows:

§ 905.605 Eligible costs.

* * * * *

(h) *Lead-based paint testing.* Lead-based paint testing costs, as described in § 965.706 of this chapter and § 905.120(j) of this part are eligible modernization costs.

(i) *Lead-based paint hazard abatement.* Lead-based paint hazard abatement costs, as described in § 965.706 of this chapter and § 905.120(j) of this part are eligible modernization costs.

8. In § 905.610, paragraphs (c) (1) and (2), (e)(2) and (h) (1), (2) and (3) are revised to read as follows:

§ 905.610 Procedures for obtaining approval of a modernization program.

* * * * *

(c) * * *

(1) A five-year funding request plan, which includes the IHA's estimate of the comprehensive modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects sufficiently to meet the modernization and energy conservation standards in § 905.670, including any special purpose, lead-based paint, and homeownership needs, as well as any emergency needs in the current Federal Fiscal Year.

(2) A preliminary assessment of the total physical and management needs of each project for which the IHA is requesting comprehensive modernization and of the specialized needs of each project for which the IHA is requesting special purpose, lead-based paint, emergency or homeownership modernization in the current Federal Fiscal Year.

* * * * *

(e) * * *

(2) Completing an assessment of the needs of each project for which the IHA is requesting funds in the current Federal Fiscal Year. The IHA will complete a detailed, comprehensive assessment, in a form prescribed by HUD, of the total physical and management needs of each project for which the IHA is requesting comprehensive, lead-based paint or special purpose modernization; except that if the request for a particular project is limited to physical improvements to increase energy efficiency, a specialized assessment will be completed unless HUD determines that there is evidence indicating that the project has major problems that justify a comprehensive assessment. As assessment of specialized physical improvement needs will be completed for each project for which the IHA is requesting emergency or homeownership modernization;

* * * * *

(h) * * *

(1) Group 1, projects having emergency conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant health, or safety or related to fire safety standards. Funding is limited to correction of emergency conditions and may be used for substantial rehabilitation. Emergency conditions include all testing and abatement as required by § 965.706 of this chapter.

(2) Group 2, projects:

(i) Having conditions which threaten tenant health, or safety or having a significant number (10 percent or more) of vacant or substandard units; or

(ii) Other family projects not receiving comprehensive, special purpose, or homeownership modernization funds, and are required to conduct testing and abatement under § 905.120(j)(ii)(C) of this part in order to correct conditions which threaten tenant health or safety; and

(iii) Located in IHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, lead-based paint and homeownership modernization). (Within this group, the Secretary may also give priority to additional factors, such as the correction of physical disparities under the nondiscrimination preference, the project is at the second or subsequent stage of comprehensive modernization, and the need for lead-based paint testing and hazard abatement.)

(3) Group 3, other projects located in IHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, lead-based paint, and homeownership modernization).

* * * * *

9. In § 905.630, paragraph (a) is revised to read as follows:

§ 905.630 Special requirements for homeownership projects.

(a) Promptly after HUD approval of the application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits, undertaking of cost-effective energy conservation measures, or lead-based paint testing and abatement.

* * * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

10. The authority citation for part 941 continues to read as follows:

Authority: Secs. 4, 5, and 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. Section 941.208(h) is revised to read as follows:

§ 941.208 Other Federal requirements.

* * * * *

(h) *Lead-based paint.* All existing properties constructed prior to 1978 (or substantially rehabilitated prior to 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) under this part, including those proposed for Major Reconstruction of Obsolete Projects (MROP) grants, shall be tested for lead-based paint on applicable surfaces (as defined at 24 CFR 965.702). It is strongly encouraged, but not required, that all such properties be tested in accordance with the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) drafted for the Comprehensive Improvement Assistance Program (CIAP), and other Public and Indian Housing programs, and issued and published at 55 FR 14555, April 18, 1990, part II, with an amendment of chapter 8 and typographical clarifications at 55 FR 39874, as periodically amended or updated, and with any other future outstanding official Departmental issuances related to lead-based paint, prior to any irrevocable commitment to acquire the property unless the properties have already been tested in accordance with the Lead-Based Paint Poisoning Prevention Act (LPPPA) as amended by the Housing and Community Development Act of 1987 or, the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines). If lead-based paint is found, the cost of testing and abatement shall be considered when:

(1) Making the cost comparison to justify new construction as well as

(2) Meeting maximum total development cost limitations.

If units containing lead-based paint are acquired, compliance with 24 CFR part 35 and 24 CFR part 965 subpart H is required, and abatement (as described in 24 CFR 965.706(d)(2)) shall be completed prior to occupancy. It is strongly encouraged, but not required, that abatement be conducted as described in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines), or other future outstanding official Departmental issuances related to lead-based paint.

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATIONS

12. The authority citation for part 965 is revised to read as follows:

Authority: Secs. 2, 3, 6, and 9, United States Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d, and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart H is also issued under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846).

§ 965.702 [Amended]

13. In § 965.702, the definition of "Lead-based paint" is amended by removing the period and adding, ", or .5% by weight." at the end of the sentence.

14. Section 965.703 is amended by revising the existing headings for (a) and (b) and by adding a new paragraph (c) to read as follows:

§ 965.703 Notification.

(a) *General LBP Hazard Notification for all Residents.* * * *

(b) *Lead-Based Paint Hazard Notification for Applicants and Prospective Purchasers.* * * *

(c) *Notification of Positive Lead-Based Paint Test Results.* In the event that a PHA-owned low income public housing project constructed or substantially rehabilitated prior to 1978 is tested and the test results using an x-

ray fluorescence analyzer (XRF) are identified as having a lead content greater than or equal to 1.0 mg/cm², or is tested by laboratory chemical analysis (atomic absorption spectroscopy (AAS)) and found to contain .5% lead by weight or more, the PHA shall provide written notification of such result to the current residents, applicants, prospective purchasers, and homebuyers of such units in a timely manner. The PHA shall retain written records of the notification.

§ 965.705 [Removed]

15. Section 965.705 is removed and reserved.

16. In § 965.706, paragraphs (c) and (d)(2) are revised to read as follows:

§ 965.706 Procedures involving EBLs.

* * * * *

(c) *Testing.* Testing shall be completed within five days after notification to the PHA of the identification of the EBL child. It is strongly recommended, but not required, that PHAs use the testing methods outlined in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) for the Comprehensive Improvement Assistance Program (CIAP), and other Public and Indian Housing programs, and issued and published at 55 FR 14555, April 18, 1990, part II, with an amendment of chapter 8 and typographical clarifications at 55 FR 39874, as periodically amended or updated, and other future official departmental issuances related to lead-based paint. A qualified inspector or laboratory shall certify in writing the precise results of the inspection. Testing services available from State, local or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. If the results equal or exceed a level of 1 mg/cm² or .5% by weight, the results shall be provided to the tenant or the family of the EBL child using PHA owned or operated child care facilities. Testing will be considered an eligible modernization cost under part 968 only upon PHA certification that testing services are otherwise unavailable.

(d) * * *

(2) *Abatement methods.* PHAs shall select a safe and cost effective treatment for surfaces found to contain lead-based paint, including clean-up procedures, and are strongly encouraged, but not required, to follow those methods specified in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines), and other future official departmental issuances relating to lead-based paint abatement in effect at the time the surfaces are to be abated. Certain prohibited abatement methods are set forth in 24 CFR 35.24(b)(2)(ii). Final inspection and certification of the treatment shall be made by a qualified inspector, industrial hygienist, or local health official based on clearance levels specified in HUD departmental issuances and guidelines.

17. Section 965.707 is revised to read as follows:

§ 965.707 Tenant protection.

The PHA shall take appropriate action in order to protect tenants, including children with EBLs, other children, and pregnant women, from hazards associated with abatement procedures, and is strongly encouraged, but not required, to take actions more fully outlined in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) and other future official Departmental issuances related to tenant protection in effect at the time the abatement procedure is undertaken. Tenant relocation may be accomplished with CIAP assistance.

18. Section 965.708 is amended by adding at the end of the section the following sentences:

§ 965.708 Disposal of lead-based paint debris.

* * * Additional information covering disposal practices is contained in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) and other future official departmental issuances relating to lead-based paint. In any event, EPA has primary responsibility for waste disposal regulations and procedures.

19. The last sentence in § 965.709 is revised to read as follows:

§ 965.709 Records.

* * * If records establish that a unit, PHA owned or operated child care facility, exterior or interior common area was tested or treated in accordance with the standards prescribed in this subpart, such units, child care facilities, exterior or interior common areas are not required to be re-tested or re-treated.

PART 968—PUBLIC HOUSING MODERNIZATION

20. The authority citation for part 968 continues to read as follows:

Authority: Secs. 6 and 14 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437l); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

21. In § 968.110, paragraph (k) is added to read as follows:

§ 968.110 Other program requirements.

* * * * *

(k) *Lead-based paint poisoning prevention*—(1) *General.* (i) The PHA shall comply with the Lead-Based Paint Poisoning Prevention Act (LPPPA) (42 U.S.C. 4821–4846) and HUD implementing regulations (24 CFR parts 35 and 965, subpart H). The five-year funding request plan for CIAP (as described in § 968.210) shall be amended to include the schedule for lead-based paint testing and abatement. Random testing shall be completed by December 6, 1994 (42 U.S.C. 4822(d)(2)(B)). Testing and abatement shall be completed with respect to all family projects constructed or substantially rehabilitated prior to 1978 approved for (or applications for) comprehensive and homeownership modernization (paragraphs (k)(1)(ii) (A) and (B) of this section); other pre-1978 family projects not undergoing comprehensive and homeownership modernization (paragraph (k)(1)(ii)(C) of this section); and special purpose modernization. Any previous teting or abatement work which was done in accordance with the June 6, 1988 regulation (53 FR 20790) or the Lead-Based Paint Poisoning Prevention Act as amended by the Housing and Community Development Act of 1987 shall not be redone in accordance with the requirements of this section.

(ii) The requirements for lead-based paint testing and abatement apply to the following three categories of special purpose modernization: Vacant unit reduction; accessibility for handicapped (for any dwelling in such housing in which any child who is less than 7 years of age resides or is expected to reside); and cost-effective energy efficiency measures. In the case of funding for accessibility for the handicapped and cost-effective energy efficiency measures, LBP testing and abatement shall be performed only when the rehabilitation involves removal of walls, doors and windows. The Regional/Field Office may determine on a case-by-case basis whether lead-based paint testing and abatement should be allowed for a PHA requesting special purpose modernization for physical improvements to replace or repair major equipment systems or structural elements (such as, the exterior of buildings). With regard to lead-based paint testing for special purpose modernization, if the project has already

been randomly sampled before the date of this rule using the criteria found in the June 6, 1988 regulations or after the date of this rule using the criteria outlined in paragraph (k)(2) of this section, no further testing is necessary. If, however, the project was not a part of a random sample, then it will be necessary for the PHA to test for special purpose modernization in accordance with paragraph (k)(2) of this section. If lead-based paint is found as a result of previous random testing or current testing, it must be abated.

(A) *Comprehensive, Special Purpose, and Homeownership Modernization in Progress.* With respect to family projects approved for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the United States Housing Act of 1937) which may contain lead-based paint for which funds have been reserved by HUD: (*1*) PHAs that have awarded any construction contract (including A&E contracts) before April 1, 1990, the provisions regarding random testing and abatement in effect at that time of award shall apply and (*2*) PHAs that will advertise for bid or award a construction contract (including architectural and engineering (A&E) contracts) or plan to start force account work on or after April 1, 1990, excluding those contracts solely for emergency work items, shall not execute these contracts until random testing as described in this paragraph has taken place and any necessary abatement as described in paragraph (k) (2), (3) and (4) of this section is included in the modernization budget.

(B) *Applications for Comprehensive, Special Purpose, and Homeownership Modernization Projects.* With respect to applications for family projects for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the United States Housing Act of 1937) which may contain lead-based paint, no construction contracts awards on or after April 1, 1990 (including architectural and engineering (A&E) contracts and force account work, excluding those contracts solely for emergency work items, shall be executed until random testing as described in paragraph (k) (2), (3) and (4) of this section has taken place and any necessary abatement as described in paragraph (k)(4) of this section is included in the modernization budget.

(C) *Lead-Based Paint Modernization; Other Family Projects Not Undergoing Comprehensive, Special Purpose, or Homeownership Modernization.* Any pre-1978 family projects (assisted under section 14 of the United States Housing Act of 1937) not undergoing comprehensive, special purpose, or homeownership modernization (as covered in paragraph (k)(1)(ii) (A) and (B) of this section) including pre-1978 family projects which *previously have been modernized* with comprehensive, special purpose or homeownership modernization grants under previous regulations shall be randomly tested as described in paragraph (k)(2) of this section and abated as described in paragraph (k)(4) of this section if lead-based paint is found, unless testing and abatement were previously done in accordance with paragraph (k)(1) of this section.

(2) *Random testing.* PHA's shall use random testing on family projects (including homeownership units) constructed prior to 1978 or substantially rehabilitated prior to 1978. It is strongly recommended, but not required, that PHA's use the random testing methodology set forth in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) drafted for the Comprehensive Improvement Assistance Program (CIAP), and other Public and Indian Housing programs, and issued and published at 55 FR 14555, April 18, 1990, part II, with an amendment of chapter 8 and typographical clarifications at 55 FR 39874, as periodically amended or upgraded, and other future outstanding official Departmental issuances in effect at the time of testing. Random testing shall be scheduled or prioritized by age of the family projects and whether the family projects are known to have lead-based paint or the presence of previous EBL's. If evidence of lead-based paint is found in units that were in the random sample, the PHA is required to:

(i) Test the corresponding surfaces where lead-based paint was found in other units of the universe being tested, or

(ii) Abate all like surface in that universe without further testing.

For scattered site family projects involving single unit structures that are not contiguous or were built and/or rehabilitated at different times, the PHA shall cause each unit to be tested for lead-based paint. Interior common areas to be sampled include PHA-owned or operated child care facilities. Testing, tenant protection, lead-based paint debris disposal, recordkeeping, and state and local law requirements as described in §§ 965.706, 965.707, 965.708, 965.709 and 965.710 of this chapter shall be followed. Random testing as described in this paragraph (k)(2) is an eligible cost under lead-based paint modernization and is a planning cost as described in § 968.205(d).

(3) *Testing methods.* Testing shall be performed in accordance with § 965.706(c).

(4) *Abatement methods.* Abatement shall be performed in accordance with § 965.706(d)(2). Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards to children under seven years of age.

22. Section 968.203 is amended by revising the definition of *comprehensive modernization* and by adding in alphabetical order the definition of *lead-based paint modernization* to read as follows:

§ 968.203 Definitions.

* * * * *

Comprehensive modernization. A modernization program for a project which provides for all needed physical and management improvements. Under CIAP, all modernization programs are comprehensive modernization, except those defined as emergency, homeownership, lead-based paint or special purpose.

* * * * *

Lead-based paint modernization. A modernization program for a family project that is limited to lead-based paint testing and lead-based paint hazard abatement as prescribed in § 968.110(k)(1)(ii)(C). For such projects, management improvements are not eligible modernization costs.

* * * * *

23. In § 968.205, new paragraphs (h) and (i) are added to read as follows:

§ 968.205 Eligible costs.

* * * * *

(h) *Lead-based paint testing.* Lead-based paint testing costs, as described in § 965.706 of this chapter and § 968.110(k) of this part are eligible modernization costs.

(i) *Lead-based paint hazard abatement.* Lead-based paint hazard abatement costs, as described in § 965.706 of this chapter and § 968.110(k) of this part are eligible modernization costs.

24. In § 968.210, paragraphs (c) (1) and (2), (e)(2) and (h) (1), (2) and (3) are revised to read as follows:

§ 968.210 Procedures for obtaining approval of a modernization program.

* * * * *

(c) * * *

(1) A five-year funding request plan, which includes the PHA's estimate of

the comprehensive modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects sufficient to meet the modernization and energy conservation standards in § 968.115, including any special purpose, lead-based paint, and homeownership needs, as well as any emergency needs in the current Federal Fiscal Year.

(2) A preliminary assessment of the total physical and management needs of each project for which the PHA is requesting comprehensive modernization and of the specialized needs of each project for which the PHA is requesting special purpose, lead-based paint, emergency or homeownership modernization in the current Federal Fiscal Year.

* * * * *

(e) * * *

(2) Completing an assessment of the needs of each project for which the PHA is requesting funds in the current Federal Fiscal Year. The PHA will complete a detailed, comprehensive assessment, in a form prescribed by HUD, of the total physical and management needs of each project for which the PHA is requesting comprehensive, lead-based paint or special purpose modernization; except that if the request for a particular project is limited to physical improvements to increase energy efficiency, a specialized assessment will be completed unless HUD determines that there is evidence indicating that the project has major problems that justify a comprehensive assessment. An assessment of specialized physical improvement needs will be completed for each project for which the PHA is requesting emergency or homeownership modernization;

* * * * *

(h) * * *

(1) Group 1, projects having emergency conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant health, or safety or related to fire safety standards. Funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation. Emergency conditions include all testing and abatement as required by § 965.706 of this chapter.

(2) Group 2, projects:

(i) Having conditions which threaten tenant health, or safety or having a significant number (10 percent or more) of vacant or substandard units; or

(ii) Other family projects not receiving comprehensive, special purpose, or homeownership modernization funds, and are required to conduct testing and abatement under § 968.110(k)(ii)(C) of this part in order to correct conditions which threaten tenant health or safety; and

(iii) Located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, lead-based paint and homeownership modernization). (Within this group, the Secretary may also give priority to additional factors, such as the correction of physical disparities under the nondiscrimination preference, the project is at the second or subsequent stage of comprehensive modernization, and the need for lead-based paint testing and hazard abatement.)

(3) Group 3, other projects located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, lead-based paint, and homeownership modernization).

* * * * *

25. In § 968.230, paragraph (a) is revised to read as follows:

§ 968.230 Special requirements for homeownership projects.

(a) Promptly after HUD approval of the application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits, undertaking of cost-effective energy conservation measures, or lead-based paint testing and abatement.

* * * * *

Dated: March 22, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-8653 Filed 4-11-91; 8:45 am]

BILLING CODE 4210-33-M

federal register

Monday
April 15, 1991

Part VII

United States Information Agency

Department of the Treasury

Customs Service

Determination for Guatemala's Request—Peten Region; Notice

19 CFR Part 12
Import Restrictions Imposed on Archaeological Artifacts From Guatemala; Final Rule

UNITED STATES INFORMATION AGENCY

Determination for Guatemala's Emergency Request—Peten Region

AGENCY: United States Information Agency.

ACTION: Determination for Guatemala's Emergency Request—Peten Region.

Convention on Cultural Property Implementation Act (Pub. L. 97–446); Import Restrictions on Archaeological Material from Guatemala. Pursuant to the authority vested in me under Executive Order 12555, and delegation Order No. 86–3 of March 18, 1986 (51 FR 10137).

Findings

I hereby find:

(1) That the Government of Guatemala made a request to the United States Government of the type and in the form required by sec. 303(a) of the Act, 19 U.S.C. 2602 (a), on October 3, 1989, seeking emergency U.S. import restrictions and has supplied information which supports a determination that an emergency conditioin exists with respect to archaeological material from the Peten region, which material was identified as comprising a part of Guatemala's cultural patrimony pillaged, or in danger of being pillaged, in crisis proportions;

(2) That pursuant to sec. 303(f)(1), 19 U.S.C. 2602(f)(1), notification of this request was published in the **Federal Register** on October 23, 1989, 54 FR 24914;

(3) That pursuant to sec. 303(f)(2), 19 U.S.C. 2602(f)(2), this request was submitted to the Cultural Property advisory Committee on November 14, 1989, for investigation, review and recommendation;

(4) That on February 9, 1990, the Committee transmitted to me its Report within the statutory ninety (90) day period prescribed in section 304(c)(2), 19 U.S.C. 2603(c)(2);

(5) That the Committee, in accordance with the requirements of sec. 306(f), 19 U.S.C. 2605(f), has thoroughly considered this request and has investigated the situation described in it;

(6) That the Committee recommends that emergency import restrictions be imposed on archaeological material from the Peten region;

(7) That the archaeological material involved here satisfies the definition in sec. 302(2)(i), 19 U.S.C. 2601(2)(i), in that it is of cultural significance, at least two hundred and fifty years old, and normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or underwater;

(8) That the Peten region is defined as an area of approximately 40,000 square kilometers which shares a border to the north with Campeche, Mexico, and to the east with Belize. To the west, it is bound by the Rio Usumacinta and Chiapas, Mexico, and to the south by the Guatemalan Highlands;

(9) That archaeological material from the Peten Region is part of the remains of a particular culture (i.e. the Lowland Maya culture) and that the record of the Maya culture found in the Peten region is in jeopardy from pillage, dismantling, dispersal or fragmentation which is, or threatens to be of crisis proportions;

(10) That the imposition of emergency import restrictions on a temporary basis would, in whole or in part, reduce the incentive for pillage, dismantling, dispersal or fragmentation.

Determinations

Now, therefore, in accordance with the aforementioned authority vested in me, I hereby determine:

(1) That, pursuant to section 304(b) of the Act, 19 U.S.C. 2603(b), an emergency condition exists with respect to the archaeological material from the peten region as part of the remains of the Lowland Maya culture.

(2) That the import restrictions set forth in section 307, 19 U.S.C. 2606, be applied to the archaeological materials from the Peten Region and forming part of the remains of the Lowland Maya culture.

Dated: December 11, 1990.

Eugene P. Kopp,

Deputy Director United States Information Agency.

[FR Doc. 91–8796 Filed 4–12–91; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 91-34]

Import Restrictions Imposed on Archaeological Artifacts from Guatemala

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by imposing emergency import restrictions on pre-Columbian culturally significant archaeological artifacts from the Peten region of Guatemala. These restrictions are being imposed pursuant to a Determination of the United States Information Agency issued under authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Donnette Rimmer, Intellectual Property Rights Branch (202) 566-6956.

Operational Aspects: Pamela Wenner, Trade Operations (202) 535-4931.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably make them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*). The spirit of the Convention was enacted into law to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. The U.S. is, to date, the only major art importing country to implement the 1970 Convention.

Customs issued regulations to carry out the provisions of the Act as T.D. 86-52, published in the **Federal Register** on February 27, 1986 (51 FR 6905), which took effect on March 31, 1986. Those regulations were amended by T.D. 90-3, on January 19, 1990 (55 FR 1809), so that the public would have a listing of countries and those T.D.s which contained detailed information on articles for which import restrictions had been imposed under of the Act.

This document amends the listing by adding the name of State Party "Guatemala" and the description of the archaeological material from the Peten Archaeological Region contained in this T.D. to the regulations. The document further describes the cultural property from the Peten Archaeological Region for which import restrictions exist.

Guatemala

Under section 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), the Government of Guatemala, a State Party to the 1970 UNESCO Convention, asked the U.S. Government to impose emergency import restrictions on certain archaeological materials from the Peten region of Guatemala. This material, identified as comprising part of Guatemala's cultural patrimony, the record of the Maya culture found in the Peten region, was being pillaged, or is in danger of being pillaged, in crisis proportions. Notice of receipt of this request was published by the U.S. Information Agency (USIA) in the **Federal Register** on October 23, 1989 (54 FR 43213).

On November 14, 1989, the request was referred to the Cultural Property Advisory Committee, which conducted a review and investigation, and submitted its report in accordance with the provisions of 19 U.S.C. 2605(f) to the Deputy Director, USIA, on February 9, 1990. The Committee found the situation in Guatemala to be an emergency, in accordance with the provisions of 19 U.S.C. 2603(a)(3), and recommended that emergency import restrictions be imposed on archaeological material from the Peten region. The Deputy Director, pursuant to the authority vested in him under Executive Order 12555 and USIA Delegation Order 86-3, considered the Committee's recommendations and made the determination that emergency import restrictions be applied. (See this issue of the **Federal Register**.)

The Commissioner of Customs, in consultation with the Deputy Director of the USIA, has drawn up a list of types of covered archaeological material from the Peten region of Guatemala. The materials on the list are subject to § 12.104a(b), Customs Regulations. As provided in 19 U.S.C. 2601 *et seq.*, and § 12.104a(b), Customs Regulations, listed material from this area may not be imported into the U.S. unless accompanied by documentation certifying that the material left Guatemala legally and not in violation of the laws of Guatemala.

In the event an importer cannot produce the certificate, documentation, or evidence required by § 12.104c, Customs Regulations, at the time of making entry, § 12.104d provides that the district director shall take custody of the material until the certificate, documentation, or evidence is presented. Section 12.104e provides that if the importer states in writing that he will not attempt to secure the required certificate, documentation, or evidence, or the importer does not present the required certificate, documentation, or evidence to Customs within the time provided, the material shall be seized and summarily forfeited to the U.S. in accordance with the provisions of part 162, Customs Regulations (19 CFR part 162).

These import restrictions of smaller, portable archaeological material are a logical extension of the restrictions imposed by the 1972 Pre-Columbian Monumental or Architectural Sculpture or Murals Statute (19 U.S.C. 2091-2095), which denied entry into the United States of segments of Maya monuments and stelae from the Peten region since May 2, 1973.

Archaeological Material From the Peten Region, Guatemala

The Peten Region has yielded pre-Hispanic ceramic, stone, shell and bone artifacts. The Peten region is defined as an area of approximately 40,000 square kilometers which shares a border to the north with Campeche, Mexico and to the east with Belize. To the west, it is bound by the Rio Usumacinta and Chiapas, Mexico and to the south by the Guatemalan Highlands. The archaeological material from the Peten region is part of the remains of the Lowland Maya Culture. As this region is further excavated, it is expected that other similar artifacts may be discovered. The following is a non-inclusive list of types of artifacts which have been identified as originating in the Peten region.

I. Ceramics

(Dimensions are approximate)

Ceramic vessels and other ceramic forms from the Peten region are decorated with one or a combination of two decorative techniques, regardless of the vessel's color. The decorative techniques are:

- Altering the smooth surface with incisions, punctures channels and similar work, or by adding feet or bases, or handles;
- Adding decorative designs, such as buttons, curls, little faces and similar designs, or especially by painting with two or more colors.

The types of ceramic forms are:

A. Common Vessels

1. Vases with straight or rounded sides, sometimes with 3 feet, pedestal base or lid. Height, 9.9–29 cm.
2. Bowls, sometimes with feet, base, or lid. Height, 8.7–21.5 cm.
3. Dishes and plates, sometimes with 3 or 4 feet. Diameter, 17–62 cm.
4. Jars. Height, 16–38 cm.

B. Special Ceramic Forms

1. Drums. Height, 35–75 cm.
2. Figurines. Height, 5–6 cm.
3. Whistles. Height, 6–15 cm.
4. Miniature vessels. Height, 5–12 cm.
5. Stamps/Seals.
6. Effigy vessels. Height, 16–30 cm.
7. Incense Burners.

II. Stone

(Dimensions are approximate)

Moveable stone artifacts from the Peten region are made from the following mineral components:

A. Jade or Green Stone, May Have Traces of Red Pigment

1. Masks. Height, 14.5–28 cm.
2. Jaguar Figure. Length, 15 cm.
3. Earplug. Diameter, 3.5–9 cm.

B. Obsidian Length, 3–20 cm.

C. Flint Length, 10–15 cm.

D. Alabaster or Calcite Height (Vase), 6–23 cm.

III. Shell

(Dimensions Are Approximate)

Shell artifacts from the Peten region may be carved or incised into human or animal or other shapes and designs and may have traces of red pigment. Height, 4–6.5 cm; length, 5–32 cm; diameter, 5–7 cm.

IV. Bone

(Dimensions are approximate)

Bone artifacts from the Peten region may be carved or incised into human or animal or other shapes and designs and may have traces of red pigment. Length, 6.5–7 cm.

Regulatory Flexibility Act

Because no Notice of Proposed Rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Inapplicability of Notice and Delayed Effective Date

Because this amendment imposes emergency import restrictions on cultural property which is currently subject to pillage and looting, pursuant to section 553(b)(B) of the Administrative Procedure Act, no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is both impracticable and contrary to the public interest.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, part 12 of the Customs Regulations (19 CFR part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general and specific authority citation for part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.* * * §§ 12.104–12.104i also issued under 19 U.S.C. 2612.

§ 12.104g [Amended]

2. Section 12.104g(b) is amended by adding "Guatemala" under the column headed "State Party", the description "Archaeological material from the Peten Archaeological Region forming part of the remains of the ancient Maya culture" under the column headed "Cultural Property", and "91–34" in the column headed "T.D. No."

Carol Hallett,

Commissioner of Customs.

Approved: April 10, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91–8788 Filed 4–12–91; 8:45 am]

BILLING CODE 4820-02-M

federal register

Monday
April 15, 1991

Part VIII

Department of Defense

Office of the Secretary

Recommended Base Closures and Realignments; Notice

DEPARTMENT OF DEFENSE BILLING CODE: 3810-01

Office of the Secretary

AGENCY: Department of Defense (DoD)

ACTION: Recommended Base Closures and Realignments

SUMMARY: The Secretary of Defense is authorized to recommend military installations inside the United States for closure and realignment in accordance with title XXIX, part A of the FY 1991 National Defense Authorization Act. He is required to publish his recommendations in the Federal Register by April 15th. The recommendations follow.

EFFECTIVE DATE: April 15, 1991

FOR A REPORT ON THE DOD RECOMMENDATIONS CONTACT: The Office of the Assistant Secretary of Defense for Public Affairs, Directorate of Public Communication, (703) 697-5737

P.H. Means
OSD Federal Register
Liaison Officer
Department of Defense

April 11, 1991

Recommended Base Closures and Realignments

Introduction

Pursuant to Title XXIX of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), this document contains the list of military installations that the Secretary of Defense recommends for closure or realignment on the basis of the force structure plan and the final criteria established under Public Law 101-510.

To implement Title XXIX of P.L. 101-510, the Deputy Secretary of Defense issued general policy guidance on December 10, 1990, to the Secretaries of the Military Departments, the Directors of Defense Agencies and key DoD staff. In that guidance the Assistant Secretary of Defense for Production and Logistics (ASD(P&L)) was authorized to issue implementing instructions and ensure consistency in the DoD base closure and realignment process.

ASD(P&L) formed a steering committee of representatives from the Military Departments, Joint Chiefs of Staff, and key Department of Defense staff. This steering committee developed the final base closure criteria and coordinated several implementing policy memoranda. The Military Departments, under the general guidance of ASD(P&L), each adopted implementing processes tailored to their unique missions and organizational structures.

The Secretaries of the Military Departments reported to the Secretary of Defense their nominations for closure or realignment based on the force structure plan and final criteria established under Public Law 101-510.

As required by law, this document includes a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation.

Department of the Army

Summary of Selection Process

Introduction

The Army is reducing its force structure and tailoring its base structure in light of changes in the world situation and the reduction in resources devoted to national defense. By 1995, the Army will have 12 active divisions, 6 fewer than in 1990. The end strength of the Army will decline by almost 30 percent, with the majority of that decline overseas.

In projecting future force reductions, the Army has focused on maintaining sufficient forces in the Active Component to satisfy crisis and contingency response, and forward presence requirements, and on a structure for domestically based reinforcing forces that relies primarily on the Reserve Components.

The Selection Process

The Army has performed a detailed study of its installations to determine which, based on the final criteria and the force structure plan established under Title XXIX of Public Law 101-510, should be closed or realigned. In making its choices, the Army determined which bases would serve well into the next century.

The Army began its Total Army Basing Study by determining the military value of its bases, as defined by the first four and the seventh of the final criteria. After grouping its installations for comparative purposes, the Army produced a baseline from which to formulate and gauge reasonable realignment/closure alternatives. The Army categorized bases according to like missions, capabilities, and attributes, without regard to whether the base was previously considered for closure or realignment.

In determining military value, the Army evaluated bases that historically performed the same types of missions and determined their military value relative to the entire Army. Each installation within a particular category was measured against a set of uniform attributes relative to the category's mission. Installations were judged on their relative overall value in a category, rather than by capacity for current mission needs. The Army weighed the attributes to assess a starting point in the evaluation of

the base structure. The ranking alone does not produce a decision, but represents a logical basis for judging possible opportunities for closure and realignment.

Next, the Army began the process of selecting bases for realignment and closure. The Army screened installations to determine whether any should be excluded from active consideration during this process. To do this, the Army considered the force structure plan, assessments of military value, and visions of the future to identify reasonable candidates for more detailed study. Then the study focused on whether the cost of the closure or realignment package would provide a return on investment. After considering the potential impacts on the environment and local economies, recommendations were presented to senior Army leaders. As this study progressed, those alternatives considered not feasible were eliminated. The Army routinely met with the Air Force and the Navy representatives to discuss the potential for interservice asset sharing.

The Army established internal controls to ensure that data were collected and assessed in a consistent and equitable manner. Standard attributes to quantify and measure the operational efficiencies, expandability, and quality of life for a base were established. The Army Audit Agency tracked the data used to quantify each attribute, performed random testing of data at Major Commands, verified the calculations, and evaluated the reasonableness of the procedures used.

The Secretary of the Army, with the advice of the Chief of Staff of the Army, nominated bases to the Secretary of Defense for closure and realignment based on the force structure plan and final criteria established under Public Law 101-510. The Secretary of Defense recommends the following Army bases for closure or realignment pursuant to Public Law 101-510:

Recommendations and Justifications

Fort Benjamin Harrison, Indiana

Recommendation: Close Fort Benjamin Harrison, retain the Department of Defense Finance and Accounting Service, Indianapolis Center. This proposal is a revision to the recommendations of the 1988 Base Closure Commission; the U. S. Army Recruiting Command (USAREC) will now relocate from Fort Sheridan to Fort Knox, KY rather than to Fort Benjamin Harrison. Realign the Soldier Support Center (U.S. Army Adjutant General and Finance Schools) from Fort Benjamin Harrison, IN, to Fort Jackson, SC to initiate the Soldier Support Warfighting Center.

Justification: The Army is creating a "vision of the future" for the Training and Doctrine Command (TRADOC) which incorporates the need for reduced training loads as the force structure decreases and also recommends management initiatives that will reduce expenditures. Part of this TRADOC "vision" calls for the creation of a Soldier Support Warfighting Center which will eventually collocate the Adjutant General, Finance, Staff Judge Advocate General and Chaplain schools. The collocation of these branches enhances their synergistic effect by training as a team similar to the manner in which they are employed. Although force structure reductions do not dictate specific base structure changes in the training installation category, they do suggest that adjustments are possible through operational and management changes. Fort Benjamin Harrison has a small TRADOC mission. The training functions are important but require less unique, special, or extensive facilities or acreage than other training schools. Expansion external to the property line is limited and would be expensive.

Retaining the DOD Finance and Accounting Service, Indianapolis Center in Building 1, the second largest administrative building in the DOD inventory, will allow continued operations without engaging in costly leases or incurring moving costs at this time. Diverting the realignment of USAREC to Fort Knox, KY, places USAREC on an active duty installation with its own airfield, hospital, family housing and other Army community services once Fort Benjamin Harrison is closed. This action can occur in a time frame consistent with the closure of Fort Sheridan. USAREC's realignment costs to Fort Knox are less than to Fort Benjamin Harrison.

Closure of Fort Benjamin Harrison has an immediate return on investment. Implementing this recommendation will save $59M, including $104M in land value. Annual savings after implementation are expected to be $36M. One building at Fort Benjamin Harrison is on the National Register of Historic sites; additional buildings are potentially eligible. Ground water and asbestos remedial actions are required and other cleanup costs are likely. The current environmental restoration cost estimate is $4 million. Closure may results in a potential employment change of -1% in the Indianapolis area, +2% at Fort Jackson, and +3% at Fort Knox. Future reuse of facilities after disposal may mitigate this impact. Reserve components require a small enclave carved out to house current USAR activities.

Fort Chaffee, Arkansas

Recommendation: Close Fort Chaffee, retaining the facilities and training area to support Reserve Component (RC). The permanent stationing of the current Active Component tenant, the Joint Readiness Training Center (JRTC) at Fort Polk, LA is outlined in another paper (Fort Polk).

Justification: All the installations in the major training area category have similar military value, except for Fort Irwin, CA, which ranked first by a wide margin. Study of the installations in this category, including Fort Chaffee, was driven by the desire to reduce overall manpower and costs while increasing the training opportunities for their primary users, the Army National Guard and Army Reserve.

When Fort Chaffee was designated the temporary location of the JRTC, Army National Guard and US Army Reserve training was constrained by active component requirements for training areas and facilities. This realignment will eliminate constraints to training and better support RC units in the geographic area. While Reserve Component end strength will decline by FY 95, changes in force structure by geographic region have not been determined. In fact, while a given area may lose force structure, other units requiring training in that area may make it impossible to close an installation. Further analysis of RC force structure and training requirements remains to be done. The transfer of Fort Chaffee to the Reserve Component, coupled with the realignment of the 5th ID (MX) from Fort Polk to Fort Hood and the permanent stationing of the JRTC at Fort Polk, provides a return on investment four years after the completion of the realignment.

Implementing this recommendation (including the transfer of JRTC from Fort Chaffee to Fort Polk, the 5th ID (MX) from Fort Polk to Fort Hood and the 199th SMB from Fort Lewis to Fort Polk) will cost $256M. Annual savings after implementation are expected to be $23M. The environmental impact will be positive at Fort Chaffee. Action may result in a potential loss of 6.1 percent of jobs in the local community. Oil and gas drilling activities on the installation may mitigate that impact. Since training tempo will decline in the near future, land use may be reduced. However, drilling associated with oil and gas leases managed by the Bureau of Land Management will continue.

Fort Devens, Massachusetts

Recommendation: Close Fort Devens, retaining only facilities to support Reserve Component training requirements. This proposal is a revision to the recommendations of the 1988 Base Closure Commission that directed the relocation of HQ, Information Systems Command (ISC), and supporting elements to Fort Devens from Forts Huachuca, AZ, Monmouth, NJ, and Belvoir, VA, and leased space in the National Capital Region. It is more cost effective to leave HQ, ISC, where it is currently located. This recommendation would: create a small reserve enclave on Fort Devens main post and retain approximately 3,000 acres for use as a regional training center; dispose of the remainder of the post; retain HQ, Information Systems Command (ISC) and supporting elements at Fort Huachuca, AZ and Fort Monmouth, NJ; relocate 10th Special Forces Group (SFG) (Airborne) from Fort Devens, MA, to Fort Carson, CO; relocate selected ISC elements from Fort Belvoir, VA, to Fort Ritchie, MD or another location within the National Capital Region. Essential facilities and training areas will be retained; excess facilities and land will be sold.

Justification: The decision to transfer Fort Devens to the Reserve Components was driven by the need to reduce the number of command and control installations. A review of the Army's requirements in this category revealed that all missions located on post or scheduled to be realigned to the post could be accommodated at other installations within the current structure with little or no effect on the readiness of active units. Retaining a reserve enclave and training facility was necessitated by the desire to maintain the readiness of the numerous reserve component units from the New England area that currently depend on the facilities at Fort Devens for training. The relocation of the 10th SFG has been under study by the Army for quite some time because of the inadequate training land available at Ft Devens.

The Army will need fewer command and control installations in the future. Of the Army's Command and Control installations, Fort Devens was ranked 9 out of 11 in military value. It is not critical to either the mid-term management of the Army's build-down or the long-term strategic requirements of the Army's command and control installation structure. The closure of Fort Devens and the transfer to the Reserve Components has an immediate return on investment upon completion.

Implementing this recommendation will save $143M, including $112M in land value. Annual savings after implementation are expected to be $55M. Environmental mitigation will be required. Asbestos abatement and other remedial actions are likely. The recommendation may result in a potential employment change of -3.5% in the Fort Devens area. There is great potential for reuse of facilities which can be expected to mitigate impact. The Reserve Components would retain a small enclave on main post and run the training area. This will incur a small annual cost for personnel and maintenance of the facilities and training area.

Fort Dix, New Jersey

Recommendation: Close Fort Dix, retaining only facilities to support Reserve Component (RC) training requirements. This recommendation, which is a change to the recommendation of the 1988 Base Closure Commission, relocates active organizations without a direct RC support mission except those which cannot be accommodated elsewhere. Essential facilities and training areas will be retained; excess facilities and land will be sold.

Justification: This proposal retains facilities and training areas essential to support ARNG and USAR units in the Mid-Atlantic states. However, it reduces base operations and real property maintenance costs considerably by eliminating excess facilities and relocating non-RC support tenants. While Reserve Component end strength will decline by FY 95, changes in force structure by geographic region have not been determined. In fact, while a given area may lose force structure, other units requiring training in that area may make it impossible to close an installation. Further analysis of RC force structure and training requirements remains to be done. All the installations in the major training area category have similar military value, except for Fort Irwin, CA, which ranked first by a wide margin. Study of the installations in this category, including Fort Dix, was driven by the desire to reduce overall manpower and costs while increasing the training opportunities for their primary users, the Army National Guard and Army Reserve.

The Fort Dix recommendation has an immediate return on investment. Implementing this recommendation will save $116M, including $83M in land value. Annual savings after implementation are expected to be $34M. Overall environmental impact will be minimal, because training will continue. There is a sanitary landfill which is on the National Priority List (NPL). A Remedial Investigation/Feasibility Study (RI/FS) of the installation is ongoing. The planned waste water treatment facility will be funded in FY 94, at the 4.6 million gallons per day rate to ensure compliance with New Jersey State clean water regulations when facilities are excessed. This proposed realignment may result in a potential loss of 0.9 percent of jobs in the community, a reduction additive to losses predicted (1.8 percent) as a result of the change to "semi-active" status under the 1988 Base Closure Commission. Future reuse of facilities after disposal may be expected to mitigate some of the impact to the local economy. By relocating active tenants and excessing property and facilities no longer required for RC training, substantive reductions to operating costs can be achieved without any degradation of that training. The Air Force is interested in assuming some of the family housing units on Fort Dix; the number will be determined after a study of the requirement.

Fort McClellan, Alabama

Recommendation: Close Fort McClellan. Realign the U.S. Army Chemical and Military Police schools to Fort Leonard Wood, MO; realign the Department of Defense Polygraph School to Fort Huachuca, AZ; retain Pelham Range, the Special Operations Test Site (SOTS) and a reserve enclave; place in caretaker status, the Chemical Decontamination Training Facility (CDTF). Create the Maneuver Support Warfighting Center at Fort Leonard Wood.

Justification. The Army is creating a "vision of the future" for the Training and Doctrine Command (TRADOC) which incorporates the need for reduced training loads as the force structure decreases and also recommends intelligent management initiatives that will reduce expenditures. Part of this vision calls for the creation of a Maneuver Support Warfighting Center which collocates the Army Engineer, Chemical and Military Police schools. The collocation of these branches enhances the synergistic effect of chemical, military police and engineer units by training as a team similar to the manner in which they would be tactically employed. Although force structure reductions do not dictate specific base structure changes in the training installation category, they do suggest that adjustments are possible through operational and management changes. Fort McClellan is the home of the smallest Army Training Center. The skills produced there represent about 5% of the Total Force and the respective schools can be reestablished on another installation which otherwise will be operating at less than current capacity with the smaller force. Return on investment is 2 years. Proceeds from the sale of excess land are projected but some areas will require environmental restoration prior to disposal.

Implementing this recommendation will result in a net cost of $28M, including $49M in land value. Annual savings after implementation are expected to be $26M. Fort McClellan is currently undergoing investigation to generate data necessary to score the site under the Environmental Protection Agency's Hazard Ranking System. An Enhanced Preliminary Assessment has been completed. Ground water and asbestos remedial actions are required and other cleanup costs are likely. Closure may results in a potential employment change of -18% in the Fort McClellan area, +16% at Fort Leonard Wood, and +0.3% at Fort Huachuca (economic impact for all recommended actions at Fort Huachuca is +8% employment change). Future reuse of facilities after disposal may mitigate impact. Army reserve components will require a small enclave carved out for use.

Additionally, this proposal recommends licensing Pelham Range and carving out selected facilities for use by the Alabama Army National Guard. Under a separate 1988 Base Closure Commission action, part of the ground communications maintenance workload currently at Sacramento Army Depot (SAAD), CA will transfer from SAAD to Anniston Army Depot, AL. Additionally, tactical missile maintenance workload will move from Anniston Army Depot, AL, to Letterkenny Army Depot, PA.

Fort Ord, California

Recommendation: Close Fort Ord and relocate 7th Infantry Division (Light) to Fort Lewis, WA.

Justification: The decision to close Fort Ord is based upon required force structure reductions by 1995 and the Army's reduced requirement to house divisions in the United States. Force structure and budget reductions require the Army to close several installations while maximizing use of those remaining installations with the highest military value. By 1995, the Army will have 12 Active divisions. It currently has the capacity to house 13 divisions in the U.S. Based on force structure decisions already made, the Army has excess capacity to station at least one division. Fort Ord was selected for closure because it ranks relatively low among the Army's fighting bases in military value. The closure of Fort Ord and relocation of the 7th ID (L) to Fort Lewis is the best way to reduce excess capacity, maintain flexibility, and capitalize on the superior deployability and operational security attributes of Fort Lewis. Because of the downsizing of the 9th ID in FY 90 to the 199th Separate Motorized Brigade, Fort Lewis has excess capacity and can easily absorb the 7th ID (L). The 199th Separate Motorized Brigade, will relocate to Fort Polk, LA.

Fort Ord requires the use of a civilian airport, since the military airfield is not fully capable of handling C-141 aircraft. Those war fighting installations ranking below Fort Ord were not recommended for closure due to strategic location or because final disposition decisions for major units have not been made. Closing Fort Ord provides an immediate return on investment. Proceeds from the sale of excess land are projected. Implementing this recommendation will save $362M, including $400M in land value. Annual savings after implementation are expected to be $70M. Environmental impacts will be positive because air and noise pollution sources will be eliminated. The estimated socio-economic impact of the closure of Fort Ord is a potential loss of 17.5 percent of jobs in the local community. Future reuse of facilities after disposal may be expected to mitigate this impact. A Reserve Component enclave will be established to accommodate missions which cannot be relocated. The Navy is interested in assuming some of the family housing units on Fort Ord; the number will be determined after a study of the requirement.

Sacramento Army Depot, California

Recommendation: Close Sacramento Army Depot. Transfer the ground communication electronic maintenance workload from Sacramento Army Depot, CA, to Tobyhanna Army Depot, PA, Anniston Army Depot, AL, Red River Army Depot, TX, Letterkenny Army Depot, PA, and Corpus Christi Army Depot, TX. Retain 50 acres for Reserve Component (RC) use.

Justification: The decision to close Sacramento was driven by the need to consolidate functions in a time of decreasing resources. Based upon commodity studies done by the Services, the Defense Depot Maintenance Council (DDMC) evaluated DoD depot capacity in 21 separate studies and concluded that the Sacramento workload could be more economically and efficiently accommodated at other depots. Sacramento Army Depot is rated 7 out of 10 in the military value matrix. The three depots rated lower than Sacramento have critical ammunition missions that would preclude closure. Sacramento Army Depot is one of two "electronic repair" depots. High labor rates are a key reason the DDMC recommended shifting workload to other depots with idle capacity. Closure of Sacramento provides an immediate return on investment. Land value of zero was used in the analysis. The depot real estate (less 50 acres for the RC) is programmed for disposal after cleanup. Implementing this recommendation will save $31M excluding any land value. Annual savings after implementation are expected to be $56M.

Sacramento Army Depot is a National Priority List site. The Enhanced Preliminary Assessment is finished. Ground water and asbestos remedial actions are required and other cleanup costs are likely. Closure of the depot and redistribution of workload results in an employment change of -0.8% at Sacramento. Future reuse of Sacramento facilities after disposal may be expected to mitigate impact. Reserve components would retain 50 acres to house current USAR activities and to collocate activities in the region currently in leased space. Information Systems Command tenant will be relocated to Fort Lewis, WA. DLA supply activities would likely be moved to one of the facilities of Defense Depot West at Tracy or Sharpe Depots, both in California.

Aviation Systems Command And Troop Support Command
Saint Louis, Missouri

Recommendation: Merge Aviation Systems Command and Troop Support Command (AVSCOM/TROSCOM), St. Louis, MO, as part of the Inventory Control Point (ICP) consolidation under a Defense Management Report decision.

Justification: To improve efficiency of Army logistics, the Army's implementation of the Defense Management Report includes the consolidation of Inventory Control Points. The merging of AVSCOM and TROSCOM into one organization accomplishes part of the Defense Management Report by consolidating these organization in place. Military value in the form of management and costs efficiency was the driving factor for this recommendation. Of all the commodity oriented installations, the Price Support Center and the Saint Louis Federal Center which house the elements of AVSCOM and TROSCOM are rated 10 and 15 of 15, respectively. Neither facility will close under this recommendation. Merging AVSCOM and TROSCOM in place provides an immediate return on investment. Implementing this recommendation will save $31M. Annual savings after implementation are expected to be $23M. There are no foreseen environmental impacts as a result of this proposal. Realignment results in a potential employment change of -0.1% in the Saint Louis, MO area due to personnel reductions which will be achieved by the merger of the two organizations.

Fort Polk, Louisiana

Recommendation: Realign 5th Infantry Division (Mechanized) to Fort Hood, TX from Fort Polk, LA; the Joint Readiness Training Center (JRTC) from Fort Chaffee, AR, to Fort Polk; in addition, realign 199th Separate Motorized Brigade (SMB) from Fort Lewis, WA to Fort Polk. The transfer of Fort Chaffee, AR to the Reserve Component is discussed in another paper (Fort Chaffee).

Justification: Realigning the 5th ID (MX) to Fort Hood allows the Army to fully utilize its finest fighting installation (Fort Hood) and to station the JRTC at the installation best suited to its requirements (Fort Polk). Fort Hood is the only installation which can house two divisions; fully utilizing the installation optimizes base operations. Fort Hood also ranks first in military value among fighting installations. Its ranges and training areas are outstanding as is its ability to support deployment. Realigning the 199th SMB operating force from Fort Lewis to Fort Polk enhances the training capability at JRTC as well as frees space at Fort Lewis for the 7th Infantry Division (Light). Fort Polk's military value is average relative to other similar installations; however, it has excellent permanent facilities and training areas ideally suited to light fighters.

The realignment of 5th ID (MX) and the 199th SMB, coupled with the transfer of Fort Chaffee to the Reserve Component (current temporary site of JRTC), provides a return on investment four years after the completion of the realignment. Implementing this recommendation (including the transfer of JRTC from Fort Chaffee to Fort Polk, the 5th ID (MX) from Fort Polk to Fort Hood and the 199th SMB from Fort Lewis to Fort Polk) will cost $256M. Annual savings after implementation are expected to be $23M. Increases in population or in training tempo at Forts Hood and Polk could have minor adverse impact on the environment, principally in the areas of air pollution and land use. The proposed decrease in population at Fort Polk may result in a potential loss of approximately 25 percent of jobs in the area. Even with the JRTC and the 199th SMB, Fort Polk affords the Army with expansion capability in the future. Employment in the Fort Hood area will increase.

Letterkenny Army Depot, Pennsylvania

Recommendation: Realign the Headquarters, Depot Systems Command (DESCOM) (including the Systems Integration and Management Activity) from Letterkenny Army Depot to Rock Island Arsenal and merge it with the Armament, Munitions and Chemical Command (AMCCOM) to form the Industrial Operations Command (IOC). Relocate the Material Readiness Support Activity (MRSA) from Lexington-Bluegrass Army Depot to Redstone Arsenal, AL, along with the relocation of the Logistics Control Activity (LCA) from the Presidio of San Francisco, CA, to Redstone Arsenal, AL. This proposal is a revision to the recommendations of the 1988 Base Closure Commission, which directed MRSA to relocate from Lexington-Bluegrass Army Depot, KY, to Letterkenny Army Depot, PA. The merger of these two activities will form the Logistics Support Activity (LOGSA).

Losses in personnel at Letterkenny Army Depot are partially offset by a concurrent action to move the tactical missile maintenance workload from Anniston Army Depot, AL, Red River Army Depot, TX, Sacramento Army Depot, CA, Tobyhanna Army Depot, PA, and several Navy and Air Force industrial facilities into Letterkenny Army Depot and to realign the tactical vehicle and artillery maintenance workload from Letterkenny to Tooele, UT, and Red River Army Depots, TX, respectively.

Justification: To improve efficiency of the Army logistics, the Army's implementation of the Defense Management Report includes the consolidation of Inventory Control Points. Sixteen million dollars ($16M) have already been programed for building a facility for MRSA and LCA at Letterkenny Army Depot to implement a the 1988 Base Closure Commission recommendation. The Material Readiness Support Activity (MRSA) move to Letterkenny was specified by the 1988 Base Closure Commission. There are no additional costs to the changed destination of MRSA. Leaving MRSA at Letterkenny Army Depot would not be as operationally efficient as the proposed change.

In order to streamline management functions for industrial operations, DESCOM and AMCCOM are being merged into the IOC at Rock Island. Merging them at Letterkenny was also considered but was determined to be more costly.

Implementing this recommendation will cost $3M. Annual savings after implementation are expected to be $2M. Changes in the force structure have indirect effects on industrial operations. The actual changes in workloads and required capacity will be affected by decisions on equipment policies that have not been made yet. When reviewing the military value matrix calculations, Letterkenny Army Depot rates 5 of 10 depot facilities. Moving DESCOM to Rock Island Arsenal provides an immediate return on investment. This action will have no effect on remedial environmental actions currently ongoing at any installation and the environmental impact the losing and gaining installations is expected to be minimal. These realignment actions may result in a potential employment change of -2.2% at Letterkenny.

Rock Island Arsenal, Illinois

Recommendation: Realign Armament, Munitions, and Chemical Command (AMCCOM) from Rock Island Arsenal, IL to Redstone Arsenal, AL, as part of the Inventory Control Point (ICP) consolidations under a Defense Management Report decision.

Justification: To improve efficiency of Army logistics, the Army's implementation of the Defense Management Report includes the consolidation of Inventory Control Points. Moving the armament portion of AMCCOM to Redstone Arsenal permits the Army to consolidate the missile and armament functions into one ICP. Changes in the force structure only have indirect effects on industrial operations. This recommendation is a business oriented decision to improve supply distribution efficiency.

Moving the AMCCOM Inventory Control Point to Redstone Arsenal provides an immediate return on investment. Implementing this recommendation (including the consolidation of the missile and armament functions into one ICP at Redstone Arsenal, AL, as well as formation of the Industrial Operations Command (IOC) at Rock Island, IL) will save $2M. Annual savings after implementation are expected to be $66M. This action will have no effect on remedial environmental actions ongoing at any installation and the environmental impacts are expected to be minimal. These realignment actions may result in a potential employment change of +2.6% at Redstone Arsenal and -1.1% at Rock Island Arsenal. Losses in personnel at Rock Island Arsenal are partially offset by a concurrent action to move the Headquarters, Depot Systems Command (DESCOM) from Letterkenny Army Depot, PA, to Rock Island Arsenal, merging AMCCOM and DESCOM to form the Industrial Operations Command (IOC).

Realign Army Laboratories (LAB 21 Study)

Recommendation: The LAB 21 study establishes the Combat Materiel Research Laboratory (CMRL), at Adelphi, MD. The Army also recommends that the Army Material Technology Laboratory (AMTL), Watertown, MA not be split up and sent to Detroit Arsenal, Picatinny Arsenal and Fort Belvoir but instead that the AMTL be sent to Aberdeen Proving Ground (APG), MD less the Structures Element that should be collocated at the NASA-Langley Research Center, Hampton, VA. This proposal is a revision to the recommendations of the 1988 Base Closure Commission.

Justification: The decision to form the CMRL was driven by the LAB 21 Study and a Defense Management Report decision to consolidate Army laboratories to create a world class laboratory and achieve savings through a more efficient laboratory system. The military value of CMRL lies with the exploration of technology to be used in both the improvement of current of military systems and the development of future systems. The establishment of the CMRL will provide a return on investment in 3 years. Implementing this recommendation will cost $92M. Annual savings after implementation are expected to be $51M. The establishment of CMRL will have minimum environmental impact. The establishment of CMRL may result in a potential employment change of +0.1% in the Adelphi, Maryland area. Specific realignments for the CMRL follow:

- Move the Army Research Institute (ARI) MANPRINT function from Alexandria, VA to Aberdeen Proving Ground (APG), MD.

- Move the 6.1 and 6.2 materials elements from the Belvoir Research and Development Center, VA to APG, MD.

- Move the Army Materials Technology Laboratory (AMTL) (less Structures element) from Watertown, MA to APG (Change to the recommendations of the 1988 Base Closure Commission).

- Move the AMTL Structures element to the Army Aviation Aerostructures Directorate collocated at NASA-Langley Research Center at Hampton, VA and expand the mission at that site to form an Army Structures Directorate. (Change to the recommendations of the 1988 Base Closure Commission).

- Move the Directed Energy & Sensors Basic and Applied Research element of the Center for Night Vision and Electro-Optics at Fort Belvoir, VA to Adelphi, MD.

- Move the Electronic Technology Device Laboratory from Fort Monmouth, NJ to Adelphi, MD.

o Move the Battlefield Environment Effects element of the Atmospheric Science Laboratory at White Sands Missile Range, NM to Adelphi, MD.

o Move Ground Vehicle Propulsion Basic and Applied Research from Warren, MI to the Army Aviation Propulsion Directorate collocated at the NASA-Lewis Research Center in Cleveland, OH to form the Army Propulsion Directorate.

o Move the Harry Diamond Laboratories Woodbridge Research Facility element to CMRL, Adelphi, MD and close/dispose of the Woodbridge, VA facility.

o Move the Fuze Development and Production Mission (Armament related) from Harry Diamond Laboratories, Adelphi, MD to Picatinny Arsenal (ARDEC), NJ.

o Move the Fuse Development and Production Mission (Missile related) from Harry Diamond Laboratories, Adelphi, MD to Redstone Arsenal (MRDEC), AL.

Tri-Service Project Reliance Study

Recommendation: Execute the Tri-Service Project Reliance medical research aspects of a Defense Management Report decision by reducing the number of Army medical research labs from 9 to 6. This action includes disestablishing the Letterman Army Institute of Research (LAIR), Presidio of San Francisco, CA (change to the 1988 Base Closure Commission recommendation); disestablishing the U.S. Army Institute of Dental Research (USAIDR), Washington, DC and disestablishing U.S. Army Biomedical Research Development Laboratory (USABRDL), Fort Detrick, MD. The proposal recommends consolidating the Army's trauma research and medical materiel development with existing Army medical Research Development, Test, and Evaluation (RDT&E) facilities. The proposal also recommends the collocation of seven Tri-Service medical research programs at existing Army, Navy and Air Force medical laboratories as follows: the Army blood research with the Navy; the Army combat dentistry with the Navy; Army directed energy (laser and microwave) bioeffects with the Air Force; elements of the Army and Navy biodynamics with the Air Force; Navy and Army toxicology (environmental quality and occupational health) with the Air Force; Navy infectious disease research and Air Force environmental medicine (heat physiology) with the Army.

Justification: Realigning medical research laboratories and programs achieves efficiencies through inter-department consolidations, transfers and reliance in technology. Medical research activities are relatively unaffected by changes in force structure. Military value in the form of mission requirements and the technological capabilities of existing staff expertise and facilities were the driving factors in this recommendation. Implementation of Project Reliance medical realignments results in steady state savings to the Army from elimination of civilian authorizations. This proposal changes the recommendation of the 1988 Base Closure Commission that previously identified LAIR for movement to Fort Detrick, MD. Under this proposal, LAIR is disestablished and the construction of a new laboratory at Fort Detrick is eliminated. Implementing the LAIR portion of this recommendation will save $56M. Annual savings after implementation are expected to be $7M. Environmental and community impacts are expected to be minimal. Closure of LAIR, USABRDL and USAIDR and other realignments may result in potential employment impacts of 0.8% at Fort Detrick, MD and less than .1% at other installations. Specific realignments are:

o Disestablish the Letterman Army Institute of Research (LAIR) as part of the closure of the Presidio of San Francisco, cancel the design and construction of the replacement laboratory at Fort Detrick, Maryland, and realign LAIRs research programs in the following manner (Change to recommendations of the 1988 Base Closure Commission):

-- Move trauma research to the U.S. Army Institute of Surgical Research, Fort Sam Houston, TX.

-- Move blood research and collocate with the Naval Medical Research Institute (NMRI), Bethesda, MD.

-- Move laser bioeffects research and collocate with the U.S. Air Force School of Aerospace Medicine (USAFSAM), Brooks Air Force Base, TX.

o Disestablish U.S. Army Biomedical Research Development Laboratory at Fort Detrick, MD, and transfer medical materiel research to the U.S. Army Medical Materiel and Development Activity at Fort Detrick and collocate environmental and occupational toxicology research with the Armstrong Aerospace Medical Research Laboratory (AAMRL) at Wright-Patterson Air Force Base, OH.

o Disestablish the U.S. Army Institute of Dental Research, Washington, DC and collocate combat dentistry research with the Naval Dental Research Institute at Great Lakes Naval Base, IL.

o Move microwave bioeffects research from Walter Reed Army Institute of Research (WRAIR), Washington, DC and collocate with USAFSAM.

o Move infectious disease research from NMRI and collocate with WRAIR.

o Move biodynamics research from U.S. Army Aeromedical Research Laboratory, Fort Rucker, AL and collocate with AAMRL.

o Move heat physiology research from USAFSAM and collocate with U.S. Army Research Institute of Environmental Medicine (USARIEM), Natick, MA.

Department of the Navy

Summary of Selection Process

Introduction

By 1995, the Navy will have 12 aircraft carriers and 11 active carrier air wings which is one fewer aircraft carrier and two fewer carrier air wings than in 1990. Navy battle force ships will decline from 545 to 451 ships, a 17% reduction. The Navy will also have 73,000 fewer active duty personnel, a 13% reduction. The Marine Corps will undergo a 15% reduction in active duty personnel. These factors require a reduction in the Navy and Marine Corps base structure.

The Navy's basing structure is focused primarily on homeporting active and reserve ships and carrier air wings. The Marine Corps basing structure is focused primarily on support of the Marine Expeditionary Forces. The base structure also provides the requisite training, logistics, and housing and related support. Forward deployment operations, supported by a few overseas bases, and the domestic base structure allow Navy and Marine Corps forces to respond to the full spectrum of international conflict.

The Selection Process

The Secretary of the Navy established a Base Structure Committee chaired by the Assistant Secretary of the Navy (Installations and Environment) to ensure that a high level, comprehensive base structure review was conducted. The Committee reviewed all installations inside the United States on an equal footing, without regard to whether the installation was previously considered for closure or realignment. They also reviewed geographic complexes in order to identify key installations whose closure could warrant other closures or realignments within those complexes.

The Committee received operational input from the Chief of Naval Operatons and the Commandant of the Marine Corps. Internal controls and the use of existing data bases ensured data accuracy.

The Committee categorized all facilities according to function and determined which categories possessed significant excess capacity to warrant a further, detailed analysis. The Committee separated the training category

into sub-areas for additional capacity analysis.

Missions, capabilities, and attributes determined categories. For example, "Naval Stations" serve as home ports for ships. "Naval Air Stations" serve as the home base for aircraft. However, some naval air stations possess waterfront property to berth ships. These bases were not considered naval stations, but their berthing capacity was taken into account in the naval station capacity analysis.

In conducting the capacity analysis, the Committee determined critical facility codes for each category of shore installation. These served as the unit of measure for determining the capacity of a base. The Committee then considered these critical factors as well as projected deployment schedules, planning criteria, data from existing data bases and unique factors relating forces to critical facilities in the capacity analysis. Some other considerations were air installation compatible use zones, airspace congestion, and explosives safety.

After validating that some categories possessed excess capacity and evaluating the military value of bases in those categories, the Committee arrived at a list of closure or realignment candidates. The Committee then evaluated the potential costs and savings, economic impact, community infrastructure and environmental impact on these candidates (and any potential receiving locations) before making its nominations to the Secretary of the Navy. The Committee also evaluated multi-service alternatives.

The Secretary of the Navy, with the advice of the Chief of Naval Operations and Commandant of the Marine Corps, nominated bases to the Secretary of Defense for closure or realignment based on the force structure plan and the final criteria established under Public Law 101-510. The Secretary of Defense recommends the following Navy and Marine Corps bases for closure or realignment:

Recommendations and Justifications

Chase Field Naval Air Station, Texas

Recommendation: Naval Air Station (NAS) Chase Field is recommended for closure, with retention of the capability to be operated as an outlying field (OLF) for an undetermined period of time. Air operations personnel will be retained as necessary to operate the OLF. Air training squadrons and all other tenants will be disestablished. All basic and advanced strike air training will be accomplished at NAS Kingsville, TX, and NAS Meridian, MS. Air training squadrons at those locations will be expanded to handle any increase in student throughput, especially during transition. Runway improvements will be made at NAS Kingsville to improve safety and efficiency of additional flight operations.

Justification: Projected force structure reductions of both aircraft carriers and carrier air wings will result in reductions in the Navy's annual strike pilot training rate (PTR). This equates to an excess of approximately one of the current three advanced air training installations.

In conformance with the Defense Base Closure and Realignment Act of 1990, the Navy's Base Structure Committee (BSC) considered for closure, on an equal basis, all three advanced air training installations along with all other air stations. Initially, using the first four DOD selection criteria, the military value of all three was evaluated. NAS Chase Field was graded lower in military value for these key reasons:

- Chase Field has infrastructure deficiencies requiring construction--buildings and training devices are still required there to introduce new T-45 aircraft to replace aging T-2 and TA-4 aircraft.
- Chase Field can more readily function as an OLF than NAS Kingsville, and NAS Meridian cannot so function due to distance from the other two.
- Realignment of Chase Field is easily reversible should the world situation dictate increased force structure with a commensurate increase in strike pilot training.

The BSC concluded NAS Chase Field was the most likely candidate for closure, and then considered the other DOD selection criteria as they pertain to closure of NAS Chase Field. Specifically, closure of NAS Chase Field will eliminate over 2300 direct and indirect positions (approximately 27.4% of the employment in the area). This will slow the housing market and reduce school district population by nearly 1000 students. No significant impacts are anticipated at the receiving locations. Continued use of the Chase airfield will not change the environmental impacts on the area. Removal of personnel will, however,

remove main pollution sources (less congestion and pollution). Return on investment was favorable. NAS Chase Field is not on the Environmental Protection Agency's National Priorities List.

Implementing this recommendation will cost about $48 million. The anticipated land value is $2 million. Annual savings after implementation is expected to be $22 million.

Davisville Construction Battalion Center, Rhode Island

Recommendation: Naval Construction Battalion Center (NCBC) Davisville is recommended for closure. Three sets of equipment and tools for Reserve Naval Mobile Construction Battalions (NMCB), and other Prepositioned War Reserve Material Stock (PWRMS) will be relocated to NCBCs Gulfport, MS, and Port Hueneme, CA.

Justification: Projected reduction of the Naval Construction Force (NCF) by two Reserve NMCBs enables reduction in the support infrastructure to balance assets with requirements.

In conformance with the Base Closure and Realignment Act of 1990, the Navy's Base Structure Committee (BSC) considered, on an equal basis, all three NCBCs for closure or reduction. Initially, the military value of each was evaluated, using the DOD selection criteria. NCBC Davisville was graded lowest of the three on military value, for these key reasons:

- The reduced mission of NCBC Davisville since it will no longer be designated as a throughput site for mobilizing reserve personnel.
- The deteriorated condition of personnel support facilities at NCBC Davisville.
- The high degree of readiness of the Reserve Naval Construction Force, as evidenced during Desert Shield/Storm. This almost eliminates pre-deployment training requirements.
- The significant mobilization and support capability of NCBCs Port Hueneme and Gulfport, also exhibited during Desert Shield/Storm.

The BSC concluded that NCBC Davisville is a likely candidate for closure, and then considered the other DOD selection criteria. Specifically, closure of NCBC Davisville would result in the loss of 250 direct and indirect positions, which equates to 0.3% of the metropolitan statistical area. There will be an insignificant impact on local public schools. Environmental impacts at NCBCs Gulfport and Port Hueneme will be inconsequential since both installations are already engaged in similar activities, but on a much larger scale than will be transferred. NCBC Davisville is not on the Environmental Protection Agency's National Priorities List.

Implementing this recommendation will cost about $36 million. The anticipated land value is $22 million. Annual saving after implementation is expected to be $6 million.

Hunters Point Annex, California

Recommendation: The Hunters Point Annex of Naval Station Treasure Island is recommended for closure. The Navy will outlease the entire property with provisions for continued occupancy of space by Supervisor of Shipbuilding, Conversion and Repair (SUPSHIP); Planning, Engineering, Repair and Alterations Detachment (PERA), and a contractor-operated test facility. This is a change to the 1988 Base Closure Commission recommendation to partially close this installation.

Justification: The Navy's Base Structure Committee (BSC) considered all naval stations for closure on an equal basis in conformance with the Defense Base Closure and Realignment Act of 1990. Initially, using the first four DOD selection criteria, the military value of all eighteen stations was evaluated. Hunters Point Annex was graded lower in military value for these key reasons:

- Significantly reduced mission capability, and adverse impact on Drydock #4 certification, as a result of future encroachment due to mandated outleasing.
- Reduced need for Drydock #4.
- Serious infrastructure deficiencies which degrade mission capability and have a limited prospect for correction.

The BSC concluded that Hunters Point Annex was a likely candidate for closure, with SUPSHIP, PERA and the testing facility to remain at the site under lease-back provisions. The BSC then considered the other DOD selection criteria. Specifically, closure of Hunters Point Annex will have no significant impacts on the environment and socioeconomic status of the San Francisco Bay area. This area is already under legislative direction to be leased. Hunters Point Annex is on the U.S. Environmental Protection Agency's National Priorities List.

Costs to implement this recommendation will be minimal. The anticipated land value is $13 million. Annual savings after implementation is expected to be $319 thousand.

Long Beach Naval Station, California

Recommendation: Naval Station (NAVSTA) Long Beach and the supporting Naval Hospital Long Beach are recommended for closure. Ship support functions and a parcel of land will be transferred to the Naval Shipyard. Ships assigned to the Naval Station will be reassigned to other Pacific Fleet homeports.

Justification: Substantial ship reductions in the planned force structure will result in excess berthing capacity and unneeded infrastructure. Berthing can be accomplished more economically and efficiently by consolidating remaining ships at other naval stations, thereby enabling closure of some homeports.

The Navy's Base Structure Committee (BSC) considered all naval stations for closure on an equal basis in conformance with the Defense Base Closure and Realignment Act of 1990. Initially, using the first four DOD selection criteria, the military value of all eighteen naval stations was evaluated. NAVSTA Long Beach was graded low in military value for these key reasons:

- Significant facility deficiencies exist at NAVSTA Long Beach, which require construction to correct.
- Long Beach is a high cost location.
- Insufficient capacity to consolidate homeporting of all Southern California ships.
- Homeport location duplicative of nearby San Diego.

The BSC concluded that NAVSTA Long Beach was a likely candidate for closure, with personnel support facilities (including family housing) and functions supporting the shipyard and ships undergoing overhaul and repair to be realigned under Naval Shipyard Long Beach. Additionally, given the support role relationship of Naval hospitals to active duty military population in a given area (i.e., hospitals are "follower" installations), if NAVSTA Long Beach were to close, Naval Hospital Long Beach also would close.

The BSC then considered the other DOD selection criteria as they pertain to Long Beach. Specifically, closure of NAVSTA and Naval Hospital Long Beach will affect over 23,550 direct and indirect positions and 6,000 shipboard personnel. This equates to a cumulative 0.5% loss of employment in the area. In all cases, relocation of ships and NAVSTA operations will improve the environment. Since the receiving site will not be gaining more ships but rather replacing ships lost from the force structure, no negative impacts there are anticipated. NAVSTA Long Beach is not on the Environmental Protection Agency's National Priorities List.

Implementing this recommendation will cost about $109 million. The anticipated land value is $27 million. Annual savings after implementation is expected to be $112 million.

Moffett Field Naval Air Station, California

Recommendation: Naval Air Station (NAS) Moffett Field is recommended for closure. Three active duty maritime patrol squadrons will be decommissioned and the remaining active duty maritime patrol squadrons will be relocated to NAS Barbers Point, HI, NAS Brunswick, ME, and NAS Jacksonville, FL. A single P-3 Fleet Replacement Squadron (FRS) will be sited at Jacksonville.

Justification: Projected force structure reductions in Maritime Patrol Aircraft (MPA) enable reductions in the MPA support shore infrastructure to balance assets to requirements and eliminate excesses. Projected MPA reductions equate to approximately one air station.

In conformance with the Defense Base Closure and Realignment Act of 1990, the Navy's Base Structure Committee (BSC) considered for closure, on an equal basis, all four MPA installations along with all other air stations. Initially, using the first four DOD selection criteria, the military value of all four MPA installations was evaluated. NAS Moffett Field was graded low in military value for these key reasons:

- Air operations at NAS Moffett Field are severely encroached by air traffic at San Francisco International and San Jose and Palo Alto Municipal Airports, and air accident potential zones are particularly severe to the south with multi-family residential development.
- NAS Moffett Field operations cannot be expanded due to adjacent development. Planned multi-story construction will further encroach on operations.
- NAS Moffett Field is located in a high cost region.

The BSC concluded that NAS Moffett Field was a likely candidate for closure, and then considered the other DOD selection criteria for NAS Moffett Field. Specifically, closure of NAS Moffett Field will result in the loss of 7000 direct and indirect positions. This equates to a 0.8% employment loss in the immediate South Peninsula/San Jose metropolitan area. Air operations are expected to be continued by other aviation businesses which may be expected to mitigate the economic impact. A 28% loss of students is anticipated in the local school district, which may be partly mitigated if the Air Force decides to occupy Navy housing. Termination of Navy flight operations will eliminate certain environmental concerns for the area. Return on investment was extremely favorable. NAS Moffett Field is on the Environmental Protection Agency's National Priorities List, and environmental restoration is underway.

Implementing this recommendation will cost about $106 million. The anticipated land value is $90 million. Annual savings after implementation is expected to be $69 million.

Orlando Naval Training Center, Florida

Recommendation: Naval Training Center (NTC) Orlando and the supporting Naval Hospital Orlando are recommended for closure. Recruit training will be absorbed by NTC Great Lakes, IL, and NTC San Diego, CA. The nuclear training function and all "A" schools will be relocated.

Justification: Future force structure reductions and substantial reductions in Navy manpower produce reductions in requirements for basic recruit and follow-on training. As a result, slightly over two Recruit Training Centers (RTCs) can accommodate future requirements, leaving an excess capacity of approximately one RTC.

The Navy's Base Structure Committee (BSC) considered all training installations on an equal basis in conformance with the Defense Base Closure and Realignment Act of 1990. Initially, the military value of each training installation was evaluated using the first four DOD selection criteria. The BSC further considered the three NTCs because of excess recruit training capacity and the desirability and benefit of collocating recruit training with a Service School Command. All things considered, NTC Orlando graded lower in military value than the other two NTCs for these key reasons:

- Desirability of retaining the NTC in San Diego because of its collocation with major fleet concentrations.
- The very significant capital investment in complex, sophisticated and expensive training devices, systems and buildings at NTC Great Lakes.
- The expansion and surge capability at NTC Great Lakes, and the lack of surge or expansion capability at NTC Orlando.

The BSC concluded that NTC Orlando was the most likely candidate for closure. Given the support role relationship of naval hospitals to active duty military population in a given area (i.e., hospitals are "follower" installations), if NTC Orlando were to close, Naval Hospital Orlando would also close.

The BSC then considered other DOD selection criteria as they pertain to the closure to the Orlando complex. Closure of the Orlando Naval Complex will affect over 18,400 direct and indirect positions and reduce area employment by approximately 3.2%. The reduction is expected to be temporary because of the growth potential of the area. While NTC Orlando is not an industrial polluter, removal of the operation will improve environmental quality by reducing congestion. An increase of positions and students at Great Lakes, however, will not significantly contribute to environmental problems. NTC Orlando is not on the Environmental Protection Agency's National Priorities List.

Implementing this recommendation will cost about $456 million. The anticipated land value is $130 million. Annual savings after implementation is expected to be $69 million.

Philadelphia Naval Shipyard, Pennsylvania

Recommendation: Naval Shipyard (NSY) Philadelphia is recommended for closure and preservation for emergent requirements. The propeller facility (shops and foundry), Naval Inactive Ships Maintenance Facility, (NISMF), and Naval Ship System Engineering Station (NAVSSES) will remain in active status on shipyard property.

Justification: Substantial ship reductions and changes in the planned force structure will lead to reductions in ship repair requirements and termination of the Carrier Service Life Extension Program (CV-SLEP). Closure of a NSY is necessary to balance the Navy's industrial workforce with this reduced workload.

The Navy's Base Structure Committee (BSC) considered all NSYs for closure on an equal basis in conformance with the Defense Base Closure and Realignment Act of 1990. Initially, the military value of each NSY was evaluated, using the first four DOD selection criteria. However, because workload in the remainder of the century includes a large number of availabilities (inactivations, overhauls and refuelings) on nuclear ships, the nuclear-capable NSYs were excluded from further consideration at this time. Also, the need to preserve drydock capability on the West Coast for contingency or emergency work on nuclear carriers, and recurring availabilities for large surface ships, necessitated exclusion of NSY Long Beach, CA, from further consideration for closure. This left only NSY Philadelphia still under consideration for closure. Given excessive yard capability for non-nuclear work and the termination of the CV-SLEP, NSY Philadelphia was determined to be a likely candidate for closure. Additional study by the BSC determined that the propeller facility, NAVSSES and NISMF should be retained.

The BSC then considered the other DOD selection criteria. Specifically, closure of the shipyard would result in the loss of nearly 31,000 direct and indirect positions, and 7000 additional ship-associated personnel. This, together with the job loss associated with closure of the Naval Station, equates to a 2.1% cumulative employment reduction in the metropolitan area. While causing an oversupply of housing in an already slow market, no additional impacts are anticipated. Termination of shipyard operations will reduce the source of potential pollution and will have a positive environmental effect. NSY Philadelphia is not on the Environmental Protection Agency's National Priorities List.

Implementing this recommendation will cost about $130 million. The anticipated land value is $10 million. Annual savings after implementation is expected to be $36 million.

Philadelphia Naval Station, Pennsylvania

Recommendation: Naval Station (NAVSTA) Philadelphia is recommended for closure. Ships assigned to the Naval Station will be reassigned to other Atlantic Fleet homeports. COMNAVBASE Philadelphia will close. Naval Damage Control Training Center (NAVDAMCONTRACEN), a major tenant, will also close and move to Naval Training Center (NTC) Great Lakes, IL. Other tenants will transfer to other bases or remain in leased space. The regional brig will remain.

Justification: Substantial ship reductions in the planned force structure will result in excess berthing capacity and unneeded infrastructure. Berthing can be accomplished more economically and efficiently by consolidating remaining ships at other naval stations, enabling closure of some homeports.

The Navy's Base Structure Committee (BSC) considered all naval stations for closure on an equal basis in conformance with the Defense Base Closure and Realignment Act of 1990. Initially, using the first four DOD selection criteria, the military value of all eighteen naval stations was evaluated. NAVSTA Philadelphia was graded lower in military value for these key reasons:

- Significant facility deficiencies exist at NAVSTA Philadelphia, which require construction to correct.
- Philadelphia is a high cost location.
- Mission reduction will occur at NAVSTA Philadelphia as a result of eliminated support requirements for the Naval shipyard, which is also recommended for closure.

The BSC concluded that NAVSTA Philadelphia was a likely candidate for closure, although the brig would remain. Additionally, because of its tenant relationship to the NAVSTA and the desirability of consolidating damage control training at NTC Great Lakes, if NAVSTA Philadelphia were closed, NAVDAMCONTRACEN would also be closed and relocated to Great Lakes.

The BSC then considered the other DOD selection criteria as they pertain to Philadelphia. Specifically, closure of NAVSTA and NAVDAMCONTRACEN Philadelphia would affect over 9100 direct and indirect positions. This employment loss, together with the loss associated with closure of the shipyard, is a 2.1% employment loss. In addition to employment impacts, a resultant over-abundance of housing is anticipated with the prospect of slow home sales. Since receiving stations have adequate capacity to accept the functions transferred from NAVSTA Philadelphia, and these assets will replace force structure losses, no environmental impacts are anticipated. NAVSTA Philadelphia is not on the Environmental Protection Agency's National Priorities List.

Implementing this recommendation will cost about $53 million. The anticipated land value is $20 million. Annual savings after implementation is expected to be $40 million.

Sand Point (Puget Sound) Naval Station, Washington

Recommendation: Naval Station Puget Sound (Sand Point) is recommended for closure. A majority of the functions and activities will be relocated to Everett, WA. The regional brig and a small surrounding parcel of land will be retained. The Navy will dispose of the remainder of the property. This is a change to the 1988 Base Closure Commission recommendation to partially close this installation.

Justification: The Navy's Base Structure Committee (BSC) considered all naval stations for closure on an equal basis in conformance with the Defense Base Closure and Realignment Act of 1990. Initially, using the first four DOD selection criteria, the military value of all eighteen naval stations was evaluated. NAVSTA Puget Sound (Sand Point) was graded low in military value for these key reasons:

- Previous reductions of missions and functions at Sand Point due to base realignments, culminating in loss of nearly one-half of the property from action by the 1988 Base Realignment and Closure Commission.
- Planned relocation of Commander, Naval Base Seattle, WA, who is the Navy's Pacific Northwest regional coordinator, to Submarine Base Bangor, consistent with his concurrent responsibilities as Commander, Submarine Group Nine.
- Need to eventually move Commanding Officer, NAVSTA Puget Sound from Sand Point to Everett as construction at Everett is completed.
- No other long term mission requirement for Sand Point property (except for the regional brig).

The BSC concluded that NAVSTA Puget Sound (Sand Point) was a likely candidate for closure, although the brig and a small surrounding parcel would be retained. The BSC then considered the other DOD selection criteria. Specifically, closure of NAVSTA Puget Sound (Sand Point) would affect almost 1800 direct and indirect positions. However, taking into account additional homeporting in Everett, there is a net increase of 860 positions in the metropolitan statistical area. This employment impact is less than 0.1%. No community impacts are anticipated at either Sand Point or the receiving base. The Sand Point property is not on the Environmental Protection Agency's National Priorities List.

Implementing this recommendation will cost about $28 million. The anticipated land value is $25 million. Annual savings after implementation is expected to be $2 million.

Tustin Marine Corps Air Station, California

Recommendation: Marine Corps Air Station (MCAS), Tustin is recommended for closure. Family housing and related personnel support facilities will be retained in support of MCAS El Toro, CA, personnel. Marine Aircraft Group 16 (MAG-16), the air station's headquarters components and related units will be transferred to a new air station to be constructed at the Marine Air Ground Combat Center (MCAGCC), Twentynine Palms, CA. Prior to relocation, MAG-16 and MAG-39 at MCAS Camp Pendleton, CA, will be combined, mixing attack, light utility, and medium and heavy lift helicopters.

Justification: Current and projected requirements necessitate restructuring aviation support to complement combined arms training with today's faster, longer range and more lethal weapon systems. In conformance with the Defense Base Closure and Realignment Act of 1990, the Department of the Navy's Base Structure Committee (BSC) considered all domestic MCASs on an equal basis (except MCAS Yuma, AZ, which has a unique mission). Initially, military value was evaluated, using the first four DOD selection criteria. MCAS Tustin was graded lowest in military value because surrounding urban growth is causing incremental reductions in mission capability. Both the Air Station proper and air space used by low-flying helicopters are being encroached on by urbanized areas. Also, its facility plant is aging, with numerous deficiencies stemming from condition and configuration. MCAS Tustin was originally designed to support blimps during World War II and has limited potential for further adaptation to support future Marine Corps mission changes.

The BSC concluded that MCAS Tustin was a likely candidate for closure, moving helicopter support to MCAGCC Twentynine Palms to be integral with supported ground training at Camp Pendleton. Additionally, combining MAG-16 and MAG-39 at MCAS Camp Pendleton would be required because the greater distance from Camp Pendleton to Twentynine Palms than Tustin makes it uneconomic and impractical to maintain all West Coast light utility and attack assets in MAG-39, and all medium and heavy lift assets in MAG-16.

The BSC then considered the other DOD selection criteria as they pertain to closure of MCAS Tustin. Specifically, while almost 7,400 military and civilian positions would be directly and indirectly affected, the percentage of employment loss in the statistical area will be significantly below 1%. The gaining location will experience largely positive economic impacts through an increase in jobs. The same factors that limit its military value provide MCAS Tustin with an unusually high civil value for redevelopment. Adjacent finished lots have sold for in excess of $1 million an acre, making a high-value sale of MCAS Tustin more likely than most locations.

MCAS Tustin is not on the Environmental Protection Agency's National Priorities list.

Implementing this recommendation will cost about $609 million. The anticipated land value is $500 million. Annual savings after implementation is expected to be $30 million.

Whidbey Island Naval Air Station, Washington

Recommendation: Naval Air Station (NAS) Whidbey Island and the supporting Naval Hospital Oak Harbor are recommended for closure. Aviation activities will be transferred to NAS Lemoore. The ranges will remain in Navy custody. Naval Facility Whidbey Island will remain. The Navy will dispose of other land and facilities.

Justification: Projected force structure reductions in aircraft carriers, carrier air wings, and A-6 aircraft will result in excess carrier aviation support shore infrastructure. This excess capacity equates to approximately one air station.

In conformance with the Defense Base Closure and Realignment Act of 1990, the Navy's Base Structure Committee (BSC) considered for closure, on an equal basis, all carrier aviation support installations along with all other air stations. Initially, using the first four DOD selection criteria, the military value of all carrier aviation support installations was evaluated. NAS Whidbey Island was graded low in military value for these key reasons:

- Available capacity at NAS Lemoore, CA.
- Single runway configuration at NAS Whidbey which limits operational flexibility and future growth.
- Encroachment at NAS Whidbey outlying field.
- Previous studies to relocate EA-6B squadrons to NAS Lemoore and eventually consolidate all West Coast attack squadrons at NAS Lemoore.
- Reduction of A-6 aircraft.
- Substantial reduction in maritime patrol aircraft which were previously planned to backfill A-6 mission reduction at NAS Whidbey Island.

The BSC concluded that NAS Whidbey Island was a likely candidate for closure. Given the support role relationship of naval hospitals to active duty military population in a given area (i.e., hospitals are "follower" installations), if NAS Whidbey Island were to close, Naval Hospital Oak Harbor also would close.

The BSC then considered other DOD selection criteria. Specifically, closure of NAS Whidbey Island and Naval Hospital Oak Harbor will precipitate the loss of over 11,700 direct and indirect positions. The cumulative effects will be a 58.3% loss of employment in the Island County area, and impacts on housing and schools. Additional facilities will be required at NAS Lemoore. The addition of almost 6000 positions at NAS Lemoore will tax housing and local school systems there. NAS Whidbey Island is on the Environmental Protection Agency's National Priorities List.

Implementing this recommendation will cost about $492 million. The anticipated land value is $33 million. Annual savings after implementation is expected to be $76 million.

Midway Island Naval Air Facility, Midway

Recommendation: Naval Air Facility Midway Island is recommended for realignment. The mission of the Naval Air Facility would be eliminated. Currently it is operated under a Base Operating Support Contract with a minimum of military personnel providing contract surveillance. Only a caretaker presence of 48 personnel would remain.

Justification: The mission of NAF Midway Island will be eliminated. Although in a strategic geographic location, current Navy operations do not require its retention.

In conformance with the Base Closure and Realignment Act of 1990, the Navy's Base Structure Committee (BSC) considered for closure or reduction, on an equal basis, all Naval Air Stations (including NAF Midway Island). Initially, the military value of each was evaluated, using the DOD selection criteria. NAF Midway Island was graded lower in military value for these key reasons:

- Reduced site-specific mission requirements of NAF Midway Island.
- The acceptable degradation to "Pony Express" joint operations.

The BSC concluded that NAF Midway Island is a likely candidate for closure, and then considered the other DOD selection criteria. Specifically, realignment of NAF Midway Island would result in the loss of 230 contractor direct and indirect positions, which is the entire civilian population of Midway Island. Environmental impacts at NAF Midway Island would be inconsequential since operations there will cease and there is no relocation. NAF Midway Island is not on the Environmental Protection Agency's National Priorities List.

Implementing this recommendation will cost virtually nothing. The anticipated land value is $38 million. Annual savings after implementation is expected to be $6.0 million.

Naval Air Warfare Center

Recommendation: As an integral part of the Navy's RDT&E, Engineering and Fleet Support Consolidation Plan, six realignments and one closure, as described in the accompanying table, are recommended in connection with establishment of the Naval Air Warfare Center (NAWC).

Justification: Consolidation of the Navy's RDT&E, engineering and Fleet support activities is driven by Congressionally mandated reductions in the Navy's overall budget and acquisition workforce. These activities will be consolidated along mission and functional lines in four centers. The missions of the activities will be purified, so that each activity will be assigned unique technology leadership areas. All work tasked in these leadership areas will be performed only at the cognizant activity. The purification process will lead to development of critical mass technical capability in each area.

With headquarters in Washington, DC, NAWC will be the Navy's full spectrum center for air platforms and air warfare combat and weapons systems. NAWC will be organized into two major divisions:

- **Aircraft Division:** centered at Patuxent River, MD; primarily responsible for aircraft, engines, avionics and aircraft support; with activities located at Indianapolis, IN, and Lakehurst, NJ, and facilities at Trenton, NJ.

- **Weapons Division:** centered at China Lake, CA, and Pt. Mugu, CA; primarily responsible for aircraft weapons and weapons systems, simulators and targets; and with a facility at White Sands, NM.

In development and review of the plan, all RDT&E facilities were considered on an equal basis, in conformance with the Defense Base Closure and Realignment Act of 1990. The Navy's Base Structure Committee (BSC) validated the plan using the DOD selection criteria. For example, and most notably, Naval Air Development Center (NADC), Warminster, graded lower in military value, for these key reasons:

- NADC has no facilities that cannot be replicated elsewhere.
- Other activities are uniquely tied to their location.
- NADC has a constrained airspace over densely populated areas, which is not suitable for flight testing high performance aircraft.
- NADC has limited land for expansion to accommodate consolidation.

The BSC noted that almost 3300 eliminated positions at eight installations where directly attributable to site-specific workload reductions, rather than streamlining or consolidation. The BSC also considered the other DOD selection criteria. The economic and environmental issues associated with each site were evaluated. Exclusive of site-specific workload reductions, establishment of NAWC will result in elimination of approximately 910 positions and transfer of approximately 2020 positions. Details related to each site are summarized in the table below. Of the sites in question, NADC Warminster and Lakehurst are on the Environmental Protection Agency's National Priorities List.

Implementing these recommendations will cost about $226 million. The anticipated land value is $27 million. Annual savings after implementation is expected to be $62 million.

Table of Recommendations to Establish Naval Air Warfare Center

A. Realignments and Closures:

1. **Naval Air Development Center (NADC), Warminster, PA,** will be disestablished as a separate technical command and Aircraft Division. The bulk of its functions will be transferred to Patuxent River MD. Custody of, and personnel to sustain, unique navigation facilities will transfer to Naval Command, Control and Ocean Surveillance Center. The airfield will close. Military family housing will be retained. A total of approximately 2250 positions will be either transferred or eliminated due to consolidation and specific workload reductions.

2. **Naval Air Propulsion Center (NAPC), Trenton, NJ,** will be disestablished as a separate technical command and realigned to merge with the Aircraft Division. Engineering personnel will be transferred to Patuxent River. High altitude engine testing will be transferred to the U.S. Air Force. Unique engine test cells will be maintained and operated at the site. A total of approximately 360 positions will be transferred or eliminated due to consolidation and specific workload reductions.

3. **Naval Air Engineering Center (NAEC), Lakehurst, NJ,** will be disestablished as a separate technical command and realigned to merge with the Aircraft Division. The Naval Air Engineering Station will be established to maintain the operating site. A total of approximately 460 positions will be eliminated due to consolidation and specific workload reductions.

4. **Naval Avionics Center (NAC), Indianapolis, IN,** will be disestablished as a separate technical command and realigned to merge with the Aircraft Division. Naval Avionics Station, Indianapolis, will be established to maintain the operating site. A total of approximately 630 positions will be eliminated due to consolidation and specific workload reductions.

5. **Naval Weapons Center (NWC), China Lake, CA,** will be disestablished as a separate technical command, realigned under Weapons Division. A net total of approximately 1110 positions will be either transferred or eliminated due to consolidation and specific workload reductions.

6. **Pacific Missile Test Center (PMTC), Pt. Mugu, CA,** will be disestablished as a separate technical command and realigned to merge with the Weapons Division. A net total of 820 positions will be eliminated due to consolidation and specific workload reductions.

7. **Naval Weapons Evaluation Facility (NWEF), Albuquerque, NM,** will transfer functions to the Weapons Division and close. A total of approximately 110 positions will be transferred or eliminated.

B. <u>Others:</u>

Although not falling into the categories of closure or realignment, the following installations are integral to the overall plan and success of the NAWC consolidation.

1. **Naval Air Test Center, Patuxent River, MD,** will be disestablished as a separate technical command and realigned to merge with the Aircraft Division. A net total of approximately 1300 positions will be gained at NATC Patuxent due to streamlining, net transfer and specific workload reductions.

2. **Naval Ordnance Missile Test Station (NOMTS), White Sands, NM,** will be downsized approximately 14 positions due to specific workload reductions, and realigned to operate as a facility of the Weapons Division.

Naval Command, Control and Ocean Surveillance Center

Recommendation: As an integral part of the Navy's RDT&E, Engineering and Fleet Support Consolidation Plan, seven closures and one realignment, as described in the accompanying table, are recommended in connection with establishment of the Naval Command, Control and Ocean Surveillance Center (NCCOSC).

Justification: Consolidation of the Navy's RDT&E, engineering and Fleet support activities is driven by Congressionally mandated reductions in the Navy's overall budget and acquisition workforce. These activities will be consolidated along mission and functional lines in four centers. The missions of the activities will be purified, so that each activity will be assigned unique technology leadership areas. All work tasked in these leadership areas will be performed only at the cognizant activity. The purification process will lead to development of critical mass technical capability in each area.

With headquarters in Washington, DC, NCCOSC will be the Navy's full spectrum center for maritime command, control and communications and intelligence (C3I), ocean surveillance technology, and fleet and shore support. NCCOSC will be organized in three major divisions:

- **RDT&E Directorate:** primarily responsible for the development of C3I systems, ocean surveillance systems and navigation support; located at San Diego, with facilities in Warminster, PA.

- **West Coast In-Service Engineering (ISE) Directorate:** primarily responsible for shipboard satellite communications, navigation and Pacific ISE support; collocated with the RDT&E Directorate at San Diego, with an operating site at Pearl Harbor.

- **East Coast ISE Directorate:** primarily responsible for shore communications, air traffic control and Atlantic ISE support; solely located at Portsmouth, VA.

In development and review of the Plan, all RDT&E facilities were considered on an equal basis, in conformance with the Defense Base Closure and Realignment Act of 1990. The Navy's Base Structure Committee (BSC) validated the plan using the first four DOD selection criteria. For example, several activities were graded higher in military value, for these key reasons:

- Availability of land and facilities to accommodate consolidation.
- Proximity to Fleet concentrations.
- Greater difficulty to relocate larger rather than smaller activities.

The BSC noted that approximately 790 eliminated positions at three installations were directly attributable to site-specific workload reductions, rather than streamlining or consolidation. The BSC also considered the other DOD selection criteria. The economic and environmental issues associated with each site were evaluated. Exclusive of site-specific workload reductions, establishment of NCCOSC will result in elimination of approximately 46 positions and transfer of approximately 2310 positions. Details related to each site are summarized in the table. None of the sites in question is on the Environmental Protection Agency's National Priorities List.

Implementing the recommendations will cost about $64 million. Annually, the recommendations will save about $13 million.

Table of Recommendations to Establish the Naval Command, Control and Ocean Surveillance Center

A. Realignments and Closures:

1. **Naval Electronic Systems Engineering Center (NESEC), Vallejo, CA,** will transfer its functions to the West Coast ISE Directorate at San Diego, CA, and close. A total of approximately 310 positions will be transferred.

2. **Naval Space Systems Activity (NSSA), Los Angeles, CA,** will transfer all of its functions to the RDT&E Directorate at San Diego, and the Space and Naval Warfare Systems Command in Washington, DC, and close. A total of approximately 30 positions will be transferred.

3. **Naval Ocean Systems Center (NOSC) Detachment, Kaneohe, HI,** will transfer the bulk of its functions to the RDT&E Directorate at San Diego, and remaining functions to the West Coast ISE Directorate operating site at Pearl Harbor, and close. A total of approximately 190 positions will be transferred.

4. **Naval Electronic Systems Engineering Center (NESEC), Charleston, SC,** will transfer its functions to the East Coast ISE Directorate at Portsmouth, VA, and close. A total of approximately 360 positions will be transferred.

5. **Naval Electronic Systems Security Engineering Center (NESSEC), Washington, DC,** will transfer its functions to the East Coast ISE Directorate at Portsmouth, VA and close. A total of approximately 160 positions will be transferred.

6. **Naval Electronic Systems Engineering Activity (NESEA), St. Inigoes, MD,** will transfer its functions to the East Coast ISE Directorate at Portsmouth, VA and close. The property will be transferred to the Naval Air Warfare Center. A total of approximately 330 positions will be transferred.

7. **Naval Electronic Systems Engineering Center (NESEC), San Diego, CA,** will transfer its functions to the West Coast ISE Directorate also in San Diego, and close. A total of approximately 620 positions will be either transferred or eliminated due to consolidation reductions.

B. Others:

Although not falling into the categories of closure or realignment, the following installations are integral to the overall plan and success of NAWP consolidation.

1. **Naval Ocean System Center (NOSC), San Diego, CA,** will be disestablished as a separate command and realigned to merge with the RDT&E Directorate, to be the center for both the RDT&E Directorate and the West Coast ISE Directorate. Functions will be gained from NESEC, Vallejo NESEC San Diego, FCDSSA San Diego, NSSA Los Angeles and NOSC DET Kaneohe. Functions will be transferred to the Naval Undersea Warfare Center at Newport, RI, and to the Naval Surface Warfare Center at Dahlgren, VA. Positions will be gained and lost through transfers and eliminated due to consolidation and specific workload reductions for a net gain of approximately 560 positions.

2. **Naval Electronics Engineering Activity, Pacific, Pearl Harbor, HI,** will be disestablished as a separate command and organizationally realigned with the West Coast ISE Directorate. It will gain functions from NOSC DET Kaneohe and remain a major operating site. Positions will be gained through transfers and eliminated due to specific workload reductions for a net loss of approximately 15 positions.

3. **Naval Electronic Systems Engineering Center (NESEC), Portsmouth, VA,** will be disestablished as a separate command and realigned to merge with the East Coast ISE Directorate to be the center for the directorate. Functions will be gained from NESEC Charleston, NESEA St. Inigoes, and NESSEC Washington, DC. Positions will be gained through transfers and eliminated due to specific workload reductions for a net gain of approximately 570 positions.

Naval Surface Warfare Center

Recommendation: As an integral part of the Navy's RDT&E, Engineering and Fleet Support Consolidation Plan, six realignments and two closures, as described in the accompanying table, are recommended in connection with establishment of the Naval Surface Warfare Center (NSWC).

Justification: Consolidation of the Navy's RDT&E, engineering and Fleet support activities is driven by Congressionally mandated reductions in the Navy's overall budget and acquisition workforce. These activities will be consolidated along mission and functional lines in four centers. The missions of the activities will be purified, so that each activity will be assigned unique technology leadership areas. All work tasked in these leadership areas will be performed only at the cognizant activity. The purification process will lead to development of critical mass technical capability in each area.

With headquarters in Washington, DC, NAWC will be the Navy's full spectrum center for surface platforms and surface warfare combat and weapons systems. It is also the focal point for all ship and submarine hull, mechanical and electrical programs. NSWC will be organized in four major divisions:

- **Combat and Weapons Systems R&D Division:** primarily responsible for surface combat, and weapons systems, mine and amphibious warfare, and mine countermeasures; centered at Dahlgren, VA with an operating site in Panama City, FL, and facilities at White Oak, MD.

- **Combat and Weapon System In-Service Engineering (ISE) Division:** primarily responsible for in-service engineering to surface ships and mines, underway replenishment and combat systems software; centered at Port Hueneme, CA, with an operating site in Dam Neck, VA.

- **Combat and Weapon System Engineering and Industrial Base Division:** primarily responsible for gun systems, ordnance and explosives; centered at Crane, IN with operating sites at Louisville, KY, and Indian Head, MD.

- **Hull, Mechanical, and Electrical (HM&E), R&D, and ISE Divisions:** primarily responsible for ship and submarine HM&E and propulsion; centered at Carderock, MD, with an operating site at Philadelphia, and facilities at Annapolis, MD.

In development and review of the Plan, all RDT&E facilities were considered on an equal basis, in conformance with the Defense Base Closure and Realignment Act of 1990. The

Navy's Base Structure Committee (BSC) validated the plan using the first four DOD selection criteria. For example, and most notably, both the David Taylor Research Center (DTRC) Annapolis Laboratory Detachment and the Naval Surface Warfare Center (NSWC) detachment White Oak, graded lower in military value for these key reasons:

- Ample space to expand to accommodate consolidation (Annapolis constrained and only 730 acres at White Oak vs 43,000 acres at Dahlgren.
- Lack of availability or proximity to suitable overwater test ranges (none at White Oak).
- Duplicative engineering capability to that existing elsewhere (Annapolis vs Naval Ship System Engineering Station Philadelphia).
- Availability to operate on a reduced basis due to proximity to a larger laboratory (Annapolis and Carderock; White Oak and Dahlgren).

The BSC noted that approximately 3980 eliminated positions at eleven installations were directly attributable to site-specific workload reduction, rather than streamlining or consolidation. The BSC also considered the other DOD selection criteria. The economic and environmental issues associated with each site were evaluated. Exclusive of site-specific workload reductions, establishment of NSWC will result in elimination of approximately 600 positions and transfer of approximately 2100 positions. Details related to each site are summarized in the table below. None of the sites in question is on the Environmental Protection Agency's National Priorities List.

Implementing the recommendations will cost about $181 million. Annually, the recommendations will save about $29 million.

Table of Recommendations to Establish the Naval Surface Warfare Center

A. <u>Realignments and Closures:</u>

1. Integrated Combat Systems Test Facility (ICSTF), San Diego, CA, will transfer its functions to the Combat and Weapon System In-service Engineering (ISE) Division at Port Hueneme, CA and close. A total of approximately 46 positions will be transferred or eliminated due to consolidation.

2. **Naval Mine Warfare Engineering Activity (NMWEA), Yorktown, VA,** will transfer its functions to the Combat and Weapon Systems ISE Division at Dam Neck, VA and close. A total of approximately 230 positions will either be transferred or eliminated due to consolidation and specific workload reductions.

3. **Naval Surface Warfare Center (NSWC) Detachment White Oak, MD,** will be disestablished as a separate command and realigned. The bulk of its functions will be transferred to the Combat and Weapon Systems R&D Division at Dahlgren, VA. Custody of and the personnel to sustain unique facilities will be retained. A total of approximately 1255 positions will either be transferred or eliminated due to consolidation and specific workload reductions.

4. **Naval Coastal Systems Center (NCSC) Panama City, FL,** will be disestablished as a separate command and realigned to merge with the Combat and Weapon Systems R&D Division as a major operating site at Panama City, FL. There will be a minor transfer of functions to the Naval Undersea Warfare Center at Newport, RI and to the Combat and Weapon Systems R&D Division at Dahlgren, VA. A total of approximately 285 positions will either be transferred or eliminated due to consolidation.

5. **David Taylor Research Center (DTRC), Annapolis Laboratory, MD,** will be disestablished as a separate command and realigned to merge with the Hull, Mechanical, and Electrical (HM&E) R&D and ISE Division. The majority of its functions will be transferred to the HM&E R&D and ISE Division at Philadelphia and to DTRC, Carderock, MD. Unique facilities and the personnel to sustain them will be retained. A total of approximately 655 positions will either be transferred or eliminated due to consolidation and specific workload reductions.

6. **Naval Ordnance Station (NOS) Indian Head, MD,** will be disestablished as a separate command and organizationally realigned with the Combat and Weapon Systems Engineering and Industrial Base Division at Crane, IN. It will remain as a major operating site. A total of approximately 610 positions will be eliminated due to consolidation and specific workload reductions.

7. **Naval Ordnance Station (NOS) Louisville, KY,** will be disestablished as a separate command and organizationally realigned with the Combat and Weapon Systems Engineering and Industrial Base Division at Crane, IN. It will remain as a major operating site. Positions will be gained and lost through transfers and eliminated due to consolidation and specific workload reductions for a net loss of approximately 600 positions.

8. **Naval Weapons Support Center, Crane, IN,** will be disestablished as a separate command and realigned with the Combat and Weapon Systems Engineering and Industrial Base Division at Crane, IN as the center for the division. Positions will be gained and lost through transfers and eliminated due to consolidation and specific workload reductions for a net loss of approximately 1065 positions.

B: Others:

Although not falling into the categories of closure or realignment, the following installations are integral to the overall plan and success of the NAWC consolidation.

1. **Fleet Combat Direction Systems Support Activity, (FCDSSA), Dam Neck, VA,** will be disestablished as a separate command and realigned to merge with the Combat and Weapon Systems ISE Division at Dam Neck, VA. Functions will be gained from NMWEA Yorktown and the Naval Undersea Warfare Center. Positions will be gained from transfers and eliminated due to consolidation and specific workload reductions for a net gain of approximately 350 positions.

2. **Naval Ship Weapons Systems Engineering Station (NSWSES), Port Hueneme, CA,** will be disestablished as a separate command and realigned to merge with the Combat and Weapon Systems ISE Division at Port Hueneme, CA as the center for the division. Positions will be gained from transfers and eliminated due to consolidation and specific workload reductions for a net loss of approximately 25 positions.

3. **Naval Surface Warfare Center (NSWC), Dahlgren, VA,** will be disestablished as a separate command and realigned to merge with the Combat and Weapon Systems R&D Division at Dahlgren, VA as the center for the division. Positions will be gained from transfers and eliminated due to consolidation and specific workload reductions for a net gain of approximately 480 positions.

4. **Naval Ship Systems Engineering Station (NAVSSES) Philadelphia, PA,** will be disestablished as a separate command and realigned to merge with the Hull, Mechanical, and Electrical (HM&E) R&D and ISE Division as a major operating site at Philadelphia, PA. There will be a minor gain of functions from DTRC, Annapolis, MD. Positions will be gained from transfers and eliminated due to consolidation and specific workload reductions for a net loss of approximately 255 positions.

5. **David Taylor Research Center (DTRC), Carderock, MD,** will be disestablished as a separate command and realigned to merge with the HM&E R&D and ISE Division at Carderock, MD as the center for the division. There will be a gain of functions from DTRC, Annapolis, MD. Positions will gained from transfers and eliminated due to consolidation and specific workload reductions for a net gain of approximately 105 positions.

Naval Undersea Warfare Center

Recommendation: As an integral part of the Navy's RDT&E, Engineering and Fleet Support Consolidation Plan, four realignments, as described in the accompanying table, are recommended in connection with establishment of the Naval Undersea Warfare Center (NUWC).

Justification: Consolidation of the Navy's RDT&E, engineering and Fleet support activities is driven by Congressionally mandated reductions in the Navy's overall budget and acquisition workforce. These activities will be consolidated along mission and functional lines in four centers. The missions of the activities will be purified, so that each activity will be assigned unique technology leadership areas. All work tasked in these leadership areas will be performed only at the cognizant activity. The purification process will lead to development of critical mass technical capability in each area.

With headquarters in Washington, DC, NUWC will be the Navy's full spectrum center for submarine sensors and submarine combat and weapons systems. NUWC will be organized into two major divisions:

- **Combat and Weapons Systems Divisions:** primarily responsible for submarine combat and weapon systems and combat systems in-service engineering (ISE); and centered at Newport, RI, with an operating site at Norfolk, and facilities at New London, CT.

- **Weapons Systems ISE Divisions:** primarily responsible for ISE and depoting of weapons, targets, counter measures and non-expendable equipment, and management of Pacific ranges; and centered at Keyport, WA.

In development and review of the plan, all RDT&E facilities were considered on an equal basis, in conformance with the Defense Base Closure and Realignment Act of 1990. The Navy's Base Structure Committee (BSC) validated the plan using the first four DOD selection criteria. For example, and most notably, Naval Underwater Systems Center (NUSC) Detachment, New London, CT.

- Very limited land for expansion to accommodate consolidation (189 acres at Newport vs 28 acres at New London).
- Approximately 1.2 million square feet of space at Newport, over one-third of which has been constructed in the last 15 years, vs approximately 740,000 square feet of space in New London.
- Avoid $12.6 million construction project at New London.

The BSC noted that approximately 1410 eliminated positions at five installations were directly attributable to site-specific workload reduction, rather than streamlining or consolidation. The BSC also considered the other DOD selection criteria. The economic and environmental issues associated with each site were evaluated. Exclusive of site-specific workload reductions, establishment of NUWC will result in elimination of approximately 250 positions and transfer of approximately 1080 positions. Details related to each site are summarized in the table below. None of the sites in question is on the Environmental Protection Agency's National Priorities List.

Implementing the recommendations will cost about $71 million. Annually, the recommendations will save about $11 million.

Table of Recommendations to Establish the Naval Undersea Warfare Center

A. Realignments:

1. **Naval Underwater Systems Center (NUSC) Detachment New London, CT,** will be disestablished as a separate command. The bulk of its functions will be transferred to the Combat and Weapon Systems Division (CWSD), Newport, RI. Personnel involved with unique facilities will remain and be realigned under CWSD Newport. A total of approximately 1070 positions will either be transferred or eliminated due to consolidation and specific workload reductions.

2. **Naval Sea Combat Systems Engineering Station (NSCSES) Norfolk, VA,** will be disestablished as a separate command and realigned to merge with CWSD as a major operating site at Norfolk. There will be a transfer of functions to the Naval Surface Warfare Center at Dam Neck and Norfolk. A total of approximately 530 positions will either be transferred or eliminated due to consolidation and specific workload reductions.

3. **Trident Command and Control Systems Maintenance Activity, (TRICCSMA), Newport, RI,** will be disestablished as a separate command and realigned to merge with the Combat and Weapon Systems Division at Newport, RI. A total of approximately 40 positions will be eliminated due to consolidation and specific workload reductions.

4. **Naval Undersea Warfare Engineering Station (NUWES), Keyport, WA,** will be disestablished as a separate command and realigned to merge with the Weapon Systems ISE Division at Keyport, WA, as the center for the division. A total of approximately 700 positions will be eliminated due to consolidation and specific workload reductions.

B. Other:

Although not falling into the categories of closure or realignment, the following installation is integral to the overall plan and success of the NUWC consolidation.

1. **Naval Underwater Systems Center (NUSC), Newport, RI,** will be disestablished as a separate command and realigned to merge with the CWSD Newport, as the center for the division. Functions will be gained from NUSC Det New London, the Naval Surface Warfare Center, and the Naval Command, Control and Ocean Surveillance Center. A net total of approximately 1120 positions will be gained from transfers and eliminated due to consolidation and specific workload reductions.

Department of the Air Force

Summary of Selection Process

Introduction

The Air Force will reduce its active component force structure by 29% across the Future Years Defense Program. This reduction spans the spectrum of Air Force active missions and includes a commensurate reduction in manpower. The resulting smaller force necessitates a reduction in Air Force base structure, both overseas and stateside. In determining base structure needs, the Air Force focused on both the Active and Air Reserve Component to ensure a Total Force approach to the process.

The Selection Process

The Air Force used a structured process that treated all bases equally, without regard to past studies or announcements. The basis for selection was the Force Structure Plan and the eight final criteria established under Public Law 101-510.

The Secretary of the Air Force appointed a Base Closure Executive Group of five general officers and five SES-level career civilians with expertise across a wide range of disciplines. This Group reviewed all bases with more than 300 civilians authorized. Major Command and reserve component representatives served as advisors to the group. Data was collected directly from the bases and validated by the Major Commands, Air Staff and Air Force Audit Agency.

The Executive Group placed all bases in categories and conducted a capacity analysis based on the Force Structure Plan. Categories and subcategories having no significant excess capacity were excluded from further study. These categories and subcategories were flying/mobility, flying/other, the support category including depots, and product divisions/laboratories and test facilities. All remaining bases were evaluated on the basis of military requirements. As a result, certain bases having unique missions not affected by the Force Structure Plan, in geographic locations where a base was required, or otherwise militarily needed, were excluded from further study.

All Active Component bases not excluded were individually examined on the basis of the eight final criteria, and on approximately 80 sub-elements. The sub-

elements were developed by the Air Force to provide specific data points for each criterion. They vary somewhat by category. Each sub-element for each base was individually coded and the Group agreed to an overall coding for each criterion.

For the tactical subcategory five options were developed, with six developed for the strategic subcategory. Each option assigned bases to three groups, in order of desirability for retention. The basic scoring employed all eight final criteria, with priority to the first four. Other options were developed by applying all eight criteria, but rescoring all bases in the category with added weight placed on specified factors.

The Air Reserve Component Category required a slightly different approach. Air National Guard and Air Force Reserve Component bases do not readily compete against each other. Air Reserve Component units enjoy a special relationship with their respective states and local communities. Further, the recruiting needs of these units must be considered. The Executive Group first identified those realignments which would achieve reasonable savings. Then, the final criteria were applied to assure that the realignment would be cost effective, consistent with military requirements, and otherwise sound.

Intercommand and interservice utilization analysis was also accomplished. The Directors of Plans and Programs from the Major Commands met on several occasions with the Executive Group. Also, consultations with Army and Navy base closure representatives occurred regarding potential interservice asset sharing.

The Secretary of the Air Force, with the advice of the Chief of Staff of the Air Force, and in consultation with the Base Closure Executive Group, nominated bases to the Secretary of Defense for closure and realignment based on the force structure plan and the final criteria established under Public Law 101-510. The Secretary of Defense recommends the following Air Force bases for closure or realignment:

Recommendations and Justifications

Bergstrom Air Force Base, Texas

Recommendation: Bergstrom AFB, Texas, is recommended for closure. All active RF-4s will be retired. The 67th Tactical Reconnaissance Wing will inactivate. The corrosion control facility will remain if it continues to be economical to operate there. The Air Force Reserve units will remain in a cantonment area if the base is converted to a civil airport. If no decision on a civil airport is reached by June of 1993, the units will be redistributed as directed by the Secretary of the Air Force. If units stay but the airport is not an economically viable entity by the end of 1996, these units would also be redistributed. The Twelfth Air Force Headquarters; 12th TAC Intelligence Squadron; and the 602nd Tactical Air Control Center Squadron will relocate to Davis-Monthan AFB, Arizona. The 712th Air Support Operations Center Squadron will relocate to Fort Hood, Texas. All other personnel will depart. The 41st Electronic Combat Squadron (ECS) (EC-130H aircraft) will remain in place at Davis-Monthan AFB rather than move to Bergstrom AFB as recommended by the 1988 Base Closure Commission.

Justification: The Air Force has five more tactical bases than needed to support the number of fighter aircraft in the DoD Force Structure Plan. All tactical bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Bergstrom AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All tactical bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Bergstrom AFB ranked low in this process compared to the other fifteen bases in the tactical subcategory and is recommended for closure. While Bergstrom AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. The overall long term military value of Bergstrom AFB suffered because of local/regional encroachment and a lack of suitable ranges/airspace. Additionally, the cost to close Bergstrom AFB is low and the savings are high.

The closure of Bergstrom AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 17,000 persons, direct and indirect employment loss of just over 10,600 jobs, and regional income loss of 175 million dollars. These losses are in contrast to a regional population of nearly 600,000, available jobs of just over 388,000, and regional annual income approaching 9 billion dollars.

By the end of FY 97, the net savings from implementing this recommendation are about $121M. Annual savings after implementation are expected to be $36.3M.

Carswell Air Force Base, Texas

Recommendation: Carswell AFB, Texas, is recommended for closure. The 7th Bombardment Wing will inactivate. The B-52H aircraft will transfer to Barksdale AFB, Louisiana. The KC-135 aircraft will transfer to the Air Reserve Component (ARC). The 301st Tactical Fighter Wing (AFRES), 73rd Aerial Port Squadron (AFRES), 457th Tactical Fighter Squadron (AFRES) and the 20th Medical Services Squadron (AFRES) will remain at Carswell AFB in an efficient cantonment area containing only the direct support facilities. The 436th Strategic Training Squadron (SAC) will relocate to Dyess AFB, Texas. All other active duty personnel will depart.

Justification: The Air Force has six more strategic bases than are needed to support the number of bombers and tankers in the DoD Force Structure Plan. All strategic bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Carswell AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All strategic bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Carswell AFB ranked low in this process compared to the other twenty bases in the strategic subcategory and is recommended for closure. While Carswell AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. The long term military value of Carswell AFB is impacted by severe local and regional encroachment. Carswell AFB also ranked below average in wartime tanker utility. The cost to close Carswell AFB is relatively low.

The closure of Carswell AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 20,000 persons, direct and indirect employment loss of just over 12,000 jobs, and regional income loss of nearly 212 million dollars. These losses are in contrast to a regional population of over 1,200,000, available jobs just over 600,000, and regional annual income of 17 billion dollars.

By the end of FY 97, the net savings from implementing this recommendation are about $156M. Annual savings after implementation are expected to be $45.5M.

Castle Air Force Base, California

Recommendation: Castle AFB, California, is recommended for closure. The 93rd Bombardment Wing will inactivate. The bomber and tanker Combat Crew Training missions will transfer to Fairchild AFB, Washington. The B-52G conventional aircraft will transfer to KI Sawyer AFB, Michigan. The KC-135 aircraft will transfer to the Air Reserve Component and other active units. All other active duty personnel will depart.

Justification: The Air Force has six more strategic bases than are needed to support the number of bombers and tankers in the DoD Force Structure Plan. All strategic bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Castle AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All strategic bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Castle AFB ranked low in this process compared to the other twenty bases in the strategic subcategory, and is recommended for closure. While Castle AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. Peacetime and wartime tanker utility negatively impact the long term military value of Castle AFB. Also, encroachment on the base and flight patterns is significant. The condition of the facilities at Castle AFB is below average in the Strategic subcategory, and the housing deficit is much greater than average. Additionally, the cost to close Castle AFB is relatively low and the savings are favorable.

The closure of Castle AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 16,000 persons, direct and indirect employment loss of nearly 9,000 jobs, and regional income loss approaching 162 million dollars. These losses are in contrast to a regional population of just over 492,000, available jobs close to 216,000, and regional annual income

of 6.5 billion dollars. Castle AFB is on the Environmental Protection Agency's National Priorities List.

By the end of FY 97, the net savings from implementing this recommendation are about $63M. This savings could be increased by approximately $27M in land value. Annual savings after implementation are expected to be $52.7M.

Eaker Air Force Base, Arkansas

Recommendation: Eaker AFB, Arkansas, is recommended for closure. The 97th Bombardment Wing will inactivate. The B-52G Air Launched Cruise Missile aircraft will retire. The KC-135 aircraft will transfer to other KC-135 units. All other active duty personnel will depart.

Justification: The Air Force has six more strategic bases than are needed to support the number of bombers and tankers in the DoD Force Structure Plan. All strategic bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Eaker AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.
As with the other categories, it was difficult to select closure candidates. All strategic bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Eaker AFB ranked low in this process compared to the other twenty bases in the strategic subcategory, and is recommended for closure. While Eaker AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. The long term military value of Eaker AFB ranked below average because of both peacetime and wartime tanker utility and access to bombing ranges. Also, the cost to close Eaker AFB is very low and the savings are very high.

The closure of Eaker AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 9,000 persons, direct and indirect employment loss of nearly 4,600 jobs, and regional income loss of just over 83 million dollars. These losses are in contrast to a regional population of over 202,000, available jobs close to 99,000, and regional annual income of 2.2 billion dollars.

By the end of FY 97, the net savings from implementing this recommendation are about $221M. Annual savings after implementation are expected to be $52.9M.

England Air Force Base, Louisiana

Recommendation: England AFB, Louisiana, is recommended for closure. The 23rd Tactical Fighter Wing will inactivate. Assigned aircraft will be retired or redistributed among remaining active and reserve component units. One active A/OA-10 squadron will be realigned to Eglin AFB, Florida and one to McChord AFB, Washington. All other personnel will depart.

Justification: The Air Force has five more tactical bases than needed to support the number of fighter aircraft in the DoD Force Structure Plan. All tactical bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close England AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All tactical bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. England AFB ranked low in this process compared to the other fifteen bases in the tactical subcategory and is recommended for closure. While England AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. The long term military value of England AFB is limited by weather and available airspace for training. England AFB has the least suitable weather of all bases ranked within this category. Although its location relative to Fort Polk is an asset, adequate Air Force support can be provided from Barksdale AFB, Louisiana. Additionally, the cost to close England AFB is low and the savings are very high.

The closure of England AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 10,000 persons, direct and indirect employment loss of just over 5,700 jobs, and regional income loss of nearly 97 million dollars. These losses are in contrast to a regional population of 139,600, available jobs just over 60,000, and regional annual income of 1.5 billion dollars.

By the end of FY 97, the net savings from implementing this recommendation are about $176M. Annual savings after implementation are expected to be $47.2M.

Grissom Air Force Base, Indiana

Recommendation: Grissom AFB, Indiana, is recommended for closure. The 305th Air Refueling Wing will inactivate. The KC-135 aircraft will transfer to the Air Reserve Component (ARC). The EC-135 aircraft will retire. The 434th Air Refueling Wing (AFRES), the 930th Tactical Fighter Group (AFRES), and the 930rd Civil Engineering Squadron (AFRES) will remain. The 930th Tactical Fighter Group will convert to the KC-135 and that unit's A-10s will retire. The Air Force Reserve units will be grouped in an efficient cantonment area containing only the essential direct supporting facilities. The Air Force Reserve will operate the airfield unless the local/state authorities decide to convert to a civil airport. The airfield and all operational facilities will be retained and those facilities not required by the Reserves will be mothballed for future contingencies. However, the airfield and these facilities would be made available as required to support joint civil use. All family housing and community support facilities including the hospital, base exchange, commissary and all morale and welfare facilities not authorized for Reserve units will be declared excess and made available for disposal. All other active duty personnel will depart.

Justification: The Air Force has six more strategic bases than are needed to support the number of bombers and tankers in the DoD Force Structure Plan. All strategic bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Grissom AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All strategic bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Grissom AFB ranked low in this process compared to the other twenty bases in the strategic subcategory, and is recommended for closure. While Grissom AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. As an active base, Grissom AFB ranked lower in long term military value because of peacetime and wartime tanker utility as well as access to bombing ranges.

Additionally, the cost to close Grissom AFB Base is low and the savings are substantial. The condition of the existing facilities at Grissom AFB is ranked well below the average.

The closure of Grissom AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 9,700 persons, direct and indirect employment loss of just over 5,200 jobs, and regional income loss of nearly 88 million dollars. These losses are in contrast to a regional population of just over 197,000, available jobs close to 101,000, and regional annual income of 2.6 billion dollars.

By the end of FY 97, the net savings from implementing this recommendation are about $157M. Annual savings after implementation are expected to be $48.3M.

Loring Air Force Base, Maine

Recommendation: Loring AFB, Maine, is recommended for closure. The 42nd Bombardment Wing will inactivate. The B-52G conventional aircraft will transfer to KI Sawyer AFB, Michigan. The KC-135 aircraft will realign to the Air Reserve Component (ARC) and other active units. All remaining personnel will depart.

Justification: The Air Force has six more strategic bases than are needed to support the number of bombers and tankers in the DoD Force Structure Plan. All strategic bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Loring AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All strategic bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Loring AFB ranked low in this process compared to the other twenty bases in the strategic subcategory, and is recommended for closure. While Loring AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. Loring AFB ranked lower in long term military value due to limited peacetime tanker utility and access to bombing ranges. The condition of the existing facilities at Loring AFB is well below average. The cost to close Loring AFB is low and the savings are the highest of the bases considered in this subcategory.

The closure of Loring AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 22,000 persons, direct and indirect employment loss of nearly 9,900 jobs, and regional income loss of just over 92 million dollars. These losses are in contrast to a regional population of over 49,100, available jobs close to 33,320, and regional annual income of 755 million dollars. Loring AFB is on the Environmental Protection Agency's National Priorities List.

By the end of FY 97, the net savings from implementing this recommendation are about $182M. Annual savings after implementation are expected to be $61.8M.

Lowry Air Force Base, Colorado

Recommendation: Lowry AFB, Colorado, is recommended for closure. The Lowry Technical Training Center will inactivate. Courses currently conducted at Lowry AFB will be consolidated at remaining Technical Training Centers, contracted, or relocated to other locations. The 1001st Space Systems Squadron, Defense Finance and Accounting Service, and Air Force Reserve Personnel Center will remain at Lowry AFB in cantonment areas. No housing (unaccompanied and family), community support, recreation, or other base support facilities will be retained. Major tenant units relocating are: 3320th Correctional Squadron to Lackland AFB, Texas; and the U.S. Army instructor and support cadre to Keesler AFB, Mississippi. All other personnel will depart. Courses from Chanute AFB, Illinois, realigned to Lowry by the 1988 Base Closure Commission will, instead, realign to various other locations.

Justification: The Air Force has one more Technical Training Center base than needed to support reduced Air Force enlisted accessions (30,000 per year). All Technical Training Center bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. The selection process involved the evaluation of a large number of subelements of the criteria by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Lowry AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All Technical Training Center bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Lowry AFB ranked low and is recommended for closure. While Lowry AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. Lowry AFB's facilities ranked below the category average. The lack of a runway limited this base's overall long term military value and its ability to accept additional missions across a broad spectrum. Although not part of the cost analysis, Lowry AFB has one of the highest potentials to return substantial proceeds from property disposal to the Base Closure Account. Finally, the closure of Lowry AFB would reduce excess capacity with favorable savings.

The closure of Lowry AFB will have an impact on the local economy, although it is relatively the least severe of any of the Technical Training Center bases. It is projected to result in a population loss of approximately 9,500 persons, direct and indirect employment loss of nearly 12,000 jobs, and regional income loss of nearly 295 million dollars. These losses are in contrast to a regional population of nearly 1,600,000, available jobs of nearly 1,000,000, and regional annual income of approximately 28 billion dollars.

By the end of FY 97, the net cost of implementing this recommendation is about $48M. This cost could be reduced by approximately $100M in land value. Annual savings after implementation are expected to be $42M.

Moody Air Force Base, Georgia

Recommendation: Moody AFB, Georgia, is recommended for closure. The 347th Tactical Fighter Wing will inactivate. Assigned aircraft will be redistributed to modernize other active and reserve component units. All other personnel will depart.

Justification: The Air Force has five more tactical bases than needed to support the number of fighter aircraft in the DoD Force Structure Plan. All tactical bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Moody AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All tactical bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Moody AFB ranked low in this process compared to the other fifteen bases in the tactical subcategory and is recommended for closure. While Moody AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. The long term military value of Moody AFB, when compared to the other bases in its category, suffered because of weather, and its location in a region where special use airspace is being stressed increasingly by a growth in air traffic. Additionally, it is the least costly base to close of all bases in this subcategory.

The closure of Moody AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 9,300 persons, direct and indirect employment loss of just over 4,800 jobs, and regional income loss of nearly 98 million dollars. These losses are in contrast to a regional population of 106,000, available jobs of just over 54,000, and regional annual income of just over 1.2 billion dollars.

By the end of FY 97, the net savings from implementing this recommendation are about $143M. Annual savings after implementation are expected to be $45.1M.

Myrtle Beach Air Force Base, South Carolina

Recommendation: Myrtle Beach AFB, South Carolina, is recommended for closure. The 354th Tactical Fighter Wing will inactivate. Assigned aircraft will be retired or redistributed among remaining active and reserve component units. One active A/OA-10 squadron will be realigned to Shaw AFB, South Carolina and one to Pope AFB, North Carolina. All other personnel will depart.

Justification: The Air Force has five more tactical bases than needed to support the number of fighter aircraft in the DoD Force Structure Plan. All tactical bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Myrtle Beach AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All tactical bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Myrtle Beach AFB ranked low in this process compared to the other fifteen bases in the tactical subcategory and is recommended for closure. While Myrtle Beach AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. Incompatible development within the clear zone and accident potential zone, as well as local and regional airspace encroachment, and weather all negatively impact the long term military value of Myrtle Beach AFB. Additionally, the cost to close Myrtle Beach AFB is low and the savings are high.

The closure of Myrtle Beach AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 20,000 persons, direct and indirect employment loss of nearly 10,000 jobs, and regional income loss of just over 97 million dollars. These losses are in contrast to a regional population of just over 183,000, available jobs approaching 100,000, and regional annual income of just over 2.1 billion dollars.

By the end of FY 97, the net savings from implementing this recommendation are about $76M. This savings could be increased by approximately $15M in land value. Annual savings after implementation are expected to be $30.2M.

Richards-Gebaur Air Reserve Station, Missouri

Recommendation: Richards-Gebaur Air Reserve Station, Missouri, is recommended for closure. The 442nd TFW, consisting of A-10 aircraft and associated support units will realign to Whiteman AFB, Missouri. Remaining major tenant units consist of the 36th Aeromedical Evacuation Squadron, 77th Aerial Port Squadron, and the 78th Aerial Port Squadron which realign to Peterson AFB, Colorado. All remaining Air Force, Air Force Reserve, and Air National Guard personnel will depart.

Justification: Analysis of the DoD Force Structure Plan does not reveal a significant reduction in Air Reserve Component force structure. However, realignments of Air Reserve Component (ARC) units onto active bases could, potentially, be cost effective. Therefore, the Air Force decided to continue examination of the ARC category for cost effective realignments to other bases. The evaluation of the Air Reserve Component category recognized that ARC bases do not readily compete against each other. Air Reserve Component units enjoy a special relationship with their respective states and local communities. Further, consideration must be given to the recruiting needs of these units. A Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians, was appointed by the Secretary of the Air Force. The BCEG first identified those realignments which could achieve reasonable savings. Then, the eight DoD selection criteria were considered to assure that the realignment would be cost effective, consistent with military requirements, and otherwise sound. The recommendation to close Richards-Gebaur ARS was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

For many years, the Air Force Reserve has borne a substantial portion of the operating costs of this airfield even though it is operated by the Kansas City Department of Aviation and Transportation. When the joint use arrangement was initiated in the late 1970's, the Air Force anticipated that an economically viable civil airport would develop and cost to the Air Force would be reduced dramatically over time. That has not occurred; therefore, relocation of the Air Force Reserve activities to an active Air Force base would achieve significant cost savings. Attention was focused on nearby Whiteman AFB, Missouri since the 442nd Tactical Fighter Wing could be relocated within the same recruiting area and, thus, avoid substantial loss of assigned personnel. The long term operational impact to this unit is minimal since Whiteman AFB has similar access to training ranges, low level routes, and Army exercise areas.

Realignment of the 442nd Tactical Fighter Wing to Whiteman AFB can be accomplished at low cost and the return on investment will be less than five years.

The closure of Richards-Gebaur Air Reserve Station will have an impact on the local economy. It is projected to result in a population loss of 4,600 persons, direct and indirect employment loss of 2,600 jobs, and regional income loss of 26.9 million dollars. The losses are in contrast to a regional population of over 702,200, available jobs of 461,000, and regional annual income approaching 11 billion dollars.

By the end of FY 97, the net cost of implementing this recommendation is about $4M. Annual savings after implementation are expected to be $12.9M.

Rickenbacker Air Guard Base, Ohio

Recommendation: Rickenbacker Air Guard Base, Ohio is recommended for closure. The 160th Air Refueling Group (ANG) will move to Wright-Patterson AFB, Ohio with 20 KC-135 aircraft. The 121st Tactical Fighter Wing will inactivate. The 907th Tactical Airlift Group (AFRES) will become the 907th Military Airlift Group and relocate with 10 C-141 aircraft to Wright-Patterson AFB. The remaining 6 C-141 aircraft currently projected for this unit will be assigned to the 445th Military Airlift Wing (AFRES) at March AFB, California. The 4950th Test Wing, currently located at Wright-Patterson AFB, will move to Edwards AFB, California. Remaining major tenant units consist of the Naval Air Reserve Center and Army Aviation Facility. Both may move to locations as determined by those Services or may remain in cantonment at this location and the Air Force will transfer the necessary property to the Army and Navy as required. All remaining Air Force, Air Force Reserve, and Air National Guard personnel will depart.

Justification: Analysis of the DoD Force Structure Plan does not reveal a significant reduction in Air Reserve Component force structure. However, realignments of Air Reserve Component (ARC) units onto active bases could, potentially, be cost effective. Therefore, the Air Force decided to continue examination of the ARC category for cost effective realignments to other bases. The evaluation of the Air Reserve Component category recognized that ARC bases do not readily compete against each other. Air Reserve Component units enjoy a special relationship with their respective states and local communities. Further, consideration must be given to the recruiting needs of these units. A Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians, was appointed by the Secretary of the Air Force. The BCEG first identified those realignments which could achieve reasonable savings. Then, the eight DoD selection criteria were considered to assure that the realignment would be cost effective, consistent with military requirements, and otherwise sound. The recommendation to close Rickenbacker AGB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

Since the reserve units at Rickenbacker Air Guard Base, Ohio are the predominate users of the airfield, the support costs for these activities are high. Therefore, it was apparent the relocation to an active base could achieve significant cost savings. Thus, attention was focused on Wright-Patterson AFB, Ohio in order to keep the Guard unit in the State of Ohio. Also, because of the relative short distance (70 miles) between Columbus and Dayton, Ohio, it was considered likely that most of the personnel currently in

these units would remain in a move to Wright-Patterson AFB. In addition, this would move those units closer to the centroid of a very large demographic area which would enhance recruiting potential. This resulted in the recommended realignments. The cost to realign the 160th Air Refueling Group and the 907th Tactical Airlift Group to Wright-Patterson AFB is low since the facilities to be vacated by the 4950th Test Wing are designed for aircraft similar to the 20 KC-135 and 10 C-141 aircraft which will be used by the Air Force Reserves and Ohio Air Guard. Although the Air Force Reserve unit was scheduled to receive 16 C-141 aircraft, the number was reduced to 10 in order to avoid costly MILCON of parking ramps and hangars that would be required to accommodate all the aircraft. The remaining 6 C-141 aircraft will be assigned to the Air Force Reserve unit at March AFB, California. The realignment of the 4950th Test Wing and its consolidation with the Air Force Flight Test Center at Edwards AFB, California will result in a more economical and efficient operation and the cost of transfer is moderate. The return on investment will be less than five years. In addition to the substantial recurring cost savings, this realignment enhances the total force concept through a closer association of active and reserve forces.

The closure of Rickenbacker Air Guard Base will have an impact on the local economy. It is projected to result in a population loss of 13,100 persons, direct and indirect employment loss of 6,700 jobs, and regional income loss of 41 million dollars. These losses are in contrast to a regional population of over 1,071,000, available jobs of 677,000, and regional annual income of 15.5 billion dollars.

By the end of FY 97, the net cost of implementing this recommendation is about $16M. Annual savings after implementation are expected to be $22.7M.

Williams Air Force Base, Arizona

Recommendation: Williams AFB, Arizona, is recommended for closure. All aircraft will be retired or redistributed. The 82nd Flying Training Wing will inactivate. Major tenant unit relocating is: Aircrew Training Research Facility to Orlando, Florida. All other personnel will depart.

Justification: The Air Force has one more Training subcategory base than needed to support reduced Air Force force structure. All Training subcategory bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. The selection process involved the evaluation of a large number of subelements of the criteria by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Williams AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All Training subcategory bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Williams AFB ranked low in this process and is recommended for closure. While Williams AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. Williams AFB ranked lowest in its category for airspace encroachment both now and in the future, directly impacting its long term military value. Additionally, it ranked lowest in condition of base facilities. The cost to close Williams AFB is low and savings are favorable.

The closure of Williams AFB will have an impact on the local economy; however, it is the least severe of any of the Training subcategory bases. It is projected to result in a population loss of approximately 7,700 persons, direct and indirect employment loss of nearly 6,000 jobs, and regional income loss of nearly 130 million dollars. These losses are in contrast to a regional population of just over 2,000,000, available jobs of nearly 1,200,000, and regional annual income of nearly 33 billion dollars. Williams AFB is on the Environmental Protection Agency's National Priorities List.

By the end of FY 97, the net savings from implementing this recommendation are about $222M. Annual savings after implementation are expected to be $54.1M.

Wurtsmith Air Force Base, Michigan

Recommendation: Wurtsmith AFB, Michigan, is recommended for closure. The 379th Bombardment Wing will inactivate. The B-52G Air Launched Cruise Missile aircraft will retire. The KC-135 aircraft will relocate and transfer to the Air Reserve Component (ARC). All other personnel will depart.

Justification: The Air Force has six more strategic bases than are needed to support the number of bombers and tankers in the DoD Force Structure Plan. All strategic bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against the eight DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to close Wurtsmith AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All strategic bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against all eight of the DoD selection criteria and Air Force subelements. Wurtsmith AFB ranked low in this process compared to the other twenty bases in the strategic subcategory, and is recommended for closure. While Wurtsmith AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. The long term overall military value of Wurtsmith AFB is below average because of distance to low altitude training routes, and poor peacetime tanker utility. The cost to close Wurtsmith AFB is very low and the savings very high.

The closure of Wurtsmith AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 9,400 persons, direct and indirect employment loss of just over 4,600 jobs, and regional income loss of nearly 94 million dollars. These losses are in contrast to a regional population of 87,600, available jobs close to 34,800, and regional annual income of 987 million dollars.

By the end of FY 97, the net savings from implementing this recommendation are about $256M. Annual savings after implementation are expected to be $63.3M.

MacDill Air Force Base, Florida

Recommendation: MacDill AFB, Florida, is recommended for realignment and partial closure. Realign the 56th Tactical Training Wing's F-16s from MacDill AFB, to Luke AFB, Arizona. The Joint Communications Support Element will move to Charleston AFB, South Carolina. The airfield at MacDill AFB will close, those facilities that support flying operations will be disposed of and the remainder of MacDill AFB will become an administrative base.

Justification: The Air Force has five more tactical bases than needed to support the number of fighter aircraft in the DoD Force Structure Plan. All tactical bases were considered for closure equally in a process that conformed to the Defense Base Closure and Realignment Act of 1990 and the Office of Secretary of Defense (OSD) guidance. Each base was evaluated against all eight of the DoD selection criteria and a large number of subelements specific to Air Force bases and missions. Data were collected and the eight criteria and subelements of the criteria applied by the Base Closure Executive Group (BCEG), a group of five general officers and five senior civilians appointed by the Secretary of the Air Force. The recommendation to partially close MacDill AFB was made by the Secretary of the Air Force with advice of the Air Force Chief of Staff and in consultation with the BCEG.

As with the other categories, it was difficult to select closure candidates. All tactical bases are in generally good condition with strong community support. Distinctions can be drawn, however, when the data are evaluated against the criteria. MacDill AFB ranked low in this process compared to the other fifteen bases in the tactical subcategory and is recommended for realignment and partial closure. While MacDill AFB's ranking rests on the combined results of applying the eight DoD selection criteria, rather than one or two specific deficiencies, a few points stand out. With the planned F-16 aircraft reductions, there is no longer a requirement to maintain two F-16 training locations (MacDill and Luke AFBs) and Luke AFB will have excess capacity due to redistribution of F-15 and F-16 aircraft. The long term military value of MacDill AFB is low due to significant impacts of current/potential local and regional land use and airspace encroachment. This realignment is low cost and the savings are substantial. Although not part of the cost analysis, MacDill AFB has one of the highest potentials to return substantial proceeds from property disposal to the Base Closure Account. By consolidating F-16 training at one base, the Air Force will save a minimum of $20 million annually.

The closure of MacDill AFB will have an impact on the local economy. It is projected to result in a population loss of approximately 6,000 persons, direct and indirect employment loss of 4,500 jobs, and regional income loss of 96 million dollars. These losses are in contrast to a regional

population of just over 1.6 million, available jobs of just over 915,000, and regional annual income of nearly 26 billion dollars.

By the end of FY 97, the net savings from implementing this recommendation are about $53M. This savings could be increased by approximately $50M in land value. Annual savings after implementation are expected to be $20.4M.

Beale Air Force Base, California

Recommendation: Instead of sending the 323rd Flying Training Wing (FTW) and Undergraduate Navigator Training (UNT) to Beale AFB, California, as recommended by the 1988 Base Closure Commission as part of the closure of Mather AFB, California, realign these activities to Randolph AFB, Texas.

Justification: The Air Force has identified six Strategic Air Command bases for closure under the Defense Base Closure and Realignment Act of 1990. Beale AFB was identified as a location for realigning force structure from these closing bases. The excess capacity identified by the 1988 Commission at Beale can better be utilized by operational strategic force structure instead of navigator training.

Also, based on the DoD Force Structure Plan, the requirements for Undergraduate Navigator Training have reduced substantially from the level projected at the time of the 1988 Commission. As a result, Randolph AFB has the capacity to absorb the 323rd FTW at reduced cost while maintaining a quality training environment. The MILCON avoidance totals approximately $31.5M.

Goodfellow Air Force Base, Texas

Recommendation: As part of the closure of Chanute AFB, Illinois, realign the fuels training to Sheppard AFB, Texas, and realign the technical training fire course to Goodfellow unless a satisfactory and cost effective contract can be arranged. The 1988 Base Closure Commission recommended that both of these courses be realigned to Goodfellow AFB, Texas.

Justification: The Air Force would like the opportunity to explore more cost effective ways to conduct fire training. However, realignment to Goodfellow AFB would proceed if a satisfactory and cost effective alternative cannot be arranged.

Based upon the DoD Force Structure Plan and the base structure review, the Air Force identified excess dormitory/dining hall capacity at Sheppard AFB that can accommodate the fuels training courses. Moving fuels training to Sheppard AFB, taking advantage of excess facilities, will result in MILCON cost avoidance of approximately $2.6M.

March Air Force Base, California

Recommendation: As a part of the closure of Norton AFB, California, realign 45 Headquarters Air Force Audit Agency (AFAA) manpower authorizations (out of 184 total positions) to the National Capital Region (NCR). The remaining 139 HQ AFAA positions remain at March AFB, as recommended by the Commission. The 1988 Base Closure Commission recommended that the AFAA realign to March AFB, California.

Justification: On February 4, 1991, a restructuring of HQ USAF was announced. In that restructuring, the Auditor General position, along with six other AFAA positions were transferred to the manpower rolls of the Air Force Secretariat. This action formally recognized that the Auditor General would be both a member of the Secretariat and the manager of the AFAA. It is imperative that, in his dual role, the Auditor General have sufficient staff in the NCR to establish Air Force policy and direct AFAA operations.

Mather Air Force Base, California

Recommendation: As part of the closure of Mather AFB, California, realign the 940th Air Refueling Group (ARG) (Air Force Reserve) to McClellan AFB, California, and leave the 323rd FTW Hospital open as an annex to McClellan AFB. The 1988 Base Closure Commission recommended realignment of the 940th ARG (AFRES) to McClellan AFB if local authorities did not elect to operate the Mather facility as an airport.

Justification: During the Air Force review of the DoD Force Structure Plan and its base structure, sufficient capacity at McClellan AFB, which is only 10 miles from Mather AFB, was identified to support the 940th Air Refueling Group (AFRES). This move to McClellan AFB will enhance operational capability because of the active duty infrastructure to support the unit and will save annual base operating costs of $9M. In addition, the move could enhance the viable reuse of Mather AFB by the local community since this refueling unit occupies the primary flightline space at the air base. Also, the Sacramento community has not, to date, committed to the reuse of Mather AFB as a civil airport. Finally, the Commission did not specifically address where, or if, the 323rd FTW hospital would realign. The Air Force implementation plan associated with the 1988 Base Closure Commission closes the hospital at Mather and converts a clinic to a hospital at McClellan AFB at a cost of approximately $34M. After review, it is appropriate to keep this forty-five bed hospital at Mather AFB open as an annex to McClellan AFB. This will save construction costs of expanding the existing medical facility at McClellan AFB and be responsive to all medical requirements in the Sacramento area. The MILCON avoidance is approximately $9.5M.

Mountain Home Air Force Base, Idaho

Recommendation: As a part of the closure of George AFB, California, realign some F-4Gs to the Idaho and Nevada Air National Guard squadrons at Boise and Reno respectively; inactivate the 35th TTW; keep the 41st ECS (EC-130H aircraft) in place at Davis-Monthan AFB; realign Mountain Home AFB EF-111 aircraft to Cannon AFB, New Mexico; and establish a composite wing at Mountain Home AFB. The 1988 Base Closure Commission recommended that the 35th Tactical Training Wing (TTW) and the 37th Tactical Fighter Wing (TFW) (F-4E/G aircraft) realign to Mountain Home AFB, Idaho. These aircraft were to be consolidated with the Mountain Home AFB's EF-111 electronic warfare aircraft. To accommodate the move of the F-4E/Gs into Mountain Home AFB, the Commission recommended realigning part of the 366th Tactical Fighter Wing (F-111E and F-111A aircraft) from Mountain Home AFB to Cannon AFB, New Mexico. Additionally, the Commission recommended realigning the 27th Tactical Air Support Squadron (OV-10 aircraft) to Davis-Monthan AFB, Arizona where other OV-10 aircraft were already located. To accommodate the additional OV-10 aircraft at Davis-Monthan AFB, the 41st Electronic Combat Squadron (ECS) (EC-130H aircraft) would realign from Davis-Monthan AFB to Bergstrom AFB, Texas.

Justification: The force structure upon which the 1988 Base Closure Commission based its realignment recommendations is significantly different than the current and projected force structure in the DoD Force Structure Plan. The Air Force, in its FY92 budget, programmed for the retirement of all F-4E/G aircraft assigned to George AFB. However, as a result of Operation Desert Storm, the Air Force has validated an operational requirement to maintain some total force F-4G capability into the future. The Reno and Boise units present a cost effective solution since they currently fly the RF-4 and are well located to support Red Flag operations and the Mountain Home AFB composite wing. The George AFB OV-10s have retired, therefore eliminating the need to realign the 41st ECS. Additionally, Bergstrom AFB is now recommended for closure. Realigning Mountain Home AFB EF-111s to Cannon AFB will collocate all CONUS based F-111 type aircraft at a single base, enhancing logistics support. These actions created capacity at Mountain Home AFB to support a new composite wing equipped with a variety of fighter, tanker, and potentially, bomber aircraft realigning from other bases. The MILCON avoidance is approximately $10.6M.

[FR Doc. 91-8863 Filed 4-12-91; 2:04 pm]
BILLING CODE 3810-01-C

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.R. 1281/Pub. L. 102-27

Dire Emergency Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions, and Other Urgent Needs Act of 1991. (Apr. 10, 1991; 105 Stat. 130; 31 pages) Price: $1.00

H.R. 1282/Pub. L. 102-28

Operation Desert Shield/ Desert Storm Supplemental Appropriations Act, 1991. (Apr. 10, 1991; 105 Stat. 161; 8 pages) Price: $1.00

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[5] 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.

[6] 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.