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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–142–2]

Black Stem Rust; Addition of Rust-Resistant Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; Correction and confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule that amends the black stem rust quarantine and regulations by adding six varieties to the list of rust-resistant *Berberis* species. This document also corrects an error in the direct final rule. One of the varieties was added under its trademark name, *Berberis thungbergii* 'Cherry Bomb.' We should have added the variety under its botanical cultivar name, *Berberis thungbergii* 'Monomb.'

EFFECTIVE DATE: The direct final rule published on February 25, 1994 (59 FR 9065–9066, Docket No. 93–142–1) is effective April 26, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

In a direct final rule published in the **Federal Register** on February 25, 1994 (59 FR 9065–9066, Docket No. 93–142–1), we notified the public of our intent to amend the black stem rust quarantine and regulations by adding six varieties to the list of rust-resistant *Berberis* species.

We solicited comments concerning the direct final rule for a 30-day comment period ending March 28, 1994. We stated that the effective date of the proposed amendment would be 60 days after publication of the direct final rule in the **Federal Register**, unless we received written adverse comments or written notice of intent to submit adverse comments by the close of the comment period.

We received neither written adverse comments nor notice of intent to submit adverse comments by that date. Therefore, the direct final rule will become effective on April 26, 1994, as scheduled. The correction to the direct final rule, as set forth below, will become effective on the same date.

§ 301.38–2 [Corrected]

FR Doc. 94–4324, pages 9065–9066, is corrected as follows:

1. On page 9066, paragraph (b), "*B. thungbergii* 'Cherry Bomb' " is corrected to read "*B. thungbergii* 'Monomb' ".

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 12th day of April 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–9131 Filed 4–14–94; 8:45 am]
BILLING CODE 3410–34–P

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AD58

Revisions to the Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: Concerns have been raised about the cost of the upland cotton user marketing certificate program and the way in which it has been administered. Although the Step 2 program, in place since August 1991, has accomplished some of its intended objectives, it has distorted normal export sales patterns, disadvantaged small-scale cotton exporters, and placed U.S. mills at a price disadvantage vis-a-vis foreign mills. A proposed rule regarding the program was published in the **Federal Register** on March 1, 1994, at 59 FR 9674. Comments were solicited with respect to proposed changes in the formula for determining the user marketing payment rate; whether export contracts that specify shipment after September 30 of the next marketing year should be eligible for payments beginning the week that includes October 1, and, if so, whether the maximum payment rate should be 2.5 cents per pound until such time as the payment rate calculation is based entirely on northern Europe forward prices; and whether a destination should be required to be declared for export sales contracts. This final rule sets forth changes with respect to these issues.

EFFECTIVE DATE: April 12, 1994.

FOR FURTHER INFORMATION CONTACT: Wayne Bjorlie, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), room 3754–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–7954.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by USDA, it has been determined that this final rule is economically significant because it will materially alter the budgetary impacts of entitlements. A change in the method of determining the payment rate under the program could raise payment rates for domestic textile mills and lower payment rates for exporters of U.S.-grown cotton, reducing budgetary expenditures. The ability of exporters to earn a payment on forward-crop sales beginning earlier in the marketing year could afford them greater benefits under the program and result in more price competition.

These program changes are projected to increase the average rate at which domestic mills are being paid by about 0.25 cent per pound and to decrease the average rate at which exporters are being paid by about 1.0 cent per pound. These changes are not significant enough to have any impact on acreage reduction programs, supply, offtake, prices, or farm income. Government outlays for Step-2 payments are

projected to be reduced by an average of about $20 million per year.

Other than the impacts indicated above, this action:

(1) Will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local or tribal governments or communities,

(2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency,

(3) Will not materially alter the budgetary impacts of user fees or loan programs, and

(4) Will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

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

Executive Order 12372

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

Paperwork Reduction Act

The information collection requirements contained in the current regulations have been approved by the Office of Management and Budget (OMB), under the provisions of 44 U.S.C. chapter 35, through August 31, 1994 (OMB No. 0560–0136). Changes made to the Upland Cotton Domestic User/Exporter Agreement as a result of this final rule have been submitted to OMB for approval.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of each option is available on request from the above-named individual.

Background

This final rule amends 7 CFR part 1427 to set forth changes with respect to the upland cotton user marketing certificate program. A proposed rule with respect to these changes was published on March 1, 1994, at 59 FR 9674. A total of 46 comments was received. Twenty-nine respondents specifically commented on the Step 2 formula calculation. Of these, thirteen respondents favored a 4-week moving average of the U.S. Northern Europe price minus the Northern Europe price minus 1.25 cents per pound for both current and forward payment rate calculations. Seven respondents favored changing only the forward Step-2 payment rate to be equal to the lower of: The difference between the U.S. Northern Europe forward price minus 1.25 cents per pound and the Northern Europe forward price in the preceding week; or 25 percent of the difference between the U.S. Northern Europe forward price minus 1.25 cents per pound and the Northern Europe forward price in the preceding week plus the payment rate for which such contracts were eligible in the preceding week. Six respondents favored blending the current and forward prices over a 6-week period to make the transition from current to forward price quotations. Two respondents suggested that there was no need to change the Step-2 payment rate calculation. One respondent recommended paying forward sales the lower of the current Step-2 payment rate or the forward Step-2 payment rate.

Eight respondents commented on the proposal of allowing forward sales to be eligible for payments beginning October 1 of the previous year up to the time the forward payment rate is available, with a maximum rate of 2.5 cents per pound. Seven respondents were in favor of this proposal. One respondent questioned whether this proposal would be effective, but did not oppose it.

Thirty-eight respondents commented on the proposed requirement to require the country of destination be specified in order to set the Step-2 payment rate. Thirty-four respondents opposed the country of destination requirement. Four respondents favored the requirement.

After considering these comments, the following changes will be made with respect to the regulations governing the upland cotton user marketing certificate program:

(1) Allow export contracts that specify delivery after September 30 to qualify for payments beginning the Friday through Thursday week that includes October 1 of the previous year. Such contracts would earn the lower of the rate in effect for a given week or 2.5 cents per pound until such time as the payment rate is based entirely on Northern Europe forward prices; and

(2) Change the rate applicable to forward export sales, beginning 4 weeks after the northern Europe prices become available until the Thursday following July 31, to be the lower of: The difference between the U.S. Northern Europe forward price minus 1.25 cents per pound and the Northern Europe forward price in the preceding week; or 20 percent of the difference between the U.S. Northern Europe forward price minus 1.25 cents per pound and the Northern Europe forward price in the preceding week plus the payment rate for which such contracts were eligible in the preceding week.

Reasons for Selection of Options

Allowing forward sales to be registered early using the current rate with a 2.5-cent maximum will permit more orderly marketing and encourage competition prior to the availability of forward payment rates. The selected payment rate formula was the option deemed most likely to prevent sudden spikes in the forward export payment rate. The proposal to require a country of destination will not be implemented now because it is expected that the change in the payment rate formula will eliminate peak payment rates. If problems persist, the destination requirement could be implemented at a later date.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.107 is amended by:

A. Revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows,

B. Revising paragraphs (a)(2)(i) through (a)(2)(iv) to read as follows,

C. Redesignating paragraph (a)(2)(v) as paragraph (a)(2)(viii),

D. Adding new paragraphs (a)(2)(v), (a)(2)(vi), and (a)(2)(vii) to read as follows, and

E. Revising paragraph references in paragraph (c)(2) to read "(a)(1)(ii), (a)(2)(ii), and (a)(2)(v)".

§ 1427.107 Payment rate.

(a) * * *

(1) * * *

(i) For bales opened beginning the Friday following August 1 and ending the week in which the Northern Europe current price and the Northern Europe forward price first become available, the payment rate shall be the difference between the U.S. Northern Europe price minus 1.25 cents per pound, and the Northern Europe price in the fourth week of a consecutive 4-week period in which the U.S. Northern Europe price exceeded the Northern Europe price each week by more than 1.25 cents per pound, and the adjusted world price (AWP) did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period.

(ii) For bales opened during the period beginning the Friday through Thursday week after the week in which the Northern Europe current price and the Northern Europe forward price first become available and ending the Thursday following July 31, the payment rate shall be the difference between the U.S. Northern Europe current price minus 1.25 cents per pound and the Northern Europe current price in the fourth week of a consecutive 4-week period in which the U.S. Northern Europe current price exceeded the Northern Europe current price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period.

* * * * *

(2) * * *

(i) For contracts entered into beginning the Friday following August 1 and ending the week in which the Northern Europe current price and the Northern Europe forward price first become available which specify shipment of the cotton by not later than September 30 of the following marketing year, the payment rate shall be the difference between the U.S. Northern Europe price minus 1.25 cents per pound, and the Northern Europe price in the fourth week of a consecutive 4-week period in which the U.S. Northern Europe price exceeded the Northern Europe price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period.

(ii) For contracts entered into during the period beginning the Friday through Thursday week after the week in which the Northern Europe current price and the Northern Europe forward price first become available and ending the Thursday following July 31 which specify shipment of the cotton by not later than September 30 of such year, the payment rate shall be the difference between the U.S. Northern Europe current price minus 1.25 cents per pound and the Northern Europe current price in the fourth week of a consecutive 4-week period in which the U.S. Northern Europe current price exceeded the Northern Europe current price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period.

(iii) For contracts entered into prior to the Friday through Thursday week that includes October 1 which specify shipment after September 30 of the year following such contract period, the payment rate shall be zero.

(iv) For contracts entered into during the period beginning the Friday through Thursday week that includes October 1 until the Friday through Thursday week after the week in which the Northern Europe current price and the Northern Europe forward price first become available which specify shipment of the cotton after September 30 following such contract period, payments shall be made whenever the U.S. Northern Europe price exceeds the Northern Europe price by more than 1.25 cents per pound for the preceding consecutive 4-week period and the AWP did not exceed the current crop year loan level for the base quality of upland cotton by more than 130 percent in any week of such 4-week period. The payment rate shall be the lower of:

(A) The difference between the U.S. Northern Europe price minus 1.25 cents per pound and the Northern Europe price in the fourth week of such 4-week period; or

(B) 2.5 cents per pound.

(v) For contracts entered into beginning the Friday through Thursday week after the week in which the Northern Europe current price and the Northern Europe forward price first become available through the third Friday through Thursday week after the Northern Europe current price and the Northern Europe forward price first become available which specify shipment of the cotton after September 30 following such contract period, payments shall be made whenever the U.S. Northern Europe current price exceeds the Northern Europe current price by more than 1.25 cents per pound for the preceding consecutive 4-week period and the AWP did not exceed the current crop year loan level for the base quality of upland cotton by more than 130 percent in any week of such 4-week period. The payment rate shall be the lower of:

(A) The difference between the U.S. Northern Europe current price minus 1.25 cents per pound and the Northern Europe current price in the fourth week of such 4-week period; or

(B) 2.5 cents per pound.

(vi) Notwithstanding the provisions of paragraphs (a)(2)(iv) and (a)(2)(v) of this section, with respect to contracts which specify shipment of the cotton after September 30, 1994, but before September 30, 1995, no payments will be made on contracts made prior to the fourth Friday through Thursday week after the Northern Europe current price and the Northern Europe forward price first become available during calendar year 1994.

(vii) For contracts entered into during the period beginning the fourth Friday through Thursday week after the Northern Europe current price and the Northern Europe forward price first become available and ending the Thursday following July 31 which specify shipment of the cotton after September 30 following such contract period, payments shall be made whenever the U.S. Northern Europe forward price exceeds the Northern Europe forward price by more than 1.25 cents per pound for the preceding consecutive 4-week period and the AWP did not exceed the loan level for the upcoming marketing year for the base quality of upland cotton by more than 130 percent in any week of such 4-week period. The payment rate shall be the lower of:

(A) The difference between the U.S. Northern Europe forward price minus 1.25 cents per pound and the Northern Europe forward price in the fourth week of such 4-week period; or

(B) 20 percent of the difference between the U.S. Northern Europe forward price minus 1.25 cents per pound and the Northern Europe forward price in the fourth week of such 4-week period plus the payment rate for which such contracts were eligible in the preceding week.

* * * * *

Signed at Washington, DC, on April 12, 1994.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–9183 Filed 4–12–94; 3:10 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 204

[INS No. 1609–93]

RIN 1115–AD38

Immigrant Investor Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 ("Appropriations Act"). Section 610 of the Appropriations Act provides that the Secretary of State, together with the Attorney General, shall set aside visas for a pilot program (the "Immigrant Investor Pilot Program") to implement the provisions of section 203(b)(5) of the Immigration and Nationality Act, as amended (the "Act"). Under the pilot program, 300 immigrant visas will be set aside annually for five years for aliens who make qualifying investments in commercial enterprises located within regional centers in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: On August 24, 1993, the Acting Commissioner of the Immigration and Naturalization Service (the "Service") published in the **Federal Register** at 58 FR 44606–44610 an interim rule with request for comments to implement the Immigrant Investor Pilot Program (the "Pilot Program").

The Immigrant Investor Pilot Program sets aside 300 immigrant visas annually over a five-year period for aliens who make qualifying investments in commercial enterprises located within regional centers designated by the Service for participation in the Pilot Program. The interim rule implemented the Pilot Program by providing the criteria and procedures for obtaining approval as a regional center and by allowing for indirect job creation by aliens seeking to immigrate under section 203(b)(5) of the Act who make a qualifying investment within a designated regional center.

Section 610 of the Appropriations Act, Public Law 102–395, dated October 6, 1992, modifies the job creation provision found in section 203(b)(5) of the Act, which requires the petitioner to create ten new jobs. For qualifying investments made within regional centers, the alien may establish "reasonable methodologies" to determine the number of jobs created, "including such jobs which are estimated to have been created indirectly through revenues generated from increased exports." The interim regulation amended 8 CFR 204.6(j)(4)(iii), allowing the petitioner to show, by reasonable methodologies, that his or her investment within the regional center will indirectly create ten full-time positions.

In order for an alien to file a petition under the Pilot Program, the alien must make the investment in a new commercial enterprise located within a regional center. Section 610 states that the regional center shall promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. 8 CFR 204.6(m) sets forth five criteria for adjudicating regional center designation proposals. Under this interim regulation, the Assistant Commissioner for Adjudications is charged with determining whether the economic unit submitting the proposal qualifies as a regional center.

The public was provided with a 30-day period, ending on September 23, 1993, to comment on the interim regulation. The Service received one comment.

Comments

The one commenter suggested that the Service define the term "regional" to mean an "operating area," as used in the Small Business Administration's Small Business Investment Corporation license application, which is defined as a state, section of a state, or other political subdivision. 8 CFR 204.6(m)(3)(i) defines the term "regional" more broadly, requiring the regional center to focus on a geographic region of the United States. There is no indication in either the Appropriations Act or in the legislative history of what Congress meant by the term "regional." Because Congress did not place any geographical limits on regional centers in establishing the Pilot Program, the Service believes it is appropriate to define the term "regional" in a flexible manner. The requirement that the regional center focus on a geographical area of the United States, therefore, will not be changed.

The commenter also suggested that if part of the investment is made outside the regional center, the alien investor should still qualify under the Pilot Program. The legislative history indicates that Congress intended to determine the viability of pooling investments in specific regions of the United States. See S. Rep. No. 918, 102 Cong., 2d Sess. (1992). Counting funds invested outside a regional center toward meeting the minimum statutory amount would, therefore, be inconsistent with the intent of Congress in enacting section 610 of the Appropriations Act.

The commenter next addressed 8 CFR 204.6(j)(4)(iii) and 8 CFR 204.6(m)(3)(ii) of the interim rule, which require that the regional center and the individual investment create jobs indirectly through exports. Section 610(a) of the Appropriations Act states that "the Pilot Program shall involve a regional center in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased capital investment." Section 610(c) of the Appropriations Act provides that aliens admitted under the Pilot Program may establish "reasonable methodologies for determining the number of jobs created by the Pilot Program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports resulting from the Pilot Program." The commenter argued that the language of section 610(a) and section 610(c) is exemplary

rather than mandatory and that neither the alien nor the regional center must create jobs through increased exports. By using the term "including" in the statute, Congress indicated its intent to specifically require that the investment in the regional center create jobs through increased exports. It should be noted that 8 CFR 204.6(m)(7)(i) of the interim regulation defines exports very broadly, by defining exports as services or goods produced directly or indirectly through revenues generated from a new commercial enterprise and which are transported outside the United States.

The commenter also recommended that a designated regional center file an Economic Impact Report, which is required by the Small Business Administration for a licensed Small Business Investment Company (SBIC). Although the Service is interested in obtaining any information on the impact of the Pilot Program, there is no authority in the statute for the Service to require an Economic Impact Report.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule implements the Pilot Program under which a maximum of 300 immigrant visas may be issued annually to alien entrepreneurs and their immediate family members. This rule merely adopts as final, the interim rule which was published at 44606–44610 on August 24, 1993, without any changes.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is 1115–0183.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Archives and records, Authority delegations (Government agencies), Bonding, Fees, Forms, Freedom of Information, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Aliens, Employment, Immigration, Petitions.

Accordingly, the interim rule amending 8 CFR parts 103 and 204 which was published at 58 FR 44606–44610 on August 24, 1993, is adopted as a final rule without change.

Dated: March 3, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–9084 Filed 4–14–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 93–150–2]

Ports Designated for Exportation of Animals, Stockton, CA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; Confirmation of effective date.

SUMMARY: This notice confirms the effective date of the direct final rule that amends the Inspection and Handling of Livestock for Exportation regulations by removing the listing for the Hemet Flying Service, Stockton, CA, export inspection facility. The direct final rule also removed Stockton, CA, as a port of embarkation.

EFFECTIVE DATE: The direct final rule published on March 1, 1994 (59 FR 9616–9617, Docket No. 93–150–1), is effective May 2, 1994.

FOR FURTHER INFORMATION CONTACT:

Dr. Andrea Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

In a direct final rule published in the **Federal Register** on March 1, 1994 (59 FR 9616–9617, Docket No. 93–150–1), we notified the public of our intent to amend the Inspection and Handling of Livestock for Exportation regulations by removing the listing for the Hemet Flying Service, Stockton, CA, export inspection facility. We also notified the public that we intended to remove Stockton, CA, as a port of embarkation.

We solicited comments concerning the direct final rule for a 30-day period ending March 31, 1994. We stated that the effective date of the proposed amendment would be 60 days after publication of the direct final rule in the **Federal Register**, unless we received written adverse comments or written notice of intent to submit adverse comments by the close of the comment period.

We received neither written adverse comments nor notice of intent to submit adverse comments by that date. Therefore, the direct final rule will become effective on May 2, 1994, as scheduled.

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 12th day of April 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–9132 Filed 4–14–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Morantel Tartrate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplement provides for use of morantel tartrate Type A medicated article to make a Type C medicated feed used as an anthelmintic for goats. Also, the regulations are amended to establish a tolerance for drug residues in edible goat tissues.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 92–444, which provides for use of morantel tartrate to make a Type A medicated article used to make a Type C medicated goat feed in addition to its approved use for a Type C medicated cattle feed. The Type C medicated goat feed is used for removal and control of mature gastrointestinal nematodes *Haemonchus contortus, Ostertagia (Teladorsagia) circumcincta*, and *Trichostrongylus axei*. Also, a tolerance for residues of morantel tartrate and its metabolites in edible goat tissues is established. Approval is based in part on data and information in Public Master File (PMF) 5366 established under the IR–4 Project, Southern Region, University of Florida, College of Veterinary Medicine, Gainesville, FL 32611.

The supplement is approved as of April 15, 1994 and the regulations are amended in 21 CFR 556.425 and 558.360 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Approval of this supplement is for use of a Type A medicated article to make a Type C medicated feed. Morantel tartrate is a Category II drug which, as in § 558.4, requires an approved form FDA 1900 for use in making a Type C medicated feed.

In addition, the regulation for tolerances for residues of the drug or its metabolites in cattle, and now in goats, is amended to remove the part that is no longer required.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for use in food producing animals does not qualify for marketing exclusivity because the supplement does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) or new human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center For Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

2. Section 556.425 is revised to read as follows:

§ 556.425 Morantel tartrate.

A tolerance of 0.7 part per million is established for *N*-methyl-1,3-propanediamine (MAPA, marker residue) in the liver (target tissue) of cattle and goats. A tolerance for residues of morantel tartrate in milk is not required.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

4. Section 558.360 *Morantel tartrate* is amended by designating the text of paragraph (d)(2) as paragraph (d)(2)(i) and adding a new heading to the newly designated paragaph, by adding new paragraph (d)(2)(ii), and by revising the last sentence of paragraph (d)(3) to read as follows:

§ 558.360 Morantel tartrate.

* * * * *

(d) * * *

(2) *Indications for use*—(i) *Cattle.*

* * *

(ii) *Goats.* For removal and control of mature gastrointestinal nematode infections of goats including *Haemonchus contortus, Ostertagia (Teladorsagia) circumcincta*, and *Trichostrongylus axei.*

(3) *Limitations.* * * * Do not treat cattle within 14 days of slaughter; do not treat goats within 30 days of slaughter.

Dated: April 6, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–8820 Filed 4–14–94; 8:45 am]

BILLING CODE 4160–01–F

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, 1994. 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 1994 through April 1994. 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, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TTD). 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 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, 1994, the interest charged on the underpayment of taxes will be at a rate of 7 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, 1994, through June 30, 1994, 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 of 1994 through April of 1994.

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 actions is a "significant regulatory action" under the criteria set forth in Executive Order 12866, because they will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

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, Reporting and recordkeeping requirements.

29 CFR Part 2622

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

In consideration of the foregoing, part 2610 and 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.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning April 1, 1994, to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—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, 1994 .	June 30, 1994 ...	7

3. Appendix B to part 2610 is amended by adding to the table of interest rates new entries for premium payment years beginning in February of 1994 through April of 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—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]

For premium payment years beginning in—	Required interest rate[1]
* * * * *	
February 1994	5.03
March 1994	5.19
April 1994	5.53

[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.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning April 1, 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—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, 1994 ...	June 30, 1994 ..	7

Issued in Washington, DC, this 12th day of April 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–9122 Filed 4–14–94; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in May 1994, and to multiemployer plans with valuation dates in May 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the May 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during May 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during May 1994.

For annuity benefits, the interest rates will be 6.50% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25% for the period during which benefits are in pay status, 4.5% during the seven years directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums under $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 are restricted to 120% of the PBGC interest assumptions).) The above annuity interest assumptions represent an increase (from those in effect for April 1994) of .30 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent an increase (from those in effect for April 1994) of .50 percent for the period during which benefits are in pay status and the seven years directly preceding that period; they are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published

in the Federal Register by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during May 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during May 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

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

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 7 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*	*	*	*			*	
7	5–1–94	6–1–94	5.25	4.50	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by $i_1, i_2, \ldots,$ and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
* * * *	*		*			*
May 1994	.0650	1-25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

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

4. In appendix B, Rate Set 7 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $o<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y—n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y—n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

Rate set	For plan with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*		*		*			*
7	5–1–94	6–1–94	5.25	4.50	4.00	4.00	7	8

Annity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1 i_2 * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries or a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date

TABLE II
[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *	*		*			*
May 1994	.0650	1–25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 12th day of April 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–9123 Filed 4–14–94; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2644

Notice and 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. This amendment adds to the appendix of that regulation a new interest rate to be effective from April 1, 1994, to June 30, 1994. The effect of the amendment is to advise the public of the new rate.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for 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 PBGC") 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 charged 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 6 percent, which will be effective from April 1, 1994, through June 30, 1994. This rate represents no change from the rate in effect for the first quarter of 1994. This rate is based on the prime rate in effect on March 15, 1994.

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 action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 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), 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table a new entry to read as follows:

Appendix A to Part 2644—Table of Interest Rates

* * * * *

From	To	Date of quotation	Rate (percent)
* * * * *	*		*
04/01/94	06/30/94	03/15/94	6

Issued in Washington, DC, on this 12th day of April 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–9124 Filed 4–14–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 901, 914, 917, 920, 924, 935, 938, 946, and 948

State Program Amendments; Alabama et al.

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making technical amendments to 30 CFR chapter VII, subchapter T, because the addresses that currently appear require revision. These changes will affect addresses listed for the following states: Alabama, Indiana, Kentucky, Maryland, Mississippi, Ohio, Pennsylvania, Virginia, and West Virginia.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Gloria Prettiman, Branch of Environmental and Economic Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5144.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Procedural Matters.

I. Background

Since July 1, 1993, the date of the most recent revision to title 30 of the Code of Federal Regulations (30 CFR part 700 to End), the addresses of certain State and Federal offices involved in the State regulatory program have changed. Those addresses, as they appear in title 30 of the CFR, are being revised to indicate where copies of the State programs are available for inspection and copying in accordance with the provisions of 30 CFR 732.11(a).

Addresses in the following sections are being revised: Part 901—Alabama, Part 914—Indiana, Part 917—Kentucky, Part 920—Maryland, Part 924—Mississippi, Part 935—Ohio, Part 938—Pennsylvania, Part 946—Virginia, and Part 948—West Virginia.

In addition to the address changes, OSM has found a technical error in § 901.10. The introductory paragraph for § 901.10, as it appeared in the July 1, 1993 revision of title 30, contains the following phrase "approved effective (date of publication)." It is obvious that the actual date of publication, which was May 20, 1982, should have been inserted. Therefore, OSM is inserting that date in this technical amendment.

II. Procedural Matters

Administrative Procedure Act

The minor revisions contained in this rulemaking are technical in nature. Accordingly, pursuant to 5 U.S.C. 553(b)(B), it has been determined that the notice and public comment procedures of the Administrative Procedure Act are unnecessary. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make the rule effective on the date of publication in the **Federal Register.**

Executive Order 12866

This technical amendment does not require review by the Office of Management and Budget under Executive Order 12866.

National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual (516 DM 2 appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Federal Paperwork Reduction Act

This rule dose not contain collection of information which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. This technical amendment (1) does not preempt any State or local laws or regulations; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Regulatory Flexibility Act

The Department of the Interior certifies that this technical amendment 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.*). The rule merely revises addresses contained in the regulations.

List of Subjects in 30 CFR Parts 901, 914, 917, 920, 924, 935, 938, 946, and 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 4, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

Accordingly, 30 CFR parts 901, 914, 917, 920, 924, 935, 938, 946 and 948 are amended for the reasons set forth in the preamble.

PART 901—ALABAMA

1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.10 is revised to read as follows:

§ 901.10 State regulatory program approval.

The Alabama State program, as resubmitted on January 11, 1982, and clarified in a meeting with OSM on April 9, 1982, (See Administrative Record No. AL–347) and in a letter to the Director, OSM, of May 14, 1982, is conditionally approved, effective May 20, 1982. Beginning on that date, the Alabama Surface Mining Commission shall be deemed the regulatory authority in Alabama for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Alabama permanent regulatory program. Copies of the approved program, together with copies of the letter of the Alabama Surface Mining Commission agreeing to the conditions of 30 CFR 901.11, are available for inspection at:

(a) Alabama Surface Mining Reclamation Commission, Security Federal Savings and Loan Building, 811 Second Avenue, Jasper, Alabama 35501.

(b) Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, Birmingham, Alabama 34209.

3. Section 901.20 is revised to read as follows:

§ 901.20 Approval of Alabama abandoned mine land reclamation plan.

The Alabama Abandoned Mine Land Reclamation Plan as submitted on May 8, 1981, is approved. Copies of the Plan are available at the following locations:

(a) Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, Birmingham, Alabama 34209.

(b) Alabama Department of Industrial Relations, 649 Monroe Street, Montgomery, Alabama 36130.

4. In § 901.25, paragraphs (a) and (b) are revised to read as follows:

§ 901.25 Amendment to approved Alabama abandoned mine land reclamation plan.

(a) The Alabama amendment, consisting of minor adjustments in the Alabama policies and procedures regarding land acquisition, management and disposal of property, and reclamation on private land (liens, appraisals and rights of entry), as submitted on June 15, 1987, and modified on January 7, 1988, is approved effective on August 8, 1988. Copies of the approved program are available at the following locations.

(1) Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220.

(2) Alabama Department of Industrial Relations, 649 Monroe Street, Montgomery, Alabama 36130.

(3) Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, Birmingham, Alabama 34209.

(b) The Alabama amendment allowing the State to assume responsibility for an emergency response reclamation program, as submitted on April 25, 1990, and modified on August 2, 1990, is approved effective August 31, 1990. Copies of the approved amendment are available at the following locations.

(1) Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220.

(2) Alabama Department of Industrial Relations, 649 Monroe Street, Montgomery, Alabama 36130.

(3) Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, Birmingham, Alabama 34209.

* * * * *

PART 914—INDIANA

5. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

6. In § 914.10 paragraph (c) is revised to read as follows:

§ 914.10 State regulatory program approval.

* * * * *

(c) Copies of the approved program are available for review at:

(1) Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, room 301, 575 North Pennsylvania Street, Indianapolis, Indiana 46204.

(2) Indiana Department of Natural Resources, Room 295, 402 West Washington Street, Indianapolis, Indiana 46204.

7. § 914.20 is revised to read as follows:

§ 914.20 Approval of Indiana abandoned mine plan.

The Indiana Abandoned Mine Plan, as submitted and revised, is approved. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, room 301, 575 North Pennsylvania Street, Indianapolis, Indiana 46204.

(b) Indiana Department of Natural Resources, Division of Reclamation, P.O. Box 147, Jasonville, Indiana 47438.

PART 917—KENTUCKY

8. The authority section for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

9. In § 917.10, paragraph (b) is removed, paragraph (c) is designated as (b), and paragraph (a) and the newly designated paragraph (b) are revised to read as follows:

§ 917.10 State regulatory program approval.

* * * * *

(a) Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503–2922.

(b) Department for Surface Mining Reclamation and Enforcement, Number 2, Hudson Hollow Complex, Frankfort, Kentucky 40601.

10. Section 917.20 is revised to read as follows:

§ 917.20 Approval of the Kentucky abandoned mine reclamation plan.

The Kentucky Abandoned Mine Reclamation Plan as submitted on June 4, 1981, is approved. Copies of the approved program are available at the following locations:

(a) Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503–2922.

(b) Kentucky Department of Natural Resources and Environmental Protection, Division of Abandoned Lands, 618 Peton Trail, Frankfort, Kentucky 40601.

11. In § 917.21, paragraphs (a) and (b) are revised to read as follows:

§ 917.21 Amendment to approved Kentucky abandoned mine land reclamation plan.

(a) The Kentucky Amendment, as submitted on December 8, 1982, is approved. Copies of the approved amendment are available at:

(1) Kentucky Department of Natural Resources and Environmental Protection, Division of Abandoned Lands, 618 Peton Trail, Frankfort, Kentucky 40601.

(2) Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503–2922.

(b) The Kentucky Abandoned Mine Reclamation Amendment, as submitted on March 25, 1985, is approved. Copies of the approved plan are available at the following locations:

(1) Kentucky Department of Natural Resources and Environmental Protection, Division of Abandoned Lands, 618 Peton Trail, Frankfort, Kentucky 40601.

(2) Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503–2922.

* * * * *

PART 920—MARYLAND

12. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

13. In § 920.10, paragraphs (a) and (b) are revised and paragraph (c) is removed to read as follows:

§ 920.10 State program approval.

* * * * *

(a) Maryland Department of Natural Resources, Water Resources Administration, Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532.

(b) Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, Fourth and Market Streets, Harrisburg, Pennsylvania 17101.

14. Section 920.20 is revised to read as follows:

§ 920.20 Approval of Maryland abandoned mine plan.

The Maryland Abandoned Mine Plan, as submitted on March 8, 1982, is approved. Copies of the approved program are available at the following locations:

(a) Office of Surface Mining Reclamation and Enforcement,

Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, Fourth and Market Streets, Harrisburg, Pennsylvania 17101.

(b) Maryland Department of Natural Resources, Water Resources Administration, Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532

PART 924—MISSISSIPPI

15. The authority citation for part 924 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

In § 924.10, paragraphs (a)(1) and (a)(2) are revised and paragraph (a)(3) is removed to read as follows:

§ 924.10 State program approval.

(a) * * *

(1) Mississippi Department of Environmental Quality, Office of Geology, Southport Center, 2380 Highway 80 West, Jackson, Mississippi 39289–1307. Telephone (601) 961–5530.

(2) Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, Birmingham, Alabama 34209. Telephone (205) 290–7282.

* * * * *

PART 935—OHIO

16. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

17. Section 935.10, paragraph (a) is revised and paragraph (b) is removed and reserved to read as follows:

§ 935.10 State regulatory program approval.

* * * * *

(a) Ohio Department of Natural Resources, Division of Reclamation, Building H–2, 1855 Fountain Square Court, Columbus, Ohio 43224.

18. Section 935.20 is revised to read as follows:

§ 935.20 Approval of Ohio Abandoned Mine Land Reclamation Plan.

The Ohio Abandoned Mine Land Reclamation Plan, as submitted on October 20, 1980, and as revised on November 21, 1980, November 2, 1981, and January 22, 1982, is approved effective August 10, 1982. Copies of the approved plan are available at the following locations:

(a) Ohio Department of Natural Resources, Division of Reclamation, Building H–2, 1855 Fountain Square Court, Columbus, Ohio 43224.

(b) Office of Surface Mining Reclamation and Enforcement, Eastland Professional Plaza, 4480 Refugee Road, suite 201, Columbus, Ohio 43232.

PART 938—PENNSYLVANIA

19. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

20. Section 938.10, is revised to read as follows·

§ 938.10 State regulatory program approval.

The Pennsylvania state program as submitted on February 29, 1980, as amended on June 9, 1980, as resubmitted on January 25, 1982, and amended on April 9, 1982, and May 5, 1982, is conditionally approved, effective on July 31, 1982. Beginning on that date, the Department of Environmental Resources shall be deemed the regulatory authority in Pennsylvania for all surface coal mining and reclamation operations and for all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Pennsylvania permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Environmental Resources agreeing to the conditions in 30 CFR 938.11 are available at the following locations:

(a) Pennsylvania Department of Environmental Resources, Market Street State Office Building, 400 Market Street, P.O. Box 2063, Harrisburg, Pennsylvania 17101–2063; Telephone: (717) 787–4686.

(b) Office of Surface Mining Reclamation and Enforcement, Third Floor, suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782–4036.

21. Section 938.20 is revised to read as follows:

§ 938.20 Approval of Pennsylvania Abandoned Mine Land Reclamation Plan.

The Pennsylvania Abandoned Mine Land Reclamation Plan as submitted on November 3, 1980, is approved. Copies of the approved Plan are available at the following locations:

(a) Pennsylvania Department of Environmental Resources, Bureau of Abandoned Mine Reclamation, Market Street State Office Building, 400 Market Street, P.O. Box 2063, Harrisburg, Pennsylvania 17105–2063.

(b) Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, Fourth and Market Streets, Harrisburg, Pennsylvania 17101.

PART 946—VIRGINIA

22. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

23. In § 946.10, paragraphs (a) and (b) are being revised and paragraphs (c) and (d) are removed to read as follows:

§ 946.10 State regulatory program approval.

* * * * *

(a) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219.

(b) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219.

24. In § 946.20, paragraphs (a) and (b) are revised and paragraph (c) is removed to read as follows:

§ 946.20 Abandoned mine land reclamation plan approval.

* * * * *

(a) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219.

(b) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219.

25. Section 946.25 is revised to read as follows:

§ 946.25 Amendments to approve Virginia abandoned mine land reclamation plan.

Virginia AMLR Amendment, as submitted on February 3, 1987, and modified on July 27, 1987, is approved effective November 13, 1987. Copies of the approved amendment are available at:

(a) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219.

(b) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219.

PART 948—WEST VIRGINIA

26. The authority citation for Part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

27. In § 948.10, paragraph (b) is removed and paragraph (c) is

redesignated as paragraph (b) and revised to read as follows:

§ 948.10 State regulatory program approval.

* * * * *

(b) West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143.

28. In § 948.20, paragraph (a) is revised and paragraph (c) is removed to read as follows:

§ 948.20 Approval of the State abandoned mine reclamation plan.

* * * * *

(a) West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143.

* * * * *

[FR Doc. 94–8983 Filed 4–14–94; 8:45 am]

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30 CFR Parts 904, 906, 915, 918, 925, 926, 931, 943, and 944

State Program Amendments; Arkansas et al.

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making technical amendments to 30 CFR Chapter VII, Subchapter T, because the addresses that currently appear require revision. These changes will affect addresses listed for the following states: Arkansas, Colorado, Iowa, Louisiana, Missouri, Montana, New Mexico, Texas, and Utah.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Gloria Prettiman, Branch of Environmental and Economic Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Washington, DC 20240; Telephone: 202–343–5144.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Matters

I. Background

Since July 1, 1993, the date of the most recent revision to title 30 of the Code of Federal Regulations (30 CFR part 700 to End), the addresses of certain State and Federal offices involved in the State regulatory program have changed. Those addresses, as they appear in title 30 of the CFR, are being revised to indicate where copies of the State programs are available for inspection and copying in accordance with the provisions of 30 CFR 732.11(a).

Addresses in the following sections are being revised: Part 904—Arkansas, Part 906—Colorado, Part 915—Iowa, Part 918—Louisiana, Part 925—Missouri, Part 926—Montana, Part 931—New Mexico, Part 943—Texas, and Part 944—Utah.

In addition to the address changes, OSM has found a technical error in § 926.10. So, for the reasons of clarification, OSM will also revise the introductory paragraph of § 926.10. The introductory paragraph, as it appears in the 1993 revision of Title 30, contains the following phrase, "is approved effective upon publication of this notice." In order to eliminate any ambiguity, OSM is replacing the statement in parentheses with the actual date of publication, which was February 11, 1982.

II. Procedural Matters

Administrative Procedure Act

The minor revisions contained in this rulemaking are technical in nature. Accordingly, pursuant to 5 U.S.C. 553(b)(B), it has been determined that the notice and public comment procedures of the Administrative Procedure Act are unnecessary. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make the rule effective on the date of publication in the **Federal Register.**

Executive Order 12866

This technical amendment does not require review by the Office of Management and Budget under Executive Order 12866.

National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual (516 DM 2 appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Federal Paperwork Reduction Act

This rule does not contain collection of information which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. This technical amendment (1) does not preempt any State or local laws or regulations; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Regulatory Flexibility Act

The Department of the Interior certifies that this technical amendment 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.*). The rule merely revises addresses contained in the regulations.

List of Subjects in 30 CFR Parts 904, 906, 915, 918, 925, 926, 931, 943, and 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 7, 1994.

Raymond Lowrie,

Assistant Director, Western Support Center.

Accordingly, 30 CFR parts 904, 906, 915, 918, 925, 926, 931, 943, and 944 are amended for the reasons set forth in the preamble.

PART 904—ARKANSAS

1. The authority citation for part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 904.10 paragraph (a) is revised to read as follows:

§ 904.10 State Regulatory Program Approval.

* * * * *

(a) Arkansas Department of Pollution Control and Ecology, Mining Division, 8001 National Drive, Little Rock, AR 72219, Telephone (501) 562–6533.

* * * * *

3. Section 904.20 is revised to read as follows:

§ 904.20 Approval of Arkansas abandoned mine land reclamation plan.

The Arkansas Reclamation Plan, as submitted on July 7, 1982, is approved. Copies of the approved program are available at:

(a) Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, .5100 E. Skelly Drive, suite 550, Tulsa, OK 74135–6548.

(b) Arkansas Department of Pollution Control and Ecology, Mining Division, 8001 National Drive, Little Rock, AR 72219.

PART 906—COLORADO

4. The authority citation for part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

5. Section 906.10, paragraphs (a) and (b) are revised, and (c) is removed, to read as follows:

§ 906.10 State regulatory program approval.

* * * * *

(a) Colorado Department of Natural Resources, Division of Minerals and Geology, Centennial Building, room 215, 1313 Sherman Street, Denver, CO 80203.

(b) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette, NW., suite 1200, Albuquerque, NM 87102.

6. Section 906.20 is revised to read as follows:

§ 906.20 Approval of Colorado Abandoned Mine Land Reclamation Plan Amendment.

The Colorado Abandoned Mine Plan, as approved on June 11, 1982, is amended on January 9, 1986. Copies of the approved program, as amended, are available at:

(a) Colorado Department of Natural Resources, Division of Minerals and Geology, Centennial Building, room 215, 1313 Sherman Street, Denver, CO 80203.

(b) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102.

PART 915—IOWA

7. The authority citation for part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

8. In § 915.10, paragraphs (a) and (b) are revised and paragraph (c) is removed to read as follows:

§ 915.10 State regulatory program approval.

* * * * *

(a) Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Wallace State Office Building, E. 9th and Grand Sts., Des Moines, IA 50319.

(b) Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, room 500, Kansas City, MO 64105.

9. Section 915.20, is revised to read as follows:

§ 915.20 Approval of Iowa abandoned mine plan.

The Iowa Abandoned Mine Plan, as submitted and revised, is approved. Copies of the approved program are available at:

(a) Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, room 500, Kansas City, MO 64105.

(b) Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Wallace State Office Building, E. 9th and Grand Sts. Des Moines, IA 50319.

PART 918—LOUISIANA

10. The authority citation for part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

11. In § 918.10, paragraphs (a) and (b) are revised to read as follows:

§ 918.10 State regulatory program approval.

* * * * *

(a) Louisiana Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P.O. Box 94275—Capitol Station, Baton Rouge, LA 70804–9275, Telephone (504) 342–5540.

(b) Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, suite 550, Tulsa, OK 74135–6548, Telephone: (918) 581–6430.

12. Section 918.20 is revised to read as follows:

§ 918.20 Approval of Louisiana Abandoned Mine Land Reclamation Plan.

The Louisiana plan, as submitted and revised, is approved. Copies of the approved program are available at the following locations:

(a) Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, suite 550, Tulsa, OK 74135–6548.

(b) Louisiana Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P.O. Box 94275, Baton Rouge, LA 70804–9275.

PART 925—MISSOURI

13. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

14. In § 925.10, paragraph (a) is revised to read as follows:

§ 925.10 State program approval.

(a) The Missouri State program submitted on February 1, 1980, and as amended and clarified on May 14, 1980, was conditionally approved effective November 21, 1980. Copies of the approved amendment are available for review at:

(1) Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102.

(2) Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, room 500, Kansas City, MO 64105.

* * * * *

15. In § 925.25, paragraph (b) is revised to read as follows:

§ 925.25 Approval of AML plan amendment.

* * * * *

(b) The amendment to the plan submitted on August 22, 1988, is approved effective March 15, 1989. Copies of the approved amendments are available at the following locations:

(1) Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, room 500, Kansas City, MO 64105.

(2) Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102.

PART—926 MONTANA

16. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

17. Section 926.10 is revised to read as follows:

§ 926.10 State regulatory program approval.

The Montana permanent program submitted on August 3, 1979, as amended November 13, 1979; January 4, January 9, January 10, January 12, January 13, January 30, February 1, and February 20, 1980; November 3, 1980; and August 26, 1981, is approved effective February 10, 1982. Copies of the approved program, as amended, are available at:

(a) Montana Department of State Lands, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620, Telephone: (406) 444–2074.

(b) Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

18. Section 926.20 is revised to read as follows:

§ 926.20 Approval of Montana abandoned mine land reclamation plan.

The Montana Abandoned Mine Land Reclamation Plan, as submitted on October 24, 1980, is approved. Amendments to this Plan, as submitted on April 20, 1983, are also approved. Copies of the approved program, as amended, are available at:

(a) Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918.

(b) Montana Department of State Lands, Capitol Station, 1625 Eleventh Avenue, Helena, MT 59620.

PART 931—NEW MEXICO

19. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

20. In § 931.10, paragraphs (a) and (b) are revised to read as follows:

* * * * *

§ 931.10 State regulatory program approval.

(a) Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 2040 South Pacheco Street, Santa Fe, NM 87505.

(b) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102.

21. Section 931.20 is revised to read as follows:

§ 931.20 Approval of the New Mexico Abandoned Mine Reclamation Plan.

The New Mexico Abandoned Mine Reclamation Plan as submitted on September 29, 1980, and amended February 4, 1981, is approved. Copies of the approved program are available at the following locations:

(a) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102.

(b) Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 2040 South Pacheco Street, Santa Fe, NM 87505.

PART 943—TEXAS

22. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

23. Section 943.10 is revised to read as follows:

§ 943.10 State program approval.

(a) The Texas State program as submitted July 20, 1979, and amended November 13, 1979, and December 20, 1979, is approved, effective February 16, 1980. The Texas State program amendments of March 27, 1980, are approved effective June 18, 1980. Copies of the approved program as amended are available at:

(1) Surface Mining and Reclamation Division, Railroad Commission of Texas, Capitol Station, P.O. Box 12967, Austin, TX 78711.

(2) Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135–6548.

24. Section 943.20 is revised to read as follows:

§ 943.20 Approval of Texas abandoned mine plan.

The Texas Abandoned Mine Plan, as submitted on April 24, 1980, and amended on May 30, 1980, June 2, 1980, and June 4, 1980, is approved effective June 23, 1980. Copies of the approved program are available at:

(a) Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135–6548.

(b) Surface Mining and Reclamation Division, Railroad Commission of Texas, Capitol Station, P.O. Box 12967, Austin, TX 78711.

PART 944—UTAH

25. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

26. Section 944.10, is revised to read as follows:

§ 944.10 State regulatory program approval.

The Utah State program as submitted on March 3, 1980, and as amended and clarified on June 16 and July 24, 1980, and resubmitted on December 23, 1980, was conditionally approved effective January 21, 1981. Copies of the approved program, together with copies of the letter of the Division of Oil, Gas and Mining agreeing to the conditions in section 944.11, are available at:

(a) Division of Oil, Gas and Mining, Department of Natural Resources, 3 Triad Center, suite 350, 355 West North Temple, Salt Lake City, UT 84180–1203.

(b) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102.

27. Section 944.20 is revised to read as follows:

§ 944.20 Approval of Utah abandoned mine plan.

The Utah Abandoned Mine Plan, as submitted on February 9, 1983, and as subsequently revised is approved. Copies of the approved program are available at:

(a) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette, NW., suite 1200, Albuquerque, NM 87102.

(b) Division of Oil, Gas and Mining, Department of Natural Resources, 3 Triad Center, suite 350, 355 West North Temple Salt Lake City, UT 84180–1203.

[FR Doc. 94–8984 Filed 4–14–94; 8:45 am]
BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 124, NJ9–1–6185; FRL–4858–7]

Approval and Promulgation of Implementation Plans; Revision to the New Jersey State Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request by New Jersey to revise its State Implementation Plan (SIP) as it relates to the control of volatile organic compounds. Under the Clean Air Act as amended in 1990, EPA is approving Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Compounds," Subchapter 8 "Permits and Certificates, Hearings, and Confidentiality," Subchapter 17 "Control and Prohibition of Air Pollution by Toxic Substances," Subchapter 23 "Prevention of Air Pollution by Architectural Coatings and Consumer Products," Subchapter 25 "Control and Prohibition of Air Pollution from Vehicular Fuels," and Subchapter 3 "Air Test Method 3: Sampling and Analytic Procedures for the Determination of Volatile Organic Compounds from Source Operations."

New Jersey was required to make corrections to these regulations pursuant to an EPA call for a revised SIP on May 26, 1988, and pursuant to section 182(a)(2)(A) of the Clean Air Act. EPA finds that New Jersey's SIP revision satisfies four outstanding commitments made in its 1983 ozone SIP. These include the adoption of provisions regulating automobile refinishing, further industrial controls, and applying reasonably available control technology to small surface coating and industrial sources. New Jersey's SIP revision also regulates all of the Group III Control Techniques Guidelines source categories required by the Clean Air Act.

EFFECTIVE DATE: This final rule will be effective May 16, 1994.

ADDRESSES: Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1034A, New York, New York 10278.
Environmental Protection Agency, Air Docket 6102, 401 M Street SW., Washington, DC 20460.
New Jersey Department of Environmental Protection and Energy, Office of Energy, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034, New York, New York 10278 (212) 264–2517.

SUPPLEMENTARY INFORMATION: On July 16, 1993, the Environmental Protection Agency (EPA) published in the **Federal Register** (58 FR 38326) a notice of proposed rulemaking (NPR) concerning revisions to the New Jersey State Implementation Plan (SIP) for ozone. The New Jersey Department of Environmental Protection and Energy (NJDEPE), in order to fulfill the requirements of the May 26, 1988 SIP call, and the requirements of the Clean Air Act as amended in 1990 (the Act), made SIP revision submittals to EPA on March 31, 1987, December 7, 1989, and March 13, 1992. All three submittals contained adopted revisions to subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Compounds," of chapter 27, title 7 of the New Jersey Administrative Code. The March 13, 1992, submittal also included revisions to Subchapter 8, "Permits and Certificates, Hearings, and Confidentiality"; Subchapter 17, "Control and Prohibition of Air Pollution by Toxic Substances"; Subchapter 23, "Prevention of Air Pollution by Architectural Coatings and Consumer Products"; Subchapter 25, "Control and Prohibition of Air Pollution from Vehicular Fuels"; and Subchapter 3, "Air Test Method 3: Sampling and Analytic Procedures for the Determination of Volatile Organic Compounds from Source Operations." Revisions to these regulations were necessary to maintain consistency with the changes made to Subchapter 16, and primarily involve the incorporation of revised terms and definitions.

With one exception, these revised regulations correct all of the reasonably available control technology (RACT) deficiencies in New Jersey's SIP which had been identified by EPA and were required to be corrected under the provisions of section 182 of the Act. These are referred to as "RACT Fix-up" deficiencies. The exception is the submittal of capture efficiency test methods, for which EPA has permitted states additional time so EPA can determine whether more cost effective alternate methods are available.

The regulations also contain new provisions regulating automobile refinishing, further industrial controls, and the application of RACT to small surface coating and industrial sources. The rules also regulate all of the Group III Control Techniques Guidelines (CTG) source categories. These measures were committed to by New Jersey in its 1983 ozone and carbon monoxide SIP.

The reader is referred to the NPR for further details on EPA's review and findings.

Response to Public Comment

One commenter, the National Refrigerants Incorporated, submitted a comment on EPA's proposed action.

Comment: This commenter is concerned that New Jersey's definition of volatile organic compounds (VOCs) does not exempt some of the chlorofluorocarbon, hydrochlorofluorocarbon, or hydrofluorocarbon compounds which EPA classifies as negligibly photochemically reactive, and some of which have the benefit of replacing CFCs which destroy the upper atmosphere ozone layer. In addition, the commenter states that these compounds are regulated by the Act and, therefore, New Jersey does not need to regulate them.

EPA Response: On August 2, 1993, NJDEPE proposed further revisions to Subchapter 16 to address additional requirements of the Act which is before EPA now and will be acted upon separately in the future. One of the revisions proposes changing its definition of VOC to be fully consistent with EPA's, thereby exempting these from regulation as VOC's. This would appear to address their concerns. However, the Act does not prohibit EPA from approving a State regulation that goes beyond the Act's requirements.

Final Action

The revisions and the rationale for EPA's action are explained in EPA's July 16, 1993 NPR and will not be restated here because EPA's final action does not differ from that proposed in the NPR.

In revising subchapter 16, New Jersey deleted the final compliance dates applicable to sources because the dates had passed, and sources are now expected to be in compliance. However, EPA requires the specification of an enforceable final compliance date should it be required to take federal enforcement action. Therefore, in the event EPA needs to take enforcement action, it will base the compliance penalties on the final compliance dates which were originally contained in subchapter 16 when a given requirement was first adopted by New Jersey. If EPA approved a subsequent revision which modified the final compliance date, that revised date would apply.

EPA, in approving previous versions of subchapter 16, placed conditions on its approval of certain sections which permitted New Jersey to approve alternate requirements. EPA's previous approval specified that if New Jersey approved any mathematical combinations of emissions (old § 16.6(c)(4) and (5)) or approved any variances from the State requirements (old §§ 16.9 and 16.10), they became applicable only if approved by EPA as SIP revisions. The State has decided that mathematical combinations are no longer an acceptable method of compliance with Subchapter 16 requirements. In addition, subchapter 16 has been revised to state that any variances must be approved by EPA as a SIP revision. EPA views these provisions as giving the Commissioner the authority to permit alternative requirements once they have been submitted and approved by EPA as SIP revisions. EPA will not recognize any variance or alternate requirement until it is submitted to EPA by the State for approval as a source specific SIP revision. Approval of a variance request by EPA will be based on a case-by-case review and will involve the effect of the proposed variance on air quality and on the ability of a facility to comply with the existing regulation. Therefore, the comments currently in 40 CFR 52.1605 pertaining to these sections in Subchapter 16 are no longer necessary.

SIP Deficiencies

Today's action also addresses all of the deficiencies identified in a May 26, 1988 letter to Governor Kean and a January 30, 1991 letter to the NJDEPE Commissioner finding the SIP substantially inadequate to attain the ozone and carbon monoxide standards. The deficiencies corrected relate to the VOC definition, recordkeeping, bubbles, seasonal shutdowns, and compliance calculations. These corrections strengthen the SIP and remove these deficiencies as a cause for SIP inadequacy.

Conclusion

Although some of New Jersey's submittals preceded the date of enactment of the 1990 Amendments to

the Clean Air Act, EPA has evaluated all the revisions for consistency with the Act's provisions, EPA regulations and EPA policy. Therefore, EPA approves Subchapter 16 and the related changes made to Subchapters 8, 17, 23, and 25. These changes have resulted in clearer, more enforceable regulations that strengthen the SIP.

EPA also finds that these regulations address and correct all of the "RACT Fix-up" deficiencies previously identified in Subchapter 16 by EPA in its letters of May 26, 1988, and January 31, 1992, with the exception of capture efficiency test methods, for which EPA has permitted states additional time so that EPA can determine if more cost effective alternate methods are available. With the approval of these regulations, it is no longer necessary for EPA to adopt a federal implementation plan to address the "RACT Fix-up" deficiencies.

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

This rule has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the wavier until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: March 23, 1994.

William J. Muszynski,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(51) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(51) Revisions to the New Jersey State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds from stationary sources, dated March 31, 1987, December 7, 1989, and March 13, 1992 submitted by the New Jersey State Department of Environmental Protection and Energy (NJDEPE).

(i) Incorporation by reference.

(A) Amendments to Chapter 27, Title 7 of the New Jersey Administrative Code Subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Substances," effective September 22, 1986,

(B) Amendments to Chapter 27, Title 7 of the New Jersey Administrative Code Subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Substances," effective June 19, 1989,

(C) Amendments to Chapter 27, Title 7 of the New Jersey Administrative Code: Subchapter 8, "Permits and Certificates, Hearings, and Confidentiality," effective March 2, 1992; Subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Compounds," effective March 2, 1992, Subchapter 17, "Control and Prohibition of Air Pollution by Toxic Substances," effective March 2, 1992; Subchapter 23, "Prevention of Air Pollution by Architectural Coatings and Consumer Products," effective March 2, 1992; Subchapter 25, "Control and Prohibition of Air Pollution from Vehicular Fuels," effective March 2, 1992; and Subchapter 3, "Air Test Method 3: Sampling and Analytic Procedures for the Determination of Volatile Organic Compounds from Source Operations," effective March 2, 1992.

(ii) Additional material.

(A) March 31, 1987, letter from Jorge Berkowitz, NJDEP, to Conrad Simon, EPA requesting EPA approval of the amendments to Subchapter 16.

(B) December 7, 1989, letter from Anthony McMahon, NJDEP, to Conrad Simon, EPA requesting EPA approval of the amendments to Subchapter 16.

(C) March 13, 1992, letter from Nancy Wittenberg, NJDEPE, to Conrad Simon, EPA requesting EPA approval of the amendments to Subchapter 16.

3. Section 52.1605 is amended by revising the entries, for Title 7, Chapter 27: Subchapters 8, 16, 17, 23 and 25, and for Title 7, Chapter 27B: Subchapter 3 to the table in numerical order as follows:

§ 52.1605 EPA—approved New Jersey State regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * * * *			
Title 7, Chapter 27			
* * * * * * *			
Subchapter 8, "Permits and Certificates, Hearings, and Confidentiality;".	Apr. 5, 1985	Nov. 25, 1986, 51 FR 42573.	
Sections 8.1, 8.2, and 8.11	Mar. 2, 1992 ...	[date and citation of this notice]	

State regulation	State effective date	EPA approved date	Comments
* *	*	* *	* *
Subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Compounds".	Mar. 2, 1992 ...	[date and citation of this notice]	Earlier versions of Subchapter 16 remain part of the SIP only to the extent of determining compliance dates which have since passed.
Subchapter 17, "Control and Prohibition of Air Pollution by Toxic Substances;".	Mar. 2, 1992 ...	[date and citation of this notice]	Subchapter 17 is included in the SIP only as it relates to the control of perchloroethylene.
* *	*	* *	* *
Subchapter 23, "Prevention of Air Pollution by Architectural Coatings and Consumer Products;".	Mar. 2, 1992 ...	[date and citation of this notice]	
* *	*	* *	* *
Subchapter 25, "Control and Prohibition of Air Pollution from Vehicular Fuels;".	Mar. 2, 1992 ...	[date and citation of this notice]	
Title 7, Chapter 27B			
Subchapter 3, "Air Test Method 3: Sampling and Analytic Procedures for the Determination of Volatile Organic Compounds from Source Operations".	Mar. 2, 1992 ...	[date and citation of this notice]	
* *	*	* *	* *

[FR Doc. 94–8966 Filed 4–14–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[SC–025–1–5643; FRL–4859–4]

Approval and Promulgation of Implementation Plans; South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 18, 1990, and July 23, 1992, South Carolina submitted, through the South Carolina Department of Health and Environmental Control (SCDEHC), revisions to the South Carolina State Implementation Plan (SIP). This notice approves the revisions to South Carolina's air quality regulations pertaining to the definition of a Volatile Organic Compound (VOC), VOC Recordkeeping in ozone (O_3) nonattainment areas, and the control of industrial emissions of nitrogen dioxide (NO_2) under the Prevention of Significant Deterioration (PSD) program.

DATES: This final rule will become effective June 14, 1994 unless notice is received by May 16, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to Bill Eckert at the EPA address in Atlanta, Georgia listed below. Copies of South Carolina's submittal are available for public review during normal business hours at the addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Bill Eckert of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the Region IV address.

SUPPLEMENTARY INFORMATION: On September 18, 1990, South Carolina submitted revisions to its SIP. After EPA reviewed this submittal, EPA determined that there were deficiencies in the VOC and PSD portions of the submittal. On July 23, 1992, South Carolina submitted additional revisions to its SIP correcting the deficiencies identified in the September 18, 1990, submittal. A brief description of the revisions follows.

Regulation 61–62.1, Section I, Paragraph 74–Definition of VOC

The revisions to this rule submitted on July 23, 1992, made the definition of VOC consistent with EPA's change in the definition of VOC as published in a **Federal Register** document dated February 3, 1992 (57 FR 3943). In the February 3, 1992, document, five new compounds were removed from the definition of VOC based on their negligible photochemical reactivity.

Regulation 61–62.5, Standard No. 5, Section I, Part F, Paragraph 3–VOC Recordkeeping in O_3 nonattainment areas

On September 18, 1990, South Carolina submitted revisions to its VOC regulations. In a **Federal Register** document published February 4, 1992, EPA determined that Regulation 61–62.5, Standard No. 5, Section I, Part F (VOC Recordkeeping, Reporting, and Monitoring), was insufficient because it did not contain provisions requiring VOC sources located in O_3 nonattainment areas to keep daily records. On July 23, 1993, South Carolina submitted revisions updating its VOC Recordkeeping provisions to be consistent with EPA requirements as interpreted in pre-enactment guidance[1] for VOC sources in O_3 nonattainment areas. Specifically, the VOC Recordkeeping provisions were updated to require that VOC sources keep daily records of operations.

Regulation 61–62.5, Standard No. 7

On September 18, 1990, South Carolina revised its PSD regulations to require the control of the industrial

[1] Among other things, the pre-amendment guidance consists of the Post–87 Policy, 52 FR 45044 (11/24/87); the Blue Book, Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, clarification of Appendix D of 52 FR 45044; and the existing Control Techniques Guidelines (CTGs).

emissions of NO_2. In a **Federal Register** document published February 4, 1992, EPA determined that the submitted regulations were inadequate because they did not contain provisions for NO_2 increments. On July 23, 1992, South Carolina submitted revisions to its PSD regulations to include NO_2 increments as required by EPA. The maximum allowable increase for NO_2 measured on an annual average basis per source is 25 micrograms per cubic meter. South Carolina incorporates 40 CFR 52.21 (July 1, 1991) and 40 CFR 51.166 (July 1, 1991) by reference. These revisions satisfy the requirements for States to incorporate the control of industrial emissions of NO_2 and NO_2 increments into their SIPs.

Final Action

EPA is approving the aforementioned revisions to the South Carolina SIP. EPA has reviewed this request for revision of the federally-approved SIP for conformance with the Clean Air Act (CAA). EPA has determined that the revisions conform with the CAA requirements and is therefore approving the revisions.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State of South Carolina is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant economic impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* vs. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective June 14, 1994. If, however, notice is received by May 16, 1994 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent documents will be published before the effective date. One will withdraw the final action and the other will begin a new rulemaking by announcing a comment period.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 14, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeepig requirements, Sulfur oxides.

Dated: March 2, 1994.

Donald J. Guinyard,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulation is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.2120 is amended by adding paragraph (c)(37) to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(37) The VOC Recordkeeping regulations for ozone nonattainment areas, PSD NO_x increment regulations, and regulations listing the definition of VOC submitted by South Carolina Department of Health and Environmental Control on July 23, 1992, as part of the South Carolina SIP.

(i) Incorporation by reference.

(A) South Carolina Regulation 61–62.5, Standard No. 5, section I, part F, covering VOC Recordkeeping, Reporting, and Monitoring; Regulation 61–62.5, Standard No. 7, section I, part C, paragraph 4; section I, part M; section I, part N; section I, part O; section I, part BB; section II, part A; section II, part D, paragraph 1, subparagraph e; section II, part D, paragraph 3, subparagraph a; section IV, part D, paragraph 1; section IV, part H, paragraph 4; covering PSD. These regulations were effective August 24, 1990, and submitted September 18, 1990.

(B) South Carolina Regulation 61–62.1, section I, paragraph 74, covering the definition of VOC; Regulation 61–62.5, Standard No. 5, section I, part F, paragraph 3, covering VOC Recordkeeping in ozone nonattainment areas; and Regulation 61–62.5, Standard No. 7, section I, part O and section IV, part H, paragraph 4 covering PSD. These regulations were effective June 26, 1992, and submitted July 23, 1992.

(ii) Other material.

(A) July 23, 1992, letter from the South Carolina Department of Health and Environmental Control to Region IV EPA.

(B) [Reserved]

3. Section 52.2126 is amended by removing and reserving paragraph (b) and by revising paragraph (a) to read as follows:

§ 52.2126 VOC rule deficiency correction.

* * * * *

(a) South Carolina's VOC regulations contain no method for determining capture efficiency. This deficiency must be corrected after EPA publishes guidance on the methods for determining capture efficiency before the SIP for ozone can be fully approved.

(b) [Reserved]

[FR Doc. 94–8968 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[TN 106–6076; 087–6137: FRL–4857–6]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to Nashville-Davidson Regulation Number 3: New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting limited approval of revisions to the Nashville-Davidson County portion of the Tennessee State Implementation Plan (SIP). On July 13, 1990, and February 26, 1993, Nashville-Davidson County, through the State of Tennessee Department of Environment and Conservation, submitted revisions to the Nashville-Davidson County portion of the Tennessee SIP. These approved revisions involve changes which were intended to bring their regulations into conformity with EPA's current New Source Review (NSR) requirements and EPA's Prevention of Significant Deterioration (PSD) increments for nitrogen dioxide (NO_2).

EPA has evaluated the proposed revision to the SIP and is granting limited approval. Even though the revisions to the NSR portion of the Nashville-Davidson County submittal do not fully meet the NSR requirements of the Clean Air Act, EPA is approving the submitted revisions because the submittal as a whole substantially strengthens the Nashville-Davidson County portion of the Tennessee SIP. Guidance on how Nashville-Davidson County can fully satisfy the current NSR requirements of the Clean Air Act (CAA) is provided in the Supplementary Information section of this document.

DATES: This final rule will be effective June 14, 1994 unless notice is received by May 16, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the material submitted by Nashville-Davidson County may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Tennessee Department of Health and Environment, Bureau of Environment, Division of Air Pollution Control, 701 Broadway, Nashville, Tennessee 37219–5403.

Metropolitan Government of Nashville and Davidson County, Metropolitan Health Department, 311–23rd Avenue, North Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: William Denman of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On July 13, 1990, and February 26, 1993, Nashville-Davidson County, through the State of Tennessee Department of Environment and Conservation, submitted various revisions to the Nashville-Davidson County portion of the Tennessee State Implementation Plan (SIP). This submittal included revisions to Regulation 3, "New Source Review" which were intended to bring Nashville-Davidson County's regulations into conformity with EPA's Prevention of Significant Deterioration (PSD) increments for NO_2 and the EPA's current New Source Review (NSR) requirements. EPA is approving the following revisions to the Nashville portion of the Tennessee SIP.

Regulation 3 New Source Review

Section 3–1 (d) *Definitions*: The existing definition for "baseline concentration" was replaced with a definition for "baseline concentration" consistent with 40 CFR 51.166 (b)(13).

Section 3–1 (e) *Definitions*: The definition for "baseline date" was added to this section.

Section 3–1 (t) *Definitions*: The definition for "major modification" was amended by deleting "insignificant" after "considered" and before "for" and replacing with "significant."

Section 3–1 (x) *Definitions*: Paragraph (7) was added so that the definition for "net emissions increase" is consistent with 40 CFR 51.166 (b)(3).

Section 3–1 (ee) *Definitions*: Paragraph (3) was added to the definition of "significant" to indicate that oxides of nitrogen would be acknowledged as precursors to tropospheric ozone formation and that offsets would be required for major or significant increases in NO_x emissions.

Section 3–1 (gg) *Definitions*: The definition of "volatile organic compound" was deleted and replaced with a definition that is consistent with 40 CFR 51.166 (b)(29).

Section 3–1 (hh) *Definitions*: The definition of "baseline area" was added to this section.

Section 3–2 *Registration and Permits*: Paragraph (b)(2)(ii) was deleted and replaced with new wording which clarified that "actual" not "allowable" emissions were to be considered in satisfying offsets when qualifying for a construction permit and set the ratio of total emission reductions to total increased emissions to 1.15 to 1.00.

Section 3–2 *Registration and Permits*: Paragraph (b)(3) was amended by deleting "carbon monoxide or" after "major" and before "volatile."

Section 3–3 *Prevention of Significant Deterioration (PSD) Review*: In paragraph (e)(2)(iii), the maximum increase over the baseline concentration for NO_2 added as an annual arithmetic mean of 25 ug/m^3.

The above listed revisions to the Nashville-Davidson County NSR SIP are being approved because they provide substantial enhancement of the existing SIP. However, deficiencies in the Nashville-Davidson county NSR SIP remain. The following is a list of deficiencies which must be corrected for Nashville's NSR SIP to meet the requirements of the CAA.

(1) The term "legally enforceable" which is used extensively throughout the regulation must be defined to provide for Federal enforceability.

(2) The definition of "commenced" (section 3–1 (i)) must be revised to be consistent with 40 CFR 51.165 (a)(1)(xvi). The provision that the owner or operator has all necessary preconstruction approvals or permits must be added.

(3) The definition of "emission offset" (section 3–1 (l)) must be better defined to provide that emission reductions used as credits are from actual emissions.

(4) The present definition of "Lowest Achievable Emission Rate (LAER)" (section 3–1 (s)) must be revised to be consistent with the definition contained in 40 CFR 51.165 (a)(1)(xiii).

(5) The definition of "Reasonable Further Progress"(section 3–1 (bb)) must be revised to be consistent with section 171 of the CAA.

(6) The definition of "significant emissions" (section 3–1 (ee)) omits the criteria for a source locating within 10

km of a Class I area and causing a 1 ug/m³ impact.

(7) Section 3–2 (b)(3) must be revised to add NO_x.

(8) Section 3–2 (d) must be revised to be consistent with 40 CFR 51.165 (a)(5)(ii). The phrase "as though construction had not yet commenced on the source or modification" must be added to the end of the last sentence.

(9) In section 3–2 (e), Nashville must add that EPA also be notified prior to approval or disapproval of an application for a construction permit.

Final Action

EPA is granting limited approval under sections 110(k)(3) and 301(a) of the aforementioned revisions to the Nashville-Davidson County portion of the Tennessee SIP. EPA is approving the revisions to the regulations in the SIP because the revised regulations are a substantial enhancement of the existing SIP. However, the approval is "limited" in the sense that EPA is not granting full approval of the NSR SIP as meeting part D requirements. Nashville's NSR regulations have deficiencies as identified in the Supplementary section of this document. Nevertheless, EPA is not taking action to disapprove Nashville's NSR SIP. Nashville must submit revisions to their NSR SIP correcting the identified deficiencies for their NSR SIP to meet the requirements of the CAA.

EPA is currently developing a rule to implement the changes under the 1990 Amendments in the NSR provisions in parts C and D of title I of the CAA. EPA anticipates that the proposed rule will be published for public comment in the summer of 1994. EPA expects to take final action to promulgate a rule to implement the parts C and D changes sometime during 1994 or 1995. Upon promulgation of those regulations, EPA will review NSR SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rule.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective June 14, 1994. However, if notice is received by May 16, 1994 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 14, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 22, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(114) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(114) On July 13, 1990, and February 26, 1993, Nashville-Davidson county submitted revisions to the Nashville-Davidson county portion of the Tennessee SIP through the Tennessee Department of Air Pollution Control which were intended to bring their regulations into conformity with EPA's New Source Review (NSR) requirements and EPA's Prevention of Significant Deterioration (PSD) increments for nitrogen dioxide (NO_2). The USEPA is granting limited approval to the revisions to the Nashville-Davidson county NSR regulations because the revised regulations strengthen the SIP.

(i) Incorporation by reference.

(A) Amendments to sections 3–1(e) and 3–3(e)(2)(iii) of the Nashville-Davidson county portion of the Tennessee regulations were adopted by the Nashville Metropolitan Board of Health on April 12, 1990.

(B) Amendments to sections 3–1(d), 3–1(t), 3–1(x)(7),3–1(ee)(3), 3–1(gg), 3–1(hh), 3–2(b)(2)(ii), and 3–2(b)(3) were adopted by the Nashville Metropolitan Board of Health on December 8, 1992.

(ii) Other material—none.

[FR Doc. 94–8970 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[TX–22–1–6239; FRL–4856–8]

Approval and Promulgation of Implementation Plan Texas Stage II Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking action to approve the Texas Natural Resource Conservation Commission (TNRCC) Stage II State Implementation Plan (SIP), which includes a SIP Supplement dated September 30, 1992, and Regulation V, 31 TAC § § 115.241–115.249, Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities, as a revision to the Texas SIP for ozone. On November 13, 1992, Texas submitted a SIP revision request to the EPA to satisfy the requirement of section 182(b)(3) of the Clean Air Act, as amended (1990). The Texas Stage II SIP revision requires owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment in the four Texas ozone nonattainment areas classified as moderate or worse. This revision applies to the Texas counties of Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller. On January 6, 1994, the EPA published a notice of proposed rulemaking (NPR) for the State of Texas. The NPR proposed approval of the Texas Stage II SIP submitted by the State. No public comments were received on the NPR; therefore, the EPA is publishing this final action.

EFFECTIVE DATE: This final rule will become effective on May 16, 1994.

ADDRESSES: Copies of the State's submittals and the EPA's technical support document (TSD) are available for public review at U.S. Environmental Protection Agency Region 6, (6T-AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733. In addition, Texas' submittal is available at the TNRCC, Stage II Program, 12124 Park 35 Circle, Austin, Texas 78753. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: James F. Davis at (214) 655–7584. A copy of this revision to the Texas SIP is also available for inspection at: Air Docket 6102, 401 M Street, SW., Washington DC 20460.

SUPPLEMENTARY INFORMATION:

Under section 182(b)(3) of the Clean Air Act (CAA), the EPA was required to issue guidance as to the effectiveness of Stage II systems. The EPA issued technical guidance in November 1991 and enforcement guidance in December 1991 to meet this requirement.[1] In addition, on April 16, 1992, the EPA published the "General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what the EPA believes a State submittal needs to include to meet that requirement.

The EPA has designated four areas as ozone nonattainment in the State of Texas. The Houston/Galveston/Brazoria ozone nonattainment area is classified as severe and contains the following eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The Beaumont/Port Arthur ozone nonattainment area is classified as serious and contains the following three counties: Hardin, Jefferson, and Orange. The El Paso ozone nonattainment area is classified as serious and contains the county of El Paso. The Dallas/Fort Worth ozone nonattainment area is classified as moderate and contains the following four counties: Collin, Dallas, Denton, and Tarrant. The designations for ozone were published in the **Federal Register** (FR) on November 6, 1991, and November 30, 1992, and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300 through 81.437. Under section 182(b)(3) of the amended CAA, Texas was required to submit Stage II vapor recovery rules for these areas by November 15, 1992. On November 13, 1992, Governor Ann W. Richards submitted to the EPA Stage II vapor recovery rules and a SIP Supplement dated September 30, 1992, which were adopted by the State on October 16, 1992. By today's action, the EPA is approving this submittal. The EPA has reviewed the State submittal against the statutory requirements and for consistency with the EPA guidance. A summary of the EPA's analysis is provided below. In addition, a more detailed analysis of the State submittal is contained in a TSD, dated June 25, 1993, which is available from the Region 6 Office, listed above.

Applicability

Under section 182(b)(3) of the CAA, States were required by November 15, 1992, to adopt regulations requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. The amended CAA specifies that these State rules must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer, any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the CAA defines an independent small business marketer. The State has adopted a general applicability requirement of 10,000 gallons per month and has not included a lower applicability for independent small business marketers. However, independent small business marketers which dispense lessthan 50,000 gallons have a provision for an extended compliance deadline.

As more fully discussed in the EPA's Enforcement Guidance and the General Preamble (57 FR 13514), the State has provided that the gallons of gasoline dispensed per month will be based on the gasoline throughput for each calendar month beginning January 1, 1991. The State is interpreting this requirement to mean that if a facility exceeds the throughput limits for any one month, the facility will be required to install Stage II. While the State is not calculating the average volume of gasoline dispensed per month for the two year period preceding the adoption date, the EPA believes that the State's method will require more gasoline dispensing facilities to comply with Stage II requirements. In addition, the State has specified that the Stage II requirements apply to all gasoline dispensing facilities, including retail outlets and fleet fueling facilities, with throughput rates as defined above. However, the State has exempted gasoline dispensing equipment used exclusively for the fueling of aircraft, marine vessels, or implements of agriculture. The EPA has determined that these limited exemptions are

[1] These two documents are entitled "Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA–450/3–91–022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

acceptable in the Texas Stage II program for the following reasons. Historically, the Stage II program was intended to reduce refueling emissions for "on-road" motor vehicles. These limited exemptions would not be considered to be on-road motor vehicles. Also, refueling systems of gasoline powered vehicles such as aircraft, marine vessels, and implements of agriculture are normally designed with nonstandardized equipment for which Stage II systems designed for on-road vehicle refueling facilities may not be compatible. The acceptability of these limited exemptions does not preclude the State from requiring refueling vapor recovery systems at such facilities at a later date.

Section 324 establishes a statutory definition of an independent small business marketer, which is fully set forth in the TSD. The State has adopted the statutory definition of independent small business marketer in its regulations.

The EPA finds the applicability requirements in the Texas Stage II rule to be acceptable.

Implementation of Stage II

The CAA specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an independent small business marketer, these times, calculated from the time of State adoption of the regulation, are: (1) Six months for facilities for which construction began after November 15, 1990; (2) one year for facilities that dispense greater than 100,000 gallons of gasoline per month; and (3) two years for all other facilities. The Texas Stage II rule time schedule sets compliance dates of May 15, 1993, November 15, 1993, and November 15, 1994, respectively for the above three deadlines. Although Texas adopted its Stage II regulations on October 16, 1992, the EPA believes it is appropriate to accept the adoption date to be November 15, 1992.

The EPA is approving the submitted time table for the following reasons. First, the CAA states that the adoption date must be used to calculate the compliance schedule for Stage II implementation at facilities. In this case, the EPA defines the adoption date to be the date when the regulation and the rest of the SIP was required to be submitted to the EPA on November 15, 1992. The compliance deadlines triggered by this date begin within the time schedule specified by the CAA. Secondly, remedying this deficiency by amending the compliance schedule would cause further delay in the implementation of Stage II in Texas. Lastly, the Texas rule otherwise fulfills the Stage II requirements, and the EPA believes it will provide substantial air quality benefits to the regulated areas. Therefore, the EPA believes it is in the public interest to approve and make enforceable this requirement at the earliest time feasible.

In the Texas program, independent small business marketers of gasoline, for which the monthly gasoline throughput is less than 50,000 gallons per month, may petition, no later than November 15, 1993, the State's Executive Director for an extension of the compliance deadline to December 22, 1998, or until one or more of the facility's gasoline storage tanks are replaced and/or equipped with corrosive protection, which is required by the Texas Natural Resource Conservation Commission. This extension provision for independent small business marketers of gasoline, for which the monthly gasoline throughput is less than 50,000 gallons per month, is acceptable because the CAA does not require Stage II systems to be installed on such facilities.

Additional Program Requirements

Consistent with the EPA's guidance, the State requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency. The EPA has indicated three acceptable methods of demonstrating a 95 percent emission reduction efficiency: (1) A method tested and approved by the California Air Resources Board (CARB); (2) a testing program that is equivalent to the CARB program, that will be conducted by the Program Oversight Agency or by a third party recognized by the Program Oversight Agency, and submitted and approved by the EPA for incorporation into the SIP; or (3) a system approved by the CARB. The State has chosen to use option three, a system approved by the CARB. The State requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation, and at least every five years or upon major modification of a facility (i.e., 75 percent or more equipment change).

With respect to recordkeeping, the State has adopted those items recommended in the EPA's guidance and specifies that sources subject to Stage II must make these documents available upon request: (1) A copy of the CARB Executive Order for the specific Stage II vapor recovery system installed at the facility; (2) results of verification tests; (3) equipment maintenance and compliance file logs indicating compliance with manufacturer's specifications and requirements; (4) training certification files; and (5) inspection and compliance records. In addition, the State has committed in their SIP supplement to maintain a general compliance file, including information such as facility name, address, phone number, owner/operator names, a State assigned reference number, date of initial compliance with the regulations, number of pumps and monthly gasoline throughput. The State has also established an inspection function consistent with that described in the EPA's guidance. The State commits to conducting inspections of facilities including a visual inspection of the Stage II equipment and of the required records and a functional test of the Stage II equipment. According to the Supplement, the State shall inspect each facility at least one time per year with follow-up inspections at noncomplying facilities. Finally, the State has established procedures for enforcing violations of the Stage II requirements, and has committed to establish a penalty schedule in the SIP. A detailed draft penalty schedule has already been developed by the State. Administrative penalties may be assessed of up to $10,000 per day per violation and civil penalties of up to $25,000 per day per violation. The EPA finds the State's program for implementation and enforcement of the Stage II program to be consistent with the EPA guidelines.

Response to Comments

On January 6, 1994 (59 FR 707), the EPA published a notice of proposed rulemaking (NPR) for the State of Texas. The NPR proposed approval of the Texas Stage II SIP submitted by the State. No public comments were received on the NPR.

Final Action

Since the EPA finds that the State has adopted a Stage II SIP in accordance with section 182(b)(3) of the CAA, as interpreted in EPA's guidance, the EPA is approving the submittal as meeting the requirements of section 182(b)(3).

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

As noted elsewhere in this action, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator

has reclassified this action from Table Two to Table Three under the processing procedures published in the FR on January 19, 1989 (54 FR 2214), and revisions to these procedures issued on October 4, 1993, in an EPA memorandum entitled "Changes to State Implementation Plan (SIP) Tables."

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Table Three SIP revisions from the requirements of section three of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table Two and Table Three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the FR on July 1, 1982.

Dated: March 22, 1994.

Joe D. Winkle,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(81) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(81) A revision to the Texas SIP to include revisions to Texas Regulation V, 31 TAC § § 115.241–115.249–Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities adopted by the State on October 16, 1992, effective November 16, 1992, and submitted by the Governor by cover letter dated November 13, 1992.

(i) Incorporation by reference.

(A) Revisions to Texas Regulation V, 31 TAC § § 115.241–115.249–Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities, effective November 16, 1992.

(B) Texas Air Control Board Order No. 92–16, as adopted October 16, 1992.

(ii) Additional materials.

(A) September 30, 1992, narrative plan addressing: general requirements, definitions, determination of regulated universe, certification of approved vapor recovery systems, training, public information, recordkeeping, requirements for equipment installation and testing, annual in-use above ground inspections, program penalties, resources, and benefits.

[FR Doc. 94–8971 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[VA19–1–6266; FRL–4860–4]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia–Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires the implementation of an Oxygenated Gasoline Program in one control area which includes: the Virginia counties within the Washington, DC Metropolitan Statistical Area (MSA) consisting of Arlington, Fairfax, Loudoun, Prince William, and Stafford, and the Virginia cities within the Washington, DC MSA consisting of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. The intended effect of this action is to approve these regulations to satisfy the requirements of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act). This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule will become effective on May 16, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Air and Radiation Docket & Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 597–6863.

SUPPLEMENTARY INFORMATION: On October 26, 1993, (58 FR 57573), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of an Oxygenated Gasoline Program in the Commonwealth of Virginia. The Commonwealth submitted a SIP revision for parallel processing on November 13, 1992. The formal SIP revision was submitted by the Commonwealth of Virginia on November 1, 1993.

Specific requirements of the Oxygenated Gasoline Program and the

rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving the SIP revision to add VR 115–04–28, submitted by the Commonwealth of Virginia on November 1, 1993, which implements an Oxygenated Gasoline Program in the Commonwealth.

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

This action has been classified as a Table 2 action for signature by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). However, in an October 4, 1993 memo, the Acting Assistant Administrator for Air and Radiation, Michael H. Shapiro, revised these SIP tables so that Table 2 final actions on which no adverse comments were received on the proposed rule may be delegated to Table 3 actions. No comments were received concerning this action, therefore, under the new guidelines this final action may be classified as a Table 3 action. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve Virginia's Oxygenated Gasoline Program must be filed in the United States Court of Appeals for the appropriate circuit by June 14, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 21, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV–Commonwealth of Virginia

2. Section 52.2420 is amended by adding paragraph (c)(100) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(100) Revisions to the Commonwealth of Virginia Regulations Oxygenated Gasoline Program regulations submitted on November 1, 1993 by the Department of Environmental Quality, formerly the Virginia Department of Air Pollution Control: Effective date November 1, 1993.

(i) Incorporation by reference.

(A) Letter of November 1, 1993 from the Department of Environmental Quality transmitting Oxygenated Gasoline Program regulations.

(B) Addition of VR 115–04–28 Regulation Governing the Oxygenation of Gasoline.

(ii) Additional materials.

(A) Remainder of November 13, 1992 and November 1, 1993 State submittals.

[FR Doc. 94–9103 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–266, FCC 94–38]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Second Order on Reconsideration and Fourth Report and Order to revise, clarify, and in certain instances, adopt further, Commission cable rate regulations. The Second Order on Reconsideration primarily (1) adopts a revised "competitive differential"—the average difference that exists between the rates of competitive and non-competitive cable systems—of 17 percent; (2) requires all regulated cable systems to establish rates based on the revised competitive differential unless they justify other rates through a cost-of-service showing; and (3) establishes special transition rules that relieve "low-priced" systems (as measured by a revised benchmark that incorporates the 17 percent competitive differential) and cable systems owned by small operators from reducing their rates by the full competitive differential pending completion of an industry cost study to be conducted by the Commission. The Fourth Report and Order establishes a "going-forward" mechanism to govern future rate adjustments resulting from channel additions or deletions, or system upgrades. The rules and procedures adopted in this decision are intended to ensure that subscribers pay reasonable rates for regulated cable services while encouraging the continued expansion of cable service offerings.

The Commission has also adopted a Fifth Notice of Proposed Rule Making, which may be found elsewhere in this Federal Register.

EFFECTIVE DATE: May 15, 1994, except the amendments to § 76.964 will become effective April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Joel Kaufman, (202) 416–1164, Aliza Katz (202) 416–0939, Edward Hearst, (202) 416–0862, or Kathy Franco (202) 416–0956.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Second Order on Reconsideration and Fourth Report and Order portions of the Commission's Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC 94–38, adopted February 22, 1994, and released March 30, 1994.

The complete text of this Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of the Second Report and Order on Reconsideration

A. Introduction

In the Report and Order and Further Notice of Proposed Rulemaking ("Rate Order") in MM Docket No. 92–266, 58 FR 29736, May 21, 1993, the Commission adopted cable rate regulation rules and policies implementing the Cable Television Consumer Protection and Competition Act of 1992. The Commission's September 1992 Competitive Survey of cable rates supported Congress' findings that the rates for cable systems not subject to effective competition reflect pervasive market power. Congress had defined three types of cable systems subject to "effective competition": (1) Cable systems that face head-to-head competition ("overbuilds"); (2) cable systems operated by municipalities ("municipal"); and (3) cable systems with low penetration ("low penetration"). Using the results of its Competitive Survey, the Commission adopted a "benchmark" approach for setting initial rates for regulated cable service. Under the benchmark approach, regulated cable systems were required to use a formula established in the Rate Order to calculate an applicable benchmark—an estimate of the rate that a cable system subject to effective competition with similar characteristics would charge. Rates of cable systems at or below the benchmark were presumed to be reasonable; rates above the benchmark were presumed to be unreasonable. Cable systems whose rates exceeded the applicable benchmark were required to set rates based on September 30, 1992 rate levels reduced either to the benchmark or by ten percent, the "competitive differential," whichever reduction was less. Alternatively, they could justify their higher rates with a cost-of-service showing. In our First Reconsideration Order, the Commission affirmed its decision to use a benchmark approach, based on rates charged by systems subject to effective competition, as the primary method for determining the reasonableness of regulated cable rates.

The petitions for reconsideration filed in this proceeding allowed the Commission to undertake a comprehensive review of its rate regulation scheme for cable service. The Second Order on Reconsideration, which modifies the benchmark approach in several key respects, amends the Commission's cable rate regulations to ensure both that the rates consumers pay for regulated cable services are reasonable and that the Commission's rules continue to promote economic growth in the cable industry. The specific changes made on reconsideration are described below.

B. Regulation Governing Rates of Basic and Cable Programming Service Tiers

1. Impact on the National Economy

The Second Reconsideration Order analyzes the impact of the revised rate regulations on the Nation's economy, and more specifically, the effect on innovation, investment, and growth in the cable industry. The Second Reconsideration Order concludes that the Commission's refined approach is expected to increase demand for cable services, increase operators' motivation to invest in advanced technology and to introduce new services that are not subject to rate regulation, and to protect subscribers from the burdens of financing new, unregulated offerings through potential cross-subsidization by the cable industry.

2. Estimating the Competitive Differential

The Second Reconsideration Order strengthens the Commission's statistical and economic model for estimating the difference between the rates charged by competitive and noncompetitive cable systems. In the April 1993 Rate Order, the Commission estimated the competitive differential to be approximately ten percent. Numerous petitioners challenged the methodology for deriving that figure on a variety of grounds. In response to those challenges, the Commission reviewed and refined its methodology.

Addressing statistical issues identified by commenters and Commission staff, the Commission used a corrected data set and revised the treatment of equipment and installation revenues. In calculating the new competitive differential the Commission also utilized a more refined economic analysis that reflects more accurate assessments of the three types of systems that Congress defined as being subject to "effective competition"—low penetration systems, overbuilds, and municipals. The Commission also considered other statutory factors, the facts of record, and the comments of interested parties.

Statistical analysis reveals that each of the three types of systems has its own competitive differential. Because the three classes of systems differ from each other, the Commission concluded that it is more appropriate to consider the competitive differential for each type of system individually than it is to average the data relating to all three system types as the Commission previously did. The Commission also concluded that the statute does not require the Commission to compute the competitive differential simply by averaging, without evaluation, the rates charged by the three different types of systems. Rather, the Act requires the Commission to "take into account" or "consider" the rates charged by each type in determining reasonable rates.

The Commission conducted an economic analysis that considered the competitive differential for each of the three categories of systems that Congress defined as facing "effective competition." This analysis revealed that the rates of low penetration systems are not statistically different as a group from the rates of systems subject to rate regulation. The Commission concluded that there may be a variety of reasons other than competitive pressures that account for low penetration rates, and thus that low penetration systems may not provide the best basis for determining the competitive differential that should apply to noncompetitive systems.

The Commission further concluded that systems in the overbuild sample provide the most informative data with regard to estimating reasonable rates. The Commission's best estimate of the difference between the rates charged by overbuilds and noncompetitive systems is 16 percent. That figure takes into account the fact that cable operators generally do not compete head-to-head in the entire franchise area they serve. The data revealed that rates decrease as the extent of competition increases. The Commission corrected for the lack of full competition throughout an entire franchise area when computing the competitive differential for overbuild systems.

The Commission also adjusted upward the 16 percent figure to take into account the fact that because cable operators serving the same area may adopt parallel or coordinated pricing practices, prices observed in an overbuild situation may be above the purely competitive level. The data indicated that the rates charged by overbuild systems are lowest at the outset of competition and then rise over time. This is consistent with parallel pricing behavior and strengthens the conclusion that the best estimate of the overall competitive differential is greater than the overbuild differential of 16 percent.

The largest differential, 37 percent, arose in the comparison of the rates charged by noncompetitive systems with the rates charged by municipal systems and the privately owned systems that compete with them. While

this differential may be the most accurate measure of the competitive differential because government-operated entities may be presumed to charge reasonable rates and have no incentive to engage in parallel or tacitly coordinated pricing practices, municipal systems may not be earning a profit. The record evidence on this point is inconclusive. Because of these concerns, the Commission separately examined the rates charged by the privately-owned cable systems in the sample of "municipal" systems. The competitive differential is equally large for these private systems, which suggests that the rates charged by the public and private systems in our municipal sample are reasonable. However, in view of the small number of systems in the municipal category (only eleven), the Commission did not rely as heavily on municipals as it otherwise might have in estimating the overall competitive differential.

After reviewing the data from all three types of non-regulated systems, but giving the most emphasis to the data relating to overbuilds, the Commission selected 17 percent as the revised competitive differential. The Commission was guided by the 16 percent competitive differential between noncompetitive systems and overbuilds accounting for full head-to-head competition. The Commission moved upward from 16 percent to reflect the conclusion that cable operators in an overbuild situation are likely over time to develop a tacit understanding of rate levels that may limit the intensity of rate competition. However, the Commission did not depart upward as far as it might have, despite the evidence relating to municipal systems, on account of concerns about the interpretation of the data in the municipal subsample, on account of its consideration of low penetration systems, and its belief that consumer welfare is best served by financially sound cable operators.

This 17 percent rate reduction is not in addition to the prior ten percent rate reduction that some operators already have applied. Rather, those operators that have already established rates based on a ten percent competitive differential will only be required to adjust rates by approximately seven percent, according to the methodology specified by the Commission.

3. Applying the Competitive Differential

The April 1993 Rate Order required some, but not all, noncompetitive cable operators to lower their rates to avoid refund liability. Only those regulated operators with rates ten percent or more above the benchmark were required to come down ten percent. Operators with rates less than ten percent above the benchmark were required to reduce their rates only to the benchmark which was the average per-channel rate charged by similar effectively competitive systems. Those cable operators with rates below the benchmark were not required to reduce their rates at all. This approach implicitly assumed that all cable operators' costs are similar, so that only high subscriber rates reflect the exercise of market power.

Based on its refined statistical analysis, and as confirmed by numerous economic studies, the Commission, on reconsideration, concluded that generally noncompetitive cable systems, not just systems charging relatively higher rates, exercise market power. Given the absence of industry-wide data, however, the Commission has not been able to identify the underlying cost and demand factors with sufficient precision to allow constructing an estimate of market power on a system-by-system basis.

The Second Reconsideration Order applies the same 17 percent adjustment to all regulated cable systems rather than assigning different adjustments to different systems. To avoid refund liability, regulated cable systems, that are not eligible for transition relief as discussed below, are required by May 15, 1994 either (1) to set their rates so that their regulated revenues per subscriber do not exceed September 30, 1992 levels reduced by the revised competitive differential of 17 percent (with certain adjustments described below), or (2) to submit a cost-of-service showing supporting higher rates. Two limited classes of noncompetitive cable systems, small operators (defined as cable companies serving 15,000 or fewer subscribers) and systems charging relatively low prices (as measured by a revised benchmark) are not required to adjust their rates in this manner until the Commission completes an industry cost study. These two categories of systems are entitled to "transition relief." The specific calculations a regulated cable system will need to use to apply the revised benchmark system are set forth in new FCC Form 1200.

For all cable systems subject to regulation, the rates permitted for the period from September 1, 1993 until May 15, 1994 (the effective date of these new rules), and refund liability with respect to such rates, will be determined by our initial rate regulations adopted on April 1, 1993. The lawfulness of rates in effect on or after May 15, 1994, and refund liability with respect to such rates, will be determined in accordance with the new rules adopted in the Second Reconsideration Order.

Systems not entitled to transition relief. Regulated cable systems that are not entitled to transition relief are those systems (1) owned by an operator serving more than 15,000 total subscribers or affiliated with a larger operator, and (2) whose rates, after applying the full 17 percent competitive differential, with certain adjustments, are above the revised benchmark. These systems will be required to set their rates at a level that equals their September 30, 1992 regulated revenues per subscriber reduced by the revised 17 percent competitive differential and adjusted forward as described below. Regulated systems wishing to support higher rate levels must submit a cost-of-service showing.

After reducing its regulated September 30, 1992 rate levels by the 17 percent competitive differential, regulated systems are allowed to include in their permitted regulated rates: (1) The inflation occurring between October 1, 1992 and September 30, 1993; (2) changes in external costs that have occurred since the system became subject to initial regulation at either the local or federal level (or February 28, 1994, whichever was earlier); and (3) changes that have resulted from the addition or deletion of program channels to regulated service tiers since September 30, 1992. The resulting rate is referred to as the "full reduction rate."

A system whose rate level being justified is above its full reduction rate level must reduce its rate to the full reduction rate level, (measured by the system's average regulated revenue per subscriber) unless it qualifies for transition treatment, as discussed below. By contrast, a system whose rate level being justified is below the full reduction rate will be permitted to raise its rate level up to the full reduction rate level. This is because the full reduction level establishes the reasonable rate level for that system under our rate regulations. Any cable system that sets its rates at the full reduction rate level will be entitled to adjust those rates in the future for annual inflation, changes in external costs, and changes in the number of regulated channels. Operators will use FCC Form 1210 to make these adjustments. Relevant dates for calculating these adjustments are discussed below.

(i) Inflation adjustment. Cable systems are eligible to file for an inflation adjustment for the period beginning October 1, 1993 and ending June 30, 1994 once the final Gross National Product Fixed Weight Price Index

(GNP–PI) for the quarter ending June 30, 1994 is released. The Commission uses the June 30 cycle for inflation because the final GNP–PI is generally released 90 days after the end of each quarter. Thus, operators will have the final GNP–PI figure for June 30, 1994 by September 30, 1994, the time for the first annual rate adjustment.

(ii) Changes in external costs. To simplify operators' external cost calculations and to enable regulators to better monitor future rate increases, the Commission modifies its rules on its own motion to provide for a single start date for the accrual of permitted external costs. That date will be the earliest of (1) the date of initial regulation for the basic service tier, (2) the date of initial regulation for cable programming services, or (3) February 28, 1994.

(iii) Changes resulting from the addition or deletion of channels. Permitted changes in rate to reflect changes in the number of channels on regulated tiers are governed as follows: Channels added to or deleted from regulated tiers between September 30, 1992 and the date of initial regulation (or February 28, 1994, whichever occurs earlier) are handled through application of the old benchmark methodology pursuant to the calculations set forth in FCC Form 393. Channel changes that occur between the date of initial regulation (or February 28, 1994, where applicable) and the effective date of the new rules are accorded external cost treatment only (to reflect changes in programming costs), since going-forward rules to govern those changes had not yet been adopted. Channel changes occurring after the effective date of the new rules will be governed by the going-forward methodology adopted in The Fourth Report and Order, discussed below.

System entitled to transition relief. Systems eligible for transition relief will not be required to make the full reduction otherwise required until the Commission has conducted an industry price/cost study, and determined whether such a reduction is not inappropriate. The relevant price/cost data will be aggregated and analyzed so that it can be applied on an industry-wide, rather than a system-by-system, basis. Systems entitled to transition relief may elect to make a cost-of-service showing to justify higher rates at the end of the transition period. At the conclusion of the Commission's analysis, systems eligible for transition relief will be required to make the full 17 percent reduction unless the analysis reveals that the 17 percent differential is inappropriate for these systems.

(i) Systems owned by small operators. The first category of system eligible for transition relief consists of systems owned by "small operators," defined as cable operators that have a total subscriber base of 15,000 or fewer customers and that are not affiliated with a larger operator. Systems owned by "small operators" will not be required to reduce rates to the full reduction level immediately. Instead, they will be allowed to cap their rates at their March 31, 1994 levels until completion of the Commission's price/cost study.

As with other operators subject to transition relief, systems owned by small operators will be required to apply the full 17 percent competitive differential unless the price/cost data the Commission collects demonstrates that a smaller competitive differential should be applied to them. Systems owned by small operators will not be required to apply more than the full 17 percent competitive differential, regardless of the results of the Commission's price/costs analysis.

For purposes of determining eligibility for transition relief, systems owned by "small operators" are defined as systems that are owned by operators with a total subscriber base of 15,000 or less as of March 31, 1994, and that are not affiliated with or controlled by larger operators. For purposes of determining whether a larger company has a sufficiently significant interest in, or control over, a small operator, transition treatment is withheld from small operators in which a larger company holds more than a 20 percent equity interest (active or passive) or over which a larger company exercises *de jure* control (such as through a general partnership or majority voting shareholder interest).

If a small operator subsequently purchases, or is purchased by, another cable operator so that the combined subscriber base of the two operators exceeds 15,000, the small operator will not be required to forfeit its transition treatment simply because an acquisition has occurred. The Commission will grandfather the rate treatment of the small operator pending completion of its cost analysis. The grandfathered treatment will apply only to the systems originally owned by the small operator, and will not extend to the new systems it has acquired (or with which it has been merged).

A system owned by a small operator on March 31, 1994 entitled to transition treatment will not lose its eligibility simply because the operator's business grows above the 15,000 subscriber limit prior to completion of the price/costs analysis. Similarly, an operator that exceeds the 15,000 subscriber cut-off on March 31, 1994 will not gain eligibility for transition relief if it subsequently loses sufficient subscribers to bring it below the 15,000 subscriber limit.

Operators whose subscriber base exceeds 15,000 total subscribers by no more than 1,000 subscribers may petition the Commission for emergency relief entitling them to transition treatment. Such petitions should be based on a showing that not treating the operator as a "small operator" will cause substantial hardship. A major factor in making this determination will be evidence regarding the operator's price/cost margin.

(ii) Low-price systems. The second class of regulated cable systems entitled to transition treatment are (1) those whose March 31, 1994 rates are below the revised benchmark, and (2) those whose March 31, 1994 rates are above the revised benchmark but whose full reduction rates are below the revised benchmark. These systems are charging comparatively low prices when measured against other noncompetitive systems, as indicated by their position relative to the new benchmark.

Because their prices are significantly lower than those charged by most noncompetitive systems, systems in this second class may face unusual demand, costs or other factors that have not been captured in our analysis to date. Accordingly, to study this issue further, the Commission will grant transition treatment to the above described cable systems with relatively low prices. However, the record evidence to date is insufficient to conclude that these systems should ultimately be exempted from the requirement to apply the full revised competitive differential. Thus, as with small operators subject to transition relief, systems with relatively low prices will be required to apply the full 17 percent competitive differential if additional analysis of their costs fails to demonstrate that a smaller competitive differential should be applied to them. Low-priced systems will not be required to apply more than the 17 percent competitive differential at the conclusion of the price/cost analysis.

In order to determine whether they are "low-price" systems entitled to transition relief, all systems that do not qualify for transition treatment under the "small operator" definition will be required to compare their March 31, 1994 rates to the new benchmark and to their full reduction rates using FCC Form 1200. Systems whose March 31, 1994 rates are below the revised benchmark, or whose March 31, 1994

rates are above the revised benchmark but whose full reduction rate is below the revised benchmark, will be eligible for transition treatment.

To compare its rates to the new benchmark, a cable system will first calculate its "regulated revenue per subscriber" for the franchise area at issue as of March 31, 1994. The "regulated revenue per subscriber" is the cable system's revenue from its basic and cable programming service tiers, plus its regulated equipment revenue, divided by its number of subscribers. The cable system will then calculate its "benchmark regulated revenue per subscriber" using the revised benchmark formula. FCC Forms 1200 (Setting Maximum Initial Rates) and 1205 (costs of regulated cable equipment and installation) will be available on a computer disk. The benchmark rate will be based on the system's characteristics as of March 31, 1994. The benchmark rate will incorporate the 17 percent competitive differential and will be adjusted for inflation to enable the cable system to make a proper comparison between its March 31, 1994 rates and the benchmark. This inflation adjustment is necessary because the benchmark formula is based on data reflecting industry rates as of September 30, 1992.

Application of transition relief. Regulated cable systems eligible for transition relief, either because they are owned by small operators or because they are low-price systems, will not be required to adjust their rates to the full reduction rate level pending completion of the Commission's price/cost analysis. Rather, systems that are owned by small operators and systems whose March 31, 1994 rates are below the revised benchmark will not have to make any reductions at this time. Systems whose March 31, 1994 rates are above the revised benchmark but whose full reduction rates are below the revised benchmark will only be required to reduce those rate levels to, and not below, the revised benchmark during the transition period.

For purposes of applying the new rate rules, a system's March 31, 1994 rate is the rate that the system was permitted to charge under the old benchmark system, which in turn would consist of its initial permitted rate plus any external costs that it is permitted to accrue up to March 31, 1994. Some systems have already become subject to regulation at the local or federal level, and some have not. If, on March 31, 1994, a system is involved in a pending rate proceeding before either its local franchising authority or the FCC, its March 31, 1994 rate will be the rate that the regulator ultimately decides is reasonable. This reasonable rate must include the external costs to which the system was entitled between the date of initial regulation for any tier (or February 28, 1994, whichever is earlier) and March 31, 1994. If the March 31, 1994 rates used by the operator on FCC Form 1200 are subsequently found not to be lawful by a local or federal regulator, the operator will be required to update the rates submitted in the form to reflect the proper rates.

The operator also will be subject to refund liability for the period during which its March 31, 1994 rate may have been unlawfully high as measured under the Commission's current rules. The system's refund liability will cover any period during which it had such liability under application of the Commission's initial benchmark regulations. It will also, however, exist after May 15, 1994 under the revised rules and will be measured by the difference between the system's actual March 31, 1994 rate and the rate that the regulator ultimately determines was reasonable under the old benchmark rules. Any refund liability under the revised regulations will terminate when the system adjusts its rates to reflect the regulator's determination.

Systems entitled to transition treatment from immediate application of the full competitive differential are not relieved of other requirements concerning the restructuring of equipment and program service offerings. Thus, all regulated systems except those excused by specific provisions in the Commission's rules remain required to (1) set equipment rates at cost (including a reasonable profit), (2) unbundle equipment charges from programming rates, and (3) apply an average rate per channel when setting program tier charges. These requirements will not apply, however, to small systems serving 1,000 or fewer subscribers that are eligible for, and elect to implement, streamlined rate reductions, as long as they implement a 14 percent line-item reduction for each regulated rate component that appears on subscribers' bills.

Systems eligible for transition relief will be subject to a modified price cap pending completion of the Commission's price/cost analysis. These systems will have to compute their full reduction rate and their transition rate. For systems owned by small operators and systems with below-benchmark rates, their "transition rate" will be their March 31, 1994 rate, as appropriately updated since that date. For systems whose March 31, 1994 rate is above the benchmark, but whose full reduction rate is below the benchmark, their "transition rate" will be the benchmark rate, as appropriately updated. Systems entitled to transition treatment may increase their rates to reflect increases in external costs and increases caused by channel changes that accrue after March 31, 1994. Such systems may not increase their transition rates due to increases in inflation until the transition rate equals their full reduction rate. Under the revised rules, a system's full reduction rate—which, unlike its transition rate, rises with inflation as well as with changes in external cost and channel changes—may eventually exceed the transition rate. At the point when the transition rate and the full reduction rate become equal (if such a point occurs during the transition period), the system will be entitled to adjust its rate upward to take advantage of all future inflation adjustments.

Regulated rates at the end of the transition period. In the near future, the Commission will initiate an industry cost study pursuant to its cost-of-service rulemaking proceeding. Information about the prices and costs of small operators and low-price systems will be collected as part of that effort. In addition, the Commission will shortly issue a further notice in this proceeding to enable these systems to submit additional evidence to us concerning their prices and costs.

Based on this information, the Commission will determine what competitive differentials ultimately are most appropriate for the two classes of systems eligible for transition relief. The Commission will apply the differentials for each category on a classwide basis, unless operators elect to make cost-of-service showings. Neither class will be subject to a competitive differential greater than 17 percent. Subject to that limitation, the Commission will apply the largest competitive differential that is consistent with the average operator in each class earning no more than 11.25 percent rate of return.

Once the appropriate competitive differential has been applied to a system, that system will be entitled to an "aggregate inflation adjustment" equal to all GNP–PI inflation adjustments for the period beginning October 1, 1992 through the most recent June 30. To the extent a system has already received some inflation adjustment for that period, the system will receive the net of the aggregate inflation adjustment minus any inflation adjustment already received. In either case, after the end of the transition period, a system will be eligible for additional inflation adjustments on an annual basis, but no earlier than

September 30 of each year, when the final GNP–PI through June 30 of each year is released.

Calculation of refund liability. In general, regulated systems who select the benchmark approach to setting rates will be required to comply with the revised rules by May 15, 1994 in order to avoid refund liability. However, to reduce the burden on cable systems that cannot conform their regulated rates to the new benchmark approach by the effective date of the revised rules, the Commission will not impose refund liability on such systems for an additional 60 days after May 15, 1994 (*i.e.*, until July 14, 1994), as along as certain conditions are met. First, systems wishing to take advantage of this deferral of refund liability may not change any rate for regulated service or equipment, or restructure any regulated service or equipment offering (by, for example, removing program channels from what would be regulated service tiers and placing them into an "a la carte" package), during the period that runs from March 30, 1994, the release date of this Order, to July 14, 1994. Moreover, a cable system that does restructure its rates and service offerings, even in compliance with the Commission's rules, before July 14, 1994 will have its refund liability triggered on the date the restructuring occurs.

Second, cable systems taking advantage of the refund deferral period must still give at least 30 days notice to subscribers of any rate or service changes they ultimately make in response to the new rules, as required under the Commission's revised notification provisions, discussed below.[1] Also, if the operator elects to take advantage of the deferral of refund liability period, it must notify the local franchising authority by June 14, 1994 (the date on which its rate justification is due) that it is electing that option. The system will then have 30 days from the date on which it ultimately restructures its rates to submit the relevant FCC forms, although in no event will such forms be filed more than 30 days after July 14, 1994, the last date of the refund liability deferral period.

Third, all rate and service restructuring must be completed by July 14, 1994 (the end of the 60-day deferral period) in order to avoid refund liability. Restructuring is considered to be completed when bills reflecting the rate and service changes have been issued to subscribers. If an operator has a staggered billing cycle, the relevant date will be the date on which the first cycle of bills is mailed, as long as the billing cycle is completed within 30 days from that date. An additional two months beyond the effective date of the Commission's new rules provides cable systems adequate time in which to familiarize themselves with the regulations and take the necessary actions to comply.

Notice to Subscribers. The Second Reconsideration Order modifies current rate regulations to require that cable systems give 30 days notice to both subscribers and franchising authorities before implementing any rate or service changes. Cable systems will have to identify on subscriber bills to precise amount of any rate change and briefly explain its cause (*e.g.*, inflation, changes in external costs or the addition/deletion of channels (identified by name)). This information must be presented in a way that enables the average subscriber to understand readily why his or her rates have increased or decreased.

In addition, systems are required to notify subscribers of their right to file complaints with the Commission about rate changes for cable programming services and associated equipment. This notice shall (1) indicate that subscribers may file such complaints within 45 days of the change being reflected in their bill, and (2) provide the address and phone number of the local franchising authority and the Commission.[2]

These notice requirements are effective immediately upon publication of the revised rules in the **Federal Register**. The Commission finds good cause to make these requirements effective on less than 30 days notice in the **Federal Register**. See 5 U.S.C. Section 553(d)(3). Good cause exists because it is important that the notice provisions set forth above apply to rate changes made pursuant to this Order. Were the normal 30-day period to apply, it would be possible for cable operators to revise their rates pursuant to this Order without complying with the notice provisions. For example, a cable operator would send a notice of rate changes pursuant to this Order on May 13, 1994, complying only with the notice requirements previously in effect and not providing, for example, the address and phone number of the Commission.

In addition, the Commission is requiring that all cable system bills to subscribers contain the address and phone number of the local franchising authority and the Commission.

Procedural issues for franchising authorities. With one exception, franchising authorities and cable operators shall follow timeframes already established in §§ 76.930 and 76.933 of the Commission's Rules for proceedings that were initiated before the effective date of this Order. Adoption of this Order generally does not affect the basic deadlines to which local authorities and operators must adhere for resolving pending rate cases under the Commission's initial benchmark regulations. Moreover, as detailed below, all operators involved in a pending case will be required to submit a rate justification on the required FCC Forms within 30 days after the revised rules take effect on May 15, 1994.

There are generally five points in the rate-setting process that a local franchising authority and cable operator may be on May 15, 1994. The first is where the franchising authority has not certified to regulate basic rates by that date, or has certified but has not yet notified the operator that it is commencing basic rate regulation. In this case, the cable system will be required to file both an FCC Form 393 and new FCC Form 1200 30 days after the local authority notifies it that the authority is initiating rate regulation of the basic service tier. It will be not be necessary to file an FCC Form 393, however, if the one-year time limit on the operator's refund liability precludes any possibility of refund for the period before the effective date of the revised rules. FCC Form 393 will be used to determine the operator's permitted rates from September 1, 1993 until May 15, 1994, and FCC Form 1200 will be used to determine its permitted rates after May 15, 1994. The franchising authority will then be expected to examine both filings within the timeframes established in section 76.933 of the Commission's Rules.

Second, if, by May 15, 1994, a franchising authority has notified the cable operator that it has become certified, but the operator has not yet submitted the required FCC form (*e.g.*, because the 30 day response period has not lapsed), the Commission will require the cable operator to file both FCC Form 393 and new FCC Form 1200 within 30 days after May 15, 1994. This limited deviation from § 76.930 of the Commission's rules, which requires the

[1] The Commission is preempting any local and state requirements that require cable systems to give more than 30 days notice of rate and service changes to subscribers where application of the local and state provisions would serve to prevent a system from bringing its rates into compliance with the new benchmark rules by the end of the refund deferral period.

[2] The address of the Commission is Federal Communications Commission, Cable Services Bureau, Consumer Protection Division, 191 M Street, NW., Washington, DC 20554. The phone number is 202–416–0856.

cable operator to file its schedule of rates within 30 days of the date of a written request from the franchising authority, is justified because it will allow the operator to complete both forms simultaneously, with minimal disruption to the franchising authority. The franchising authority will be expected to examine both filings within the time periods established in § 76.933. There is one exception to this rule. In the Commission's Third Reconsideration Order in this docket, the Commission makes clear that franchising authorities have the power to impose sanctions, including findings of default, on cable operators who fail to file documents relevant to a rate determination in response to requests from the franchising authority. The Commission will permit any cable operator who has not filed a requested FCC Form 393 within the 30 day time period established in § 76.930 to do so by the effective date of these rules. If the operator fails to do so, the franchising authority will be permitted to apply the sanctions outlined in the Commission's Third Reconsideration Order in this docket.

Third, if, by May 15, 1994, a franchising authority has received the cable operator's filing for justifying rates under the old benchmark system but has not reached a final decision pursuant to §§ 76.933 or 76.936 of the Commission's rules, the Commission expects the franchising authority to follow all existing timeframes with respect to that part of the proceeding.[3] The cable operator in this situation will also be required to file new FCC Form 1200 with the franchising authority within 30 days of May 15, 1994. The franchising authority will then resolve the second portion of the proceeding, in which it will evaluate the cable operator's rates under the revised rules, within the timeframes established in § 76.933.

Fourth, if, by May 15, 1994, a franchising authority has reached a final decision about the lawfulness of an operator's basic rates under the Commission's initial rate rules, the Commission will require the cable operator to file new FCC Form 1200 within thirty days of May 15, 1994. The franchising authority will then examine the form pursuant to the time frames established in § 76.933.

Finally, if a franchising authority has reached a final decision on the cable operator's rates, and a rate increase request is pending as of May 15, 1994, the cable operator will be required to file new FCC Form 1200 within thirty days of May 15, 1994. The rate increase request will then be evaluated pursuant to the data submitted on the FCC Form 1200, rather than by any data that had already been submitted by the operator in support of its rate increase request. Operators will be able to file rate justifications after June 30, 1994 to reflect external costs incurred during the second quarter of 1994.

Pending complaints before the commission. Unless the Commission has issued a decision on a pending complaint before May 15, 1994, the operator about whom the complaint was made must file an FCC Form 1200 in addition to the FCC Form 393 it either has filed or must file. Such operators will be subject to refund liability calculated under the Commission's initial regulations for rates that were in effect from September 1, 1993 until May 15, 1994 (although any refund liability will not start until the complaint was filed). Refund liability with respect to rates charged on and after May 15, 1994 will be calculated pursuant to the revised rules adopted in this Order. As with basic tier regulation, if the operator elects to take advantage of the deferral of refund liability period, it must notify the Commission by the date on which its rate justification on an FCC Form is due that it is electing that option. The system will then have 30 days from the date on which it ultimately restructures its rates to submit the relevant FCC forms, although in no event will such forms be filed more than 30 days after July 14, 1994, the last date of the refund liability deferral period.

To the extent there is a complaint regarding cable programming service tier rates pending before the Commission, the Commission will continue to require the cable operator in question to file notice of any changes in rates with the Commission. This notice must be filed at least 30 days before such rates are proposed to be effective. This notice is necessary to allow the Commission to ensure that the cable service tier rate is not unreasonable.

4. Commission Authority to Adopt the Modified Ratemaking Approach

The Second Reconsideration Order concludes that the modified ratemaking approach the Commission adopts is consistent with its statutory authority under the Cable Act of 1992. Section 623(b)(1) of the Communications Act, 47 U.S.C. section 543(b)(1), mandates that the Commission ensure that rates for the basic service tier are "reasonable." In addition, regulated upper tier rates may not be "unreasonable." Section 623(c)(1), 47 U.S.C. section 543(c)(1). The Cable Act does not compel the use of a specific ratemaking model to ensure that rates are reasonable; while setting forth various factors the Commission must consider in establishing its ratemaking approach, the statute leaves to the Commission the way in which these factors should be taken into account. Congress specifically rejected mandating use of a formulaic approach to cable rate regulation.

Affording wide latitude to the Commission in discharging its ratemaking functions is consistent with legal precedent. The courts recognize that regulatory agencies generally have broad discretion to choose methods and procedures in ratemaking determinations, provided the rates are within a "zone of reasonableness."[4] By choosing to require that basic rates be "reasonable" and that upper tier rates not be "unreasonable," Congress has invoked this general body of law for application under the Cable Act. The Commission was instructed to consider the factors enumerated in the Cable Act and to its expertise to achieve Congress's overall goal of ensuring "reasonable" rates for subscribers.

In response to NYNEX's petition for reconsideration, the Commission revisited and refined its approach to analyzing the competitive sample for purposes of estimating the competitive differential. While rejecting NYNEX's recommendation to exclude the rates of low penetration systems from the competitive samples, the Commission's revised approach more appropriately considers the rates charged by all three categories of systems (low penetration systems, overbuilds, and municipals) that are deemed to be subject to effective competition under section 623(1)(1) of the Act, 47 U.S.C. section 543(l)(l).

The revised competitive differential of 17 percent is a more accurate reflection of the overall competitive differential, and based on a sounder methodology, than the previous figure of ten percent. The previous approach simply averaged the data from all systems subject to effective competition. The Second Reconsideration Order more closely analyzes the data from all three types of

[3] Franchising authorities are reminded that they may issue an accounting order requesting that the cable operator keep a record of its rates if the authority is unable to reach a rate determination within the prescribed time period. See 47 CFR 76.933(c). If the authority later determines that the operator's basic rates were unlawfully high, the operator's refund liability will extend from the date the accounting order was issued up to the date on which the operator eventually adjusts its rate in response to the franchising authority's decision, and then back for a period not to exceed one year. See 47 CFR 76.942(c); Rate Order at para. 142, n. 376.

[4] See *Permian Basin*, 390 U.S. at 800; *FTC* V. *Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942); *United States* v. *FCC*, 707 F. 2d at 618.

systems, and uses a qualitative, rather than arithmetic, analysis to determine the differential whose application best approximates the "reasonable" rate that would be charged by a system that faces effective competition. The revised competitive differential of 17 percent also reflects the Commission's analysis of the various factors that Congress instructed the Commission to take into account.

While modifying the way in which the three statutory classes of systems deemed to be subject to effective competition are taken into account in arriving at the competitive differential, the Commission continued to consider all three categories to accomplish the goal of setting "reasonable" rates that are no higher than the rates of systems subject to "effective competition" as defined by Congress. The modified competitive differential establishes "reasonable" rates, that is, rates approximating what would be charges if cable systems faced effective competition.

The refined approach is consistent with the previous determination that "cable systems with less than 30 percent penetration should continue to be included in the sample of systems subject to effective competition." While the Commission determined that it may not exclude from the competitive sample the rates of one of the category of systems that Congress deemed to be subject to "effective competition," nothing in the Cable Act of 1992 mandates estimating a competitive differential simply by averaging the per-channel rates charged by all of the systems included in the competitive sample and comparing that average to the average per-channel rate charged by the systems in the noncompetitive sample. In addition, giving more weight to the data relating to overbuild systems—systems that actually compete against one another to some extent—is consistent with Congress's finding that "[w]ithout the presence of another multi-channel video programming distributor, a cable system faces no local competition," and "[t]he result is undue market power for the cable operator as compared to that of consumers." [5]

The Cable Act requires the Commission to take into account several factors in prescribing its rate regulations for the basic and cable tiers, many of which are cost based. Because the Commission recognizes that application of the competitive differential would not result in a reasonable rate for every cable system, but would instead set the rates of some systems below the amount that a cable operator without market power would charge, the Commission, in a separate proceeding, also adopts revised "cost-of-service" regulations that will permit cable operators to choose not to apply the competitive differential, but instead to have their rates set according to procedure analogous to those used to set the rates of public utilities. The optional "cost-of-service" rules are based largely on the costs and revenues of cable companies. The existence of the cost-of-service "safety valve" affects the Commission's determination of the competitive differential by allowing us to estimate it most accurately, secure in the knowledge that those operators for whom the Commission's competitive differential is inaccurate may choose not to use it.

In certain respects, the revised approach is analogous to the judicially approved manner in which the Commission prescribes a rate of return for telephone companies. In the telephone context, the Commission selects a prescribed rate of return from within a broad "zone of reasonableness" that is bounded generally on the upper end by rates that would be unreasonably high from the perspective of consumers and on the lower end by rates that would not sufficiently protect the interests of investors in the regulated enterprise. In selecting the prescribed rate of return within this broad range of permissible rates, the Commission considers numerous factors that go into the ratemaking decision, according greater or lesser weight to individual factors on the basis of the record and in the exercise of its judgment and expertise. This is what the Commission did in selecting the revised competitive differential.

In addition to adjusting the competitive differential, the other key change made with respect to rate calculations in this Order is the decision to apply the competitive differential to all non-competitive cable systems, although the full 17 percent rate reduction will not be required for operators with relatively low rates or for small operators while the Commission studies the prices and costs these operators experience. This decision reflects a reasonable balancing of various policy and legal considerations. Nothing in the statute suggests that the Commission was required to use a benchmark approach. Nor does anything in the current record suggest that the competitive differential should not be applied to all regulated operators, and economic theory suggests that cable operators with market power will exercise it. However, cable operators with relatively low rates may not be exercising market power to the same degree as those with higher rates, and small operators may be more vulnerable to harm than larger operators by the application of the competitive differential. Absent cost data, the Commission cannot determine whether a revision of the competitive differential for cable operators with relatively low rates and small operators is warranted. In those circumstances, it is reasonable ultimately to apply the competitive differential to all regulated operators unless cost data indicates otherwise.

5. The Price Cap Governing Cable Service Rates

Calculation of external costs. The April 1993 Rate Order determined that rates for regulated cable services would be governed by a price cap once initial regulated rates were set, and that cable operators could adjust capped rates annually for inflation based on the gross national product fixed weight price index (GNP–PI). The Rate Order also provided that cable operators could pass through to subscribers increases in certain categories of external costs, including new retransmission consent fees incurred after October 6, 1994, other programming cost increases, taxes, franchise fees, and the costs of other franchise requirements. External cost recovery (except for franchise fees) [6] was permitted only to the extent that the increases exceed the rate of inflation. Cable operators could pass through to subscribers any changes in external costs that accrued after the earlier of the initial date of regulation of the tier at issue or 180 days after the effective date of the Commission's initial regulations.

The Commission subsequently decided that operators could file rate increases no more than quarterly on account of external cost increases, and that operators must reduce permitted rates to reflect any decreases in external costs. Such decreases must be reflected in any filings the operator makes for inflation or increases in external costs and, in any event, all decreases must be reflected in the operator's rates within one year from when they occurred. The Commission established special rules for adjusting quarterly external cost increases for annual inflation. Thus, operators may adjust their regulated rates annually by inflation and up to quarterly by the net change in external

[5] That finding was set out in section 2(a)(2) of the Cable Act of 1992, 106 Stat. 1460, which was not codified.

[6] Changes in franchise fees were allowed to result in an adjustment to permitted charges, but were to be calculated separately as part of the maximum monthly charge per subscriber for a tier of regulated programming service. See 47 CFR 76.922(d)(2)(v).

costs, but any change in external costs must also be measured against inflation and adjusted for the corrected inflation rate.

In order to simplify making these rate adjustments, the Second Reconsideration Order reconsiders the rules in this area. First, the Second Reconsideration Order separates the inflation adjustment from the external cost adjustment. Under the new approach, an operator will determine the actual level of its external costs, and then remove this amount from the total charge for the affected service tier, leaving a "residual." The "residual" will be adjusted for inflation on an annual basis, but no earlier than September 30 of each year, when the final GNP–PI through June 30 of each year is released, and no later than December 31 of each year.[7] By contrast, the external cost component that does not include the "residual" may be adjusted quarterly for net changes in external costs.

Because the residual rate that is adjusted for inflation does not reflect the operator's external costs, there is no possibility of double recovery of external cost increases. Therefore, operators need not compare changes in external costs to inflation, as under the Commission's initial approach, nor later adjust external cost increases based on the annual inflation rate. The Commission adopts this approach because it will produce the same rates as that specified in the Rate Order, but should be simpler to apply.

In the absence of a showing that a rate increase is necessary to avoid confiscation, operators may file rate increases no more frequently than quarterly to reflect increases in external costs. However, to simplify the filing procedures, all systems are required to use calendar year quarters, rather than quarters that begin on the date the tier at issue became subject to regulation. This change is reflected in the new forms operators are required to support their rates under the revised rules. The forms also ensure that operators are compensated for all changes in external costs that have occurred since the relevant starting date. The Commission also modifies its rules to permit operators to accrue external costs for any program service tier from the date on which the first of the operator's tiers became subject to regulation (or February 28, 1994, whichever was earlier). Operators may file for a rate increase on account of changes in external costs as soon as the information necessary to make the change is available. The Second Reconsideration Order retains the requirement that any filing to reflect increases in external costs or the annual inflation adjustment must also reflect any decreases in such costs that have occurred over the same period, and will continue to require operators to file revised rates to reflect decreases in external costs that are reflected in other rate filings no later than one year from when such decreases occur. Operators that wish to adjust rates for external costs that occurred during a particular period also must include any rate adjustments needed to reflect changes that have occurred in the number of channels on regulated tiers and, if an annual change, inflation. FCC Form 1210 and associated instructions set forth the specific steps for making these calculations.

Copyright fees. Several petitioners request treatment of copyright fees incurred by the carriage of distant broadcast signals as external costs, and that the Commission allow systems to recover copyright fees from September 30, 1992, forward, separate and apart from the operators' permitted rates. They make a variety of arguments in support of this request, including that these fees constitute taxes. While the Commission is unpersuaded by petitioners' argument that copyright fees are "taxes" that should be given external cost treatment, to the extent that petitioners' argument is that increases in compulsory copyright fees incurred by carrying distant broadcast signals should be treated in a fashion parallel to increases in the contractual costs for nonbroadcast programming, the argument has merit. Section 76.922(d)(2) of the Commission's regulations, subject to specified limitations, permits subscriber rates to be adjusted to take into account changes in certain "external costs," including "programming costs." Copyright fee increases, whether they result from the addition of new broadcast signals to a tier, adjustments to the fee levels by the arbitration panels under the aegis of the Copyright Office, or from adjustments in tier structures, appear to fit logically within the programming costs category.

Pole attachment fees. Some cable operators argue that costs associated with pole attachment fees should be treated as external costs, for such reasons as the costs are beyond operators' control. Although pole attachment fees are to some extent beyond the control of system operators, they are not sufficiently unique to warrant external treatment. Unlike increases in franchise fees or taxes, pole attachment fees are not imposed by the government nor are they, like programming expenses, an area with respect to which the legislative history of the 1992 Cable Act expresses explicit concern. In addition, some pole attachment fees are regulated under the 1978 Pole Attachment Act, which should provide operators some recourse against unreasonable pole attachment fee increases. Operators may not treat pole attachment fees as external costs. The Commission, however, will consider waivers in instances of significant hardship resulting from unusually large pole attachment fee increases imposed by pole providers not subject to regulation under the Pole Attachment Act. Such showings may include both the magnitude of the increases in pole attachment fees and the impact of the increases on the operator.

6. Other Rate Issues

Commercial rates. The Second Reconsideration Order rejects some petitioners' requests to establish provisions authorizing special, presumably higher, rates for regulated cable services provided to commercial establishments. The Commission will consider, on a case-by-case basis, however, specific proposals that cable operators may want to make that would produce savings for consumers. In addition, the Commission is further exploring this issue in a Further Notice of Proposed Rulemaking found elsewhere in this **Federal Register**.

Rate relief for Alaska and Hawaii. Some petitioners request that the Commission establish special higher rates for cable systems located in Alaska and Hawaii. Petitioners have failed to present any evidence, however, showing that rates for cable service provided by operators subject to regulation in Alaska and Hawaii do not reflect their market power. The Commission was unable, in any event under the present record, to fashion adjustments to rates to address allegedly higher costs of providing cable service in Alaska and Hawaii. The Second Reconsideration Order rejects petitioners' requests on this issue.

Basic tier access charge. The Second Reconsideration Order rejects a petitioner's request that the Commission adopt a "subscriber line charge" that would be paid by subscribers who purchase only the basic tier.

"A La Carte" packages. Under the 1992 Cable Act, video programming offered on a per channel or per program ("a la carte") basis is not subject to rate regulation. In the Rate Order, the Commission held that it would not

[7] An operator must make its inflation adjustment by the end of the calendar year if it wishes to change its rates for the changes in inflation that have occurred.

regulate collective offerings of otherwise exempt per channel or per program services so long as: (1) The price for the combined package does not exceed the sum of the individual charges for each component of service, and (2) the cable operator continues to provide the component parts of the package to subscribers separately. The second condition would be met only when the per channel offering provides subscribers with a realistic service choice. The Commission stated that it would retain jurisdiction to review individual offerings of "a la carte" channels to determine whether the attempted offering constituted an evasion of rate regulation.

However, since the adoption of the Rate Order, a number of operators have restructured service offerings so that channels that could have been subject to regulation have been removed from a regulated tier and are now offered on an "a la carte" basis as well as on a package basis.[8] Since the rates of the collective offerings of the "a la carte" channels are unregulated, operators may raise their overall rates for the same service by removing channels from regulated tiers and offering them on a package and an "a la carte" basis. This practice may not be consistent with the purposes of the 1992 Cable Act. Numerous complaints have been filed by local franchising authorities and subscribers concerning the terms and conditions of "a la carte" offerings of channels. Some of these offerings may not comply with the Commission's requirement that subscribers must have a realistic option to purchase channels that are not subject to regulation on an "a la carte" basis. Some of the repackagings of channels may also constitute prohibited evasions of rate regulation.

On reconsideration, the Second Reconsideration Order finds that the public interest will be served by generally permitting nonregulated treatment of collective offerings of "a la carte" channels if the offering enhances consumer choice and does not constitute an evasion of rate regulation. These objectives will be achieved if operators comply with the safeguards of the Commission's initial rules. However, to address the concerns discussed above, the Second Reconsideration Order provides interpretive guidelines for determining whether an operator's collective offering of "a la carte" channels should be accorded regulated or unregulated treatment. These guidelines will enable operators to better determine what collective offerings of "a la carte" channels will be considered an evasion of rate regulation and/or a realistic service offering, and will help local authorities and the Commission to assess expeditiously the appropriate regulatory status of individual offerings. In evaluating offerings in individual cases, the Commission will consider whether consumers are being offered a greater variety of programming choices and options and whether the price for those choices is generally increasing or decreasing from previous levels. In addition, packages of "a la carte" channels offered prior to April 1, 1993, the date the Commission adopted the Rate Order, will be accorded nonregulated treatment. This limited "grandfathering" of packages available on April 1, 1993 will avoid elimination of discounts that were available to consumers at that time and that may continue to be available.

The Second Reconsideration Order identifies factors that local authorities and the Commission should consider in assessing in an individual case whether an "a la carte" package enhances consumer choice and does not constitute an evasion of rate regulation. If present, several of the following factors would suggest that the rates for the offering should be unregulated. These factors are: (1) The operator had offered (or begun to explore offering) "a la carte" packages consisting of non-premium channels prior to rate regulation; (2) the operator has conducted market research that suggests introducing an "a la carte" package" would be profitable, other than as a means of evading rate regulation; (3) the subscriber is free to select which channels will be included in the package; (4) subscribers are given notice that fully discloses their options, as well as fully discloses the total price (including related equipment charges) associated with exercising any of these options; and (5) an insignificant percentage or number of channels in the package (as determined on a case-by-case basis) has been removed from regulated tiers.

On the other hand, the following factors would weigh against allowing unregulated treatment of collective offerings of "a la carte" channels: (1) The introduction of the "a la carte" package results in avoiding rate reductions that otherwise would have been required under the Commission's rules; (2) a significant percentage or number of channels in the package were removed from regulated tiers (considering whether including some previously regulated channels may have been necessary for the successful marketing of the new package); (3) the package price is so deeply discounted when compared to the price of an individual channel or the sum of the prices of the individual channels (and considering traditional discounting practices) that it does not constitute a realistic set of service choice because subscribers will not have any realistic options other than subscribing to the package; (4) the channels taken from regulated tiers have not traditionally been marketed "a la carte"; (5) an entire regulated tier has been eliminated and turned into an "a la carte" package; (6) the subscriber must pay a significant equipment charge to purchase an individual channel in the package; (7) the subscriber must pay a "downgrade charge" (an additional charge) to purchase an individual channel in the package; (8) the "a la carte" package includes channels that were removed from lower tiers of channels, so that subscribers to those lower tiers are required to buy one or more intermediate tiers in order to receive the same channels; (9) subscribers are automatically subscribed to the "a la carte" package through, for example, such means as negative option billing; and (10) the affected programmers object to the restructuring of their services into "a la carte" packages. No single factor will necessarily be dispositive in any case. Rather, the Commission will assess the totality of the circumstances, analyze whether one or more of the foregoing factors is present, and determine whether the offering intentionally, or in effect, constitutes an evasion of rate regulation.

To assess initial rates and future rate adjustments, local authorities will need to determine the total number of regulated channels offered by a cable operator. This will require a determination of whether any collective offerings of "a la carte" channels should be considered a regulated tier. FCC Form 1215 requires that operators fully describe any collective offerings of "a la carte" channels offered in the franchise area. FCC Form 1215 must be filed along with each Form 1200 setting initial rates and Form 1210 updating rates.

Local authorities are permitted to make initial determination as to whether a collective offering of "a la carte" channels should be considered a regulated tier, even if the collective offering would be a cable programming

[8] On November 17, 1993, the Commission issued 16 letters of inquiry to various cable operators, and on December 13, 1993, it issued another 35 letters of inquiry, most of which addressed the issue of removal and repackaging of channels. More recently, on February 22, 1994, the Commission issued 11 letters of inquiry to cable operators, which, among other things, asked operators to justify "a la carte" offerings that may be inconsistent with the Commission's rate regulations.

service tier if it were regulated. Local authorities may, at their option, make an initial decision addressing only the regulatory status of any "a la carte" package at issue. The franchising authority must make this initial decision within the 30 day period for reviewing basic cable rates and equipment costs, or within the first 60 days of an extended 120 day period (if the franchising authority has requested an additional 90 days). The franchising authority shall provide public notice of its initial decision within seven days pursuant to local procedural rules for public notice. Operators or consumers may make an interlocutory appeal of this initial decision to the Commission within 14 days of the initial decision. (Within 14 days of the initial ruling, an operator shall provide notice to the franchising authority whether it will, or will not, make such an appeal.) The Commission will rule expeditiously on these appeals, and the local authority may then proceed with its local rate case in light of the Commission's decision on the interlocutory appeal.

A limited initial decision by a franchising authority will toll the periods under the Commission's rules within which local authorities must decide rate cases. The time period will then begin running again seven days after the Commission rules on the interlocutory appeal, or seven days following the expiration of the period in which an interlocutory appeal may be filed.

Alternatively, local authorities may make any necessary "a la carte" determination as part of their final decision setting rates for the basic service tier. That decision may then be appealed to the Commission as provided under current rules concerning appeals of local decisions to the Commission. In any appeal of a local decision, the Commission will defer to the local authority's findings of fact if there is a reasonable basis for the local findings. The Commission will then apply FCC rules and precedent to those facts to determine the appropriate regulatory status of the tier in question. Local authorities may also request that the Commission make the initial "a la carte" decision by means of a petition for declaratory ruling. Filing such a request for declaratory ruling will also toll the time periods in which the local authority must make its decisions.

These provisions for local determination of "a la carte" issues will facilitate local authorities setting rates for the basic service tier while providing for Commission oversight of local decisions that could affect the regulatory status of cable programming services tiers. In addition, the Commission will monitor treatment of collective offerings of "a la carte" channels.

Small system administrative relief. The Cable Act of 1992 requires the Commission to develop and prescribe cable rate regulations designed "to reduce the administrative burdens and cost of compliance for cable systems with 1,000 or fewer subscribers."

The Rate Order authorizes franchising authorities to permit small systems to certify that their rates for basic service and equipment are reasonable under the Commission's rate standards, and permits (and encourages) franchising authorities regulating the same small system to file joint certifications. The Commission subsequently stayed rate regulation for small systems pending a review of the regulatory requirements applicable to them.

For a variety of reasons, petitioners argued that the Commission did not take sufficient steps to ease the burdens of complying with rate regulation for small systems.

The Second Reconsideration Order adopts rules in addition to those established in the Rate Order that will provide administrative relief for small systems but that will also, as described below, achieve substantial compliance with rate regulation requirements.

(i) *Streamlined rate reductions.* The Second Reconsideration Order permits eligible small systems, as defined below, to reduce their rates under a streamlined approach instead of using the benchmark methodology set forth in FCC Form 1200. Specifically, small systems owned by eligible operators may elect to make rate reductions by reducing each billed item of regulated cable service by the competitive differential. Thus, eligible operators may reduce the billed charge for each tier of regulated service by the competitive differential. The reduction will be from charges in effect as of March 31, 1994. The amount of the reduction will be 14 percent. This percentage reduction roughly approximates what the required rate reduction would be if the small system were required to reduce its September 30, 1992 rates by the full competitive differential of 17 percent and those rates had then been adjusted forward by the roughly three percent inflation that occurred between September, 1992 and September, 1993. Small systems electing to reduce rates in this manner must apply the 14 percent reduction to each regulated equipment charge appearing on subscribers' bills. Under this approach, eligible small systems are not required to unbundle equipment and installation charges from their programming service charges, or to set equipment and installation charges at actual cost.

Small systems ultimately can and should establish regulated rates on the same basis as other operators. Thus, this streamlined alternative to implementing rate reductions will be a temporary approach to setting rates prior to full compliance. In the Cost of Service Report and Order, discussed elsewhere in this Federal Register, the Commission examines whether it should establish average cost schedules for the provision of equipment, as well as average cost schedules generally for provision of regulated program service. These schedules could be used by small systems to set rates instead of requiring them to identify and evaluate their own costs or make the calculations required under the benchmark rules. When average cost schedules for equipment are developed, small systems that have elected to make streamlined rate reductions should be required to develop rates based on September 30, 1992 rates with specified adjustments as required of cable systems generally.

If a small system elects streamlined rate reductions, the permitted rate for a tier will be the rate for the tier in effect on March 31, 1994 minus 14 percent. However, a small system that has violated the rate freeze and subsequently makes a 14 percent streamlined rate reduction from rates established in violation of the freeze, will be required to later adjust rates to account for any overcharges that resulted from the freeze violation. A small system's lawful initial rate will be subject to the price cap requirements applicable to cable systems generally. Thus, capped rates may be adjusted annually for inflation, quarterly for external costs, and quarterly for additions and deletions of channels. Small systems must use FCC Form 1210 when justifying such rate changes to local or federal regulators. While rates set under the streamlined rate reduction approach will not be based on average rates across all regulated tiers as is the case for setting initial regulated rates for cable operators generally, the price cap requirements, including adjustments for inflation, external costs, and adjustments for changes in regulated channels, will nonetheless be applied to the resulting tier charge.

Streamlined rate reductions will only be available to independent small systems (*i.e.*, those that are not owned by or affiliated with other cable systems) and to small systems owned by those MSOs that have 250,000 or fewer total subscribers, own only systems with less

than 10,000 subscribers each, and have an average system size of 1,000 or fewer subscribers. For purposes of measuring affiliation, the Commission employs the same criteria used for determining eligibility for transition relief. Streamlined rate reductions are not permitted by companies in which a larger company holds more than a 20 percent equity interest (active or passive) or over which a larger company exercises *de jure* control (such as through a general partnership or majority voting shareholder interest). Eligibility for streamlined rate reductions will be determined by application of the Commission's eligibility criteria to the company as it existed on March 31, 1994. This will eliminate incentives for operators to change affiliation in order to become eligible for streamlined rate reductions. Streamlined rate reductions will not be available to any system that has already restructured its rates in an effort to comply with Commission rules, since such a system has demonstrated that it does not need the administrative relief that the streamlined rates reduction process is intended to provide.

Small systems electing to implement streamlined rate reductions must provide written notice to that effect to their subscribers, as well as to the local franchising authority with respect to the basic service tier and the Commission with respect to a cable programming service tier. This notice must be provided within 30 days after the small system becomes subject to regulation. The small system must then implement the streamlined rate reductions within 30 days after the notification has been provided.

(ii) *Company-wide averaging of equipment.* Under the Commission's existing rules, operators are required to aggregate expenses and revenues, including equipment and installation costs, at the franchise, system, regional or company level in accordance with the operator's practices as of April 3, 1993. In order to reduce administrative burdens associated with setting unbundled rates for equipment based on actual costs, operators of small systems are permitted to average the equipment costs of its small systems at any level, or combination of levels, regardless of the operator's practices as of April 3, 1993, subject to safeguards designed to protect subscribers from unusual rate changes.

Setting equipment charges at a different level of cost averaging than the operator was employing on April 3, 1993 could involve rate changes both for equipment and programming service charges, since permitted rates for equipment and programming service charges are based on aggregate programming service and equipment charges as of September 30, 1992. In order to prevent sudden rate changes that could harm subscribers, the Second Reconsideration Order establishes several safeguards that operators of small systems must follow when developing average equipment costs for those systems. First, the flexibility in averaging equipment costs will apply only to the operator's small systems, rather than the larger systems it owns. Second, it will only be permitted for equipment, as opposed to installation charges. Third, operators may establish average charges only for similar types of equipment. Thus for example, average charges may be established only for similar types of remotes or converters. Finally, when justifying equipment charges averaged across the operator's small systems, the operator must present a general description of the averaging methodology employed and a justification that it produces reasonable equipment rates. Based on the showing, local franchising authorities and the Commission may, for good cause, require that the operator set equipment rates in accordance with existing rules. The Commission will additionally monitor the impact of this action to assure that it does not harm subscribers.

The Communications Act requires that equipment charges be based on actual cost. Permitting operators to set equipment charges based on average costs comports with the statutory mandate that equipment charges be based on actual costs. As such, it will be available to all cable operators owning small systems. There is no reason to limit the eligibility for this small system relief to operators of a certain size. Moreover, this relief is not intended as an interim measure. Rather, operators may set equipment rates based on company-wide average costs subject, as indicated, to any decision on cost averaging the Commission may establish in the Cost Proceeding.

The Second Reconsideration Order finds that the 1992 Cable Act affords the Commission sufficient discretion to adopt the dual approach described above, which is designed to "reduce administrative burdens and costs of compliance" for all systems that have 1,000 or fewer subscribers.

(iii) *Other proposals for administrative relief.* The Second Reconsideration Order rejects several proposals for administrative relief, including exempting from rate regulation all systems classified as small systems; the "reasonable net revenue" test, which would exempt systems with a net income margin of less than 15.5% from rate regulation; delaying small system rate regulation pending a study of the effects of the benchmark; and permitting small systems to charge a rate within some percentage of the average national charge.

Headend vs. Franchise area definition of small systems. The Second Reconsideration Order rejects commenters arguments that the definition of a small system should be changed from a "headend" to a "franchise area" basis. The Commission reinstates its belief that determining small system size based on a system's principal headend, including any other headends or microwave receive sites that are technically integrated to the system's principal headend, best harmonizes the small system rule with most of the Commission's existing regulations on cable system size.

Termination of rate regulation stay for small systems. The Second Reconsideration Order terminates the stay for small systems as of May 15, 1994, the effective date of the rules adopted herein. Local authorities may provide initial notices of regulation to small systems as of that date, and the Commission will accept newly filed complaints concerning cable programming services tiers provided by small systems as of that date. Local authorities may have provided initial notices of regulation to operators during the stay and the Commission has accepted complaints for cable programming services tiers provided by small system since September 1, 1993. These notices and complaints will be considered as having been made or filed, respectively, as of May 15, 1994, the effective date of the Commission's new rules. Small systems must then submit a rate justification (or otherwise file a permitted response, such as a written notification that it intends to use the streamlined rate reduction process) within the 30 days prescribed in the Commission's rules. In addition, the statutory 180-day window for filing complaints concerning rates for cable programming services tiers in effect on May 15, 1994 will commence running on that date for small systems.

Small system operators previously subject to the stay may obtain an extension of time to establish compliance with rate regulations if they can show that timely compliance would result in severe economic hardship. Requests for extension of time should be addressed to the local franchising authority concerning rates for the basic service rates and to the Commission concerning rates for a cable programming services tier. Possible

circumstances showing severe economic harm might be based on prior commitments with regard to programming contracts or actual plans in progress for significant improvements to its plant and equipment, or an unusually severe impact on the financial condition of the company that could be caused by rate reductions. However, an extension of time to comply will not toll the effective date of rate regulation for small systems or eliminate refund liability for rates that exceed permitted levels after the effective date of the Commission's rules.

Synopsis of the Fourth Report and Order

A. Introduction

The Fourth Report and Order adopts a methodology for adjusting capped rates when channels are added to, or deleted from, a tier of regulated cable service. The Commission also declines to modify its benchmark requirements to account for system upgrades initiated or completed shortly before the onset of rate regulation of cable service.

Adjustments to capped rates for addition and deletion of channels. In the Third Further NPRM, the Commission sought comment on what methodology should be adopted for applying the benchmark system to adjust capped rates when channels are added or deleted from regulated tiers. Specifically, the Commission sought comment on regulatory goals and three possible methodologies for adjusting capped rates when adding or deleting channels from a particular regulated tier.

Under the first proposed method for adjusting capped rates when adding or deleting channels from a particular regulated tier, the new charge for the tier would consist of the sum of: (1) The current permitted charge for the tier, and (2) a charge calculated by multiplying the benchmark rate by the number of new channels on the tier. Under this approach, the declining rate per channel reflected in the benchmark would be applied only to additional channels. The per channel charge for existing channels would not be adjusted downward to reflect the benchmark curve. The Commission tentatively concluded that this approach should not be adopted for a variety of reasons, including that it would permit significantly higher rates.

Under the second methodology, the new permitted rate for a regulated tier when channels are added or deleted would be the benchmark per-channel rate multiplied by the new number of channels on the tier. The Commission tentatively concluded that this approach should not be adopted because it would create substantial disincentives for cable operators with rates above the benchmark to add channels and because it could create undue incentives for systems with below benchmark rates to add channels, permitting substantially increased rates for such operators.

Under the third methodology, the "parallel track" approach, programming costs would be removed from an operator's permitted charge per tier. The remaining charge would then be adjusted to reflect the proportionate increase or decrease observed in the benchmark curve based on the new number of channels offered across all regulated tiers. The new level of programming expense for the tier would then be added back to the adjusted tier charge to obtain the new charge for the tier.

The goals adopted for the going-forward methodology adopted include: Preserving the competitive rates produced by the Commission's requirements for setting initial regulated rates, encouraging the cable industry to continue to grow and provide new and additional services to subscribers, and to further the statutory goal of reducing administrative burdens on subscribers, operators, and regulators.

In addition to revealing a significant competitive differential that the Commission will use to implement its revised benchmark approach, the Competitive Survey of industry rates as of September 30, 1992, established that, on average, charges per channel decreases as the number of channels offered by a system increases. This downward "curve" in per-channel rates may well reflect economies of scope and scale in the provision of regulated cable service. Accordingly, the Fourth Report and Order adopts a methodology for adjusting capped rates that incorporates the downward curve of per-channel rates observed in the Commission's Competitive Survey. Operators who believe that the rates determined under the new benchmark approach and the going-forward methodology are inadequate when channels are added may make a cost-of-service showing in order to attempt to justify a higher rate.

The Fourth Report and Order finds the third alternative methodology proposed in the Third Further NPRM are adjusting capped rates for channel adjustments most compatible with the revised benchmark formula and approach for setting regulated rates. In this Fourth Report and Order, operators are required to first remove all external costs from the tier charge and then adjust the residual component of the tier charge by a specified amount per channel when the total number of regulated channels increases. Should the total number of regulated channels decrease, the residual component of tier charge will be reduced by a specified amount. The per-channel adjustment factors used to calculate changes in permitted tier charges are derived from the Commission's benchmark equation.

This approach is consistent with the requirements that were adopted in the Second Reconsideration Order for calculating all external costs and inflation adjustments. This treatment will achieve identical results as the method specified in the Rate Order but will be simpler to administer. At the same time, the operator will be able to fully recover in going-forward rate calculations the actual level of programming expense incurred. This approach will assure that operators may respond to demand for programming and recover their costs when adding channels.

To help promote the growth and diversity of cable programming services, operators are permitted a mark-up on new programming expense of 7.5%, which may be revised based on on-going experience. The mark-up will apply only to any additional programming cost for a tier, measured on a per subscriber basis, occurring after May 15, 1994. Programming costs for purposes of external costs include any new or additional retransmission consent fees incurred after October 6, 1994 or compulsory copyright fees paid for carriage of distant broadcast signals. Operators must also reduce rates by any decreases in programming expense plus an additional 7.5% after that date. This will reduce incentives for operators to delete programming in order to replace it with new programming to which the mark-up could then be applied.

When a cable system changes the number of regulated channels offered, it must average the initial and final number of channels and find the adjustment factor in the table corresponding to that average. For any service tier, the total permitted adjustment is the product of the per channel adjustment factor and the change in the number of regulated channels on that tier. The adjustment is positive if the number of regulated channels has increased and negative if the total number of regulated channels has decreased. If a cable operator is merely restructuring tiers and there is no change in the total number of regulated channels, then the operator would find its total number of regulated channels in the table, note the corresponding per channel adjustment

factor, and calculate adjustments in network costs per tier as explained earlier in this paragraph. After the residual component of the tier charge is adjusted in this fashion, all external costs, including programming expenses, will be combined with the adjusted residual to determine the final tier charge. As stated, any increased level of programming expense will be entitled to a 7.5 percent mark-up.

The foregoing methodology for adjusting capped rates when channels are added or deleted from a regulated tier is set forth in detail in the Commission's new rule § 76.922(e). FCC Form 1210 and associated instructions also sets forth in detail this methodology for adjusting capped rates when channels are added to, or deleted from, a regulated tier, as well as for external cost and inflation adjustments generally.

Upgrades initiated shortly before rate regulation. The Third Further NPRM sought comment on (1) whether operators with rates below benchmark levels which initiated or completed system upgrades shortly before rate regulation should be permitted to raise rates to benchmark levels without any cost showing; and (2) alternatives to full cost-of-service showings that could permit recovery of such upgrade costs, such as whether the streamlined cost-of-service showing proposed in the Cost-of-Service NPRM should be applied to these situations.

Because the Second Reconsideration Order, with certain exceptions, requires that all rates be reduced by the competitive differential to avoid refund liability, it is no longer necessary or appropriate to address these issues. The Fourth Report and Order does not permit operators to raise rates above otherwise permitted levels on account of upgrades initiated or completed before regulation without any cost showings, and additionally does not establish special streamlined cost-of-service showings for past upgrades. Operators for whom the general rate regulations do not permit adequate recovery of upgrades initiated or completed shortly before rate regulation took effect may file cost-of-service showings.

Administrative Matters

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's final analysis with respect to the Fourth Report and Order and Second Order on Reconsideration is as follows:

Need and purpose of this action. The Commission, in compliance with section 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 543 (1992) pertaining to rate regulation, adopts revised rules and procedures intended to ensure cable subscribers of reasonable rates for cable services within minimum regulatory and administrative burden on cable entities.

Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by the Office of Advocacy in the Rate Order.

Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. In the present Order on Reconsideration, the Commission has attempted to accommodate the concerns addressed by these suggestions. For example, the Commission has chosen a more sophisticated economic model from among a number of statistical options to recalculate the competitive differential, and has reconsidered the benchmark approach such that all regulated cable systems will be required to establish rates based on the revised competitive differential. However, the Commission has determined that certain systems will not have to reduce rates by the full competitive differential immediately. Rather, the Commission will conduct cost studies of cable operators to allow systems with relatively low rates and operators with 15,000 or fewer subscribers to present evidence that the new competitive differential should not apply in full to them. These decisions will better ensure that regulated cable service rates are reasonable while reducing administrative burdens. In addition, the Commission provides administrative relief in the rate-setting process, and adopts simplified procedures concerning the requirements for calculating equipment costs and revenues for cable systems of 1,000 of fewer subscribers.

The Third Further NPRM in this proceeding presented three alternative methodologies for the adjustment of capped rates when channels are added or deleted from regulated service tiers. Many commenters supported, with some suggesting modifications, the approach the Commission tentatively endorsed in the Third Further NPRM. The Commission considered alternative methodologies and found on the basis of the record that the "parallel track" approach adopted in this Order, as well as the variety of revisions to its rate rules adopted here, will best achieve the goals of ensuring reasonable rates for consumers, promoting the growth and diversity of cable programming services, and facilitating ease of administration.

Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

Accordingly, *it is ordered* That, pursuant to sections 4(i), 4(j), 303(r), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, 542(c) and 543 the rules, requirements and policies discussed in this Second Order on Reconsideration and Fourth Report and Order, *are adopted* and part 76 of the Commission's rules, 47 CFR part 76 *is amended* as set forth below.

It is further ordered That, the Secretary shall send a copy of this Report and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

It is further ordered That, the requirements and regulations established in this decision shall become effective May 15, 1994 with the exception of the 30 day notice requirement for rate changes[9] to be codified at 47 CFR 76.964 which shall be effective upon publication in the **Federal Register.**

List of Subjects in 47 CFR Part 76

Cable television.

[9] As discussed above, the Commission finds good cause for making these notice provisions effective on less than 30 days notice in the **Federal Register.** See 5 U.S.C. section 533(d)(3).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.901 is amended to revise paragraph (c) to read as follows:

§ 76.901 Definitions.

* * * * *

(c) *Small system.* A small system is a cable television system that serves 1,000 or fewer subscribers. The service area of a small system shall be determined by the number of subscribers that are served by the system's principal headend, including any other headends or microwave receive sites that are technically integrated to the principal headend.

3. Section 76.922 is amended to revise paragraphs (b), (c) and (d), and to add new paragraphs (e) and (f) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(b) *Permitted charge on May 15, 1994.* (1) The permitted charge for a tier of regulated program service shall be, at the election of the cable system, either:

(i) A rate determined pursuant to a cost-of-service showing;

(ii) The full reduction rate;

(iii) The transition rate, if the system is eligible for transition relief; or

(iv) A rate based on a streamlined rate reduction, if the system is eligible to implement such a rate reduction. Except where noted, the term "rate" in this subsection means a rate measured on an average regulated revenue per subscriber basis.

(2) *Full reduction rate.* The "full reduction rate" on May 15, 1994 is the system's September 30, 1992 rate, measured on an average regulated revenue per subscriber basis, reduced by 17 percent, and then adjusted for the following:

(i) The establishment of permitted equipment rates as required by § 76.923;

(ii) Inflation measured by the GNP–PI between October 1, 1992 and September 30, 1993;

(iii) Changes in the number of program channels subject to regulation that are offered on the system's program tiers between September 30, 1992 and the earlier of the initial date of regulation for any tier or February 28, 1994; and

(iv) Changes in external costs that have occurred between the earlier of the initial date of regulation for any tier or February 28, 1994, and March 31, 1994.

(3) *March 31, 1994 benchmark rate.* The "March 31, 1994 benchmark rate" is the rate so designated using the calculations in Form 1200.

(4) *Transition rates.* Systems owned by small operators and systems with low prices shall be eligible to establish a transition rate for a tier, pending a further order of the Commission.

(i) System owned by small operators. (A) For purposes of determining eligibility to establish a transition rate, a system owned by a small operator is a system owned by an operator that has a total subscriber base of 15,000 or fewer subscribers as of March 31, 1994. Systems owned by cable operators with between 15,000 and 16,000 subscribers may, upon a showing of substantial hardship, obtain a waiver from the Commission of the foregoing 15,000 subscriber limit.

(B) A system owned by a small operator shall not be eligible to establish a transition rate if the operator is owned or controlled by, or is under common control or affiliated with, a cable operator serving more than 15,000 subscribers. For purposes of this rule, a small cable operator will be considered affiliated with an operator serving more than 15,000 subscribers if such an operator holds a 20 percent or greater equity interest in the small operator.

(C) The transition rate for systems owned by small operators on May 15, 1994 shall be the system's March 31, 1994 rate, adjusted:

(*1*) To establish permitted rates for equipment as required by § 76.923 if such equipment rates have not already been established; and

(*2*) For changes in external costs incurred between the earlier of the initial date of regulation for any tier or February 28, 1994, and March 31, 1994, to the extent such external cost changes are not already reflected in the system's March 31, 1994 rate.

(ii) Low-price systems. (A) A low-price system is a system. (*1*) Whose March 31, 1994 rate is below its March 31, 1994 benchmark rate, or

(*2*) Whose March 31, 1994 rate is above its March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below its March 31, 1994 benchmark rate, as defined in paragraph (b)(2) of this section.

(B) The transition rate on May 15, 1994 for a system whose March 31, 1994 rate is below its March 31, 1994 benchmark rate is the system's March 31, 1994 rate. The March 31, 1994 rate is in both cases adjusted:

(*1*) To establish permitted rates for equipment as required by Section 76.923 if such rates have not already been established; and

(*2*) For changes in external costs incurred between the earlier of initial date of regulation of any tier or February 28, 1994, and March 31, 1994, to the extent changes in such costs are not already reflected in the system's March 31, 1994 rate. The transition rate on May 15, 1994 for a system whose March 31, 1994 adjusted rate is above its March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below its March 31, 1994 benchmark rate, is the March 31, 1994 benchmark rate, adjusted to establish permitted rates for equipment as required by Section 76.923 if such rates have not already been established.

(iii) Notwithstanding the foregoing, the transition rate for a tier shall be adjusted to reflect any determination by a local franchising authority and/or the Commission that the rate in effect on March 31, 1994 was higher (or lower) than that permitted under applicable Commission regulations. A filing reflecting the adjusted rate shall be submitted to all relevant authorities within 30 days after issuance of the local franchising authority and/or Commission determination. A system whose March 31, 1994 rate is determined by a local franchising authority or the Commission to be too high under the Commission's rate regulations in effect before May 15, 1994 will be subject to any refund liability that may accrue under those rules. In addition, the system will be liable for refund liability under the rules in effect on and after May 15, 1994. Such refund liability will be measured by the difference in the system's March 31, 1994 rate and its permitted March 31, 1994 rate as calculated under the Commission's rate regulations in effect before May 15, 1994. The refund liability will accrue according to the time periods set forth in §§ 76.942, and 76.961 of the Commission's rules.

(5) *Streamlined rate reductions.* (i) Small systems that are not owned by or affiliated with any other system ("independent systems"), and small systems owned by small multiple system operators ("small MSOs"), that

have not already restructured their rates to comply with the Commission's rules may establish rates for regulated program services and equipment by making a streamlined rate reduction. "Small MSOs" are those multiple system operators that:

(A) Serve 250,000 or fewer total subscribers,

(B) Own only systems with less than 10,000 subscribers each, and

(C) Have an average system size of 1,000 or fewer subscribers. Independent small systems and small systems owned by small MSOs shall not be eligible for streamlined rate reductions if they are owned or controlled by, or are under common control or affiliated with, a cable operator that exceeds these subscriber limits. For purposes of this rule, a small system will be considered "affiliated with" such an operator if the operator holds a 20 percent or greater equity interest in the small system.

(ii) The streamlined rate for a tier on May 15, 1994 shall be the system's March 31, 1994 rate for the tier, reduced by 14 percent. A small system that elects to establish its rate for a tier by implementing this streamlined rate reduction must also reduce, at the same time, each billed item of regulated cable service, including equipment, by 14 percent. Regulated rates established using the streamlined rate reduction process shall remain in effect until:

(A) Adoption of a further order by the Commission establishing a schedule of average equipment costs;

(B) The system increases its rates using the calculations and time periods set forth in FCC Form 1211; or

(C) The system elects to establish permitted rates under another available option set forth in paragraph (b)(1) of this section.

(iii) *Implementation and notification.* An eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to subscribers, the local franchising authority and the Commission according to the following schedule:

(A) Where the franchising authority has been certified by the Commission to regulate the small system's basic service tier rates as of May 15, 1994, the system must notify the franchising authority and its subscribers in writing that it is electing to set its regulated rates by the streamline rate reduction process. Such notice must be given by June 15, 1994, and must also describe the new rates that will result from the streamlined rate reduction process. Those rates must then be implemented within 30 days after the written notification has been provided to subscribers and the local franchising authority.

(B) Where the franchising authority has not been certified to regulate basic service tier rates by May 15, 1994, the small system must provide the written notice to subscribers and the franchising authority, described in paragraph (b)(5)(iii)(A) of this section, within 30 days from the date it receives the initial notice of regulation from the franchising authority. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the local franchise authority.

(C) Where the Commission is regulating the small system's basic service tier rates as of May 15, 1994, the system must notify the Commission and its subscribers in writing that it is electing to set its regulated rates by the streamlined rate reduction process. Such notice must be given by June 15, 1994, and must also describe the new rates that will result from the streamlined rate reduction process. Those rates must then be implemented within 30 days after the written notification has been provided to subscribers and the Commission.

(D) Where the Commission begins regulating basic service rates after May 15, 1994, the small system must provide the written notice to subscribers and the Commission, described in paragraph (b)(5)(iii)(C) of this section, within 30 days from the date it receives an initial notice of regulation. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the Commission.

(E) If a complaint about its cable programming service rates has been filed with the Commission on or before May 15, 1994, the small system must provide the written notice described in paragraph (b)(5)(iii)(A) of this section, to subscribers, the local franchising authority and the Commission by June 15, 1994. If a cable programming services complaint is filed against the system after May 15, 1994, the system must provide the required written notice to subscribers, the local franchising authority or the Commission within 30 days after the complaint is filed. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided.

(F) A small system is required to give written notice of, and to implement, the rates that are produced by the streamlined rate reduction process only once. If a system has already provided notice of, and implemented, the streamlined rate reductions when a given tier becomes subject to regulation, it must report to the relevant regulator (either the franchising authority or the Commission) in writing within 30 days of becoming subject to regulation that it has already provided the required notice and implemented the required rate reductions.

(6) *Establishment of initial regulated rates.* (i) Cable systems, other than those eligible for streamlined rate reductions, shall file FCC Forms 1200, 1205, and 1215 for a tier that is regulated on May 15, 1994 by June 15, 1994, or thirty days after the initial date of regulation for the tier. A system that becomes subject to regulation for the first time on or after July 1, 1994 shall also file FCC Form 1210 at the time it files FCC Forms 1200, 1205 and 1215.

(ii) A cable system will not incur refund liability under the Commission's rules governing regulated cable rates on and after May 15, 1994 if:

(A) Between March 31, 1994 and July 14, 1994, the system does not change the rate for, or restructure in any fashion, any program service or equipment offering that is subject to regulation under the 1992 Cable Act; and

(B) The system establishes a permitted rate defined in paragraph (b) of this section by July 14, 1994. The deferral of refund liability permitted by this subsection will terminate if, after March 31, 1994, the system changes any rate for, or restructures, any program service or equipment offering subject to regulation, and in all events will expire on July 14, 1994. Moreover, the deferral of refund liability permitted by this paragraph does not apply to refund liability that occurs because the system's March 31, 1994 rates for program services and equipment subject to regulation are higher than the levels permitted under the Commission's rules in effect before May 15, 1994.

(7) For purposes of this section, the initial date of regulation for the basic service tier shall be the date on which notice is given pursuant to § 76.910, that the provision of the basic service tier is subject to regulation. For a cable programming services tier, the initial date of regulation shall be the first date on which a complaint on the appropriate form is filed with the Commission concerning rates charged for the cable programming services tier.

(8) For purposes of this section, rates in effect on the initial date of regulation or on September 30, 1992 shall be the rates charged to subscribers for service received on that date.

(c) *Subsequent permitted charge.* The permitted charge for a tier after May 15,

1994 shall be, at the election of the cable system, either:

(1) A rate determined pursuant to a cost-of-service showing, or

(2) A rate determined by application of the Commission's price cap requirements set forth in paragraph (d) of this section to a permitted rate determined in accordance with paragraph (b) of this section.

(d) *Price cap requirements.* The Commission's price cap requirements allow a system to adjust its permitted charges for inflation and changes in external costs. After May 15, 1994, adjustments for changes in external costs shall be calculated by subtracting external costs from the system's permitted charge and making changes to that "external cost component" as necessary. The remaining charge, referred to as the "residual component," will be adjusted annually for inflation. Cable systems shall use FCC Form 1210 (or FCC Form 1211, where applicable) to justify changes in permitted rates made pursuant to the price cap requirements.

(1) *Calendar year quarters.* All systems must use a calendar year quarter when adjusting rates under the price cap requirements. The first quarter shall run from January 1 through March 31 of the relevant year; the second quarter shall run from April 1 through June 30; the third quarter shall run from July 1 through September 30; and the fourth quarter shall run from October 1 through December 31.

(2) *Inflation adjustments.* The residual component of a system's permitted charge may be adjusted annually for inflation. The annual inflation adjustment shall be based on inflation occurring from June 30 of the previous year to June 30 of the year in which the inflation adjustment is made, except that the first annual inflation adjustment shall cover inflation from September 30, 1993 until June 30 of the year in which the inflation adjustment is made. The adjustment may be made after September 30, but no later than August 31 of the next calendar year. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce. Cable systems that establish a transition rate pursuant to paragraph(b)(4) of this section shall not be permitted to adjust rates on account of inflation until the transition rate adjusted for external costs and changes in numbers of regulated channels is less than, or equal to, the system's full reduction rate adjusted for inflation, external costs and changes in numbers of regulated channels.

(3) *External costs.* (i) Permitted changes for a tier may be adjusted up to quarterly to reflect changes in external costs experienced by the cable system. In all events, the system must adjust its rates annually to reflect any decreases in external costs that have not previously been accounted for in the system's rates. A system must also adjust its rates annually to reflect any changes in external costs, inflation and the number of channels on regulated tiers that occurred during the year if the system wishes to have such changes reflected in its regulated rates. A system that does not adjust its permitted rates annually to account for these changes will not be permitted to increase its rates subsequently to reflect the changes.

(ii) A system must adjust its rates in the next calendar year quarter for any decrease in programming costs that results from the deletion of a channel or channels from a regulated tier.

(iii) Any rate increase made to reflect an increase in external costs must also fully account for all other changes in external costs, inflation and the number of channels on regulated tiers that occurred during the same period. Rate adjustments made to reflect changes in external costs shall be based on any changes in those external costs that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable). A system may adjust its rates after the close of a quarter to reflect changes in external costs that occurred during that quarter as soon as it has sufficient information to calculate the rate change.

(iv) External costs shall consist of costs in the following categories:

(A) State and local taxes applicable to the provision of cable television service;

(B) Franchise fees;

(C) Costs of complying with franchise requirements, including costs of providing public, educational, and governmental access channels as required by the franchising authority;

(D) Retransmission consent fees and copyright fees incurred for the carriage of broadcast signals; and

(E) Other programming costs.

(v) The permitted charge for a regulated tier shall be adjusted on account of programming costs, copyright fees and retransmission consent fees only for the program channels or broadcast signals offered on that tier.

(vi) The permitted charge shall not be adjusted for costs of retransmission consent fees or changes in those fees incurred prior to October 6, 1994.

(vii) The starting date for adjustments on account of external costs for a tier of regulated programming service shall be the earlier of the initial date of regulation for any basic or cable service tier or February 28, 1994.

(viii) Changes in franchise fees shall not result in an adjustment to permitted charges, but rather shall be calculated separately as part of the maximum monthly charge per subscriber for a tier of regulated programming service.

(ix) Adjustments to permitted charges to reflect changes in the costs of programming purchased from affiliated programmers, as defined in § 76.901, shall be permitted as long as the price charged to the affiliated system reflects either prevailing company prices offered in the marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of the programming.

(x) Adjustments to permitted charges on account of increases in costs of programming shall be further adjusted to reflect any revenues received by the operator from the programmer.

(xi) In calculating programming expense, operators may add a mark-up of 7.5% for new programming added after May 15, 1994 and shall reduce rates by decreases in programming expense plus an additional 7.5% for decreases occurring after May 15, 1994.

(e) *Changes in the number of channels on regulated tiers.* (1) A system may adjust the residual component of its permitted rate for a tier to reflect changes in the number of channels offered on the tier on a quarterly basis. Cable systems shall use FCC Form 1210 (or FCC Form 1211, where applicable) to justify rate changes made on account on changes in the number of channels on a regulated tier. Such rate adjustments shall be based on any changes in the number of regulated channels that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable). However, when it deletes channels in a calendar quarter, a system must adjust the residual component of the tier charge in the next calendar quarter to reflect that deletion. The following table shall be used to adjust permitted rates for a tier for changes in the number of channels offered on the tier. The entries in the table provide the cents per channel per subscriber per month by which cable operators will adjust the residual component using FCC Form 1210 (or FCC Form 1211, where applicable).

Average number of regulated channels	Per-channel adjustment factor
7	$0.52
7.5	0.45
8	0.40
8.5	0.36
9	0.33
9.5	0.29
10	0.27
10.5	0.24
11	0.22
11.5	0.20
12	0.19
12.5	0.17
13	0.16
13.5	0.15
14	0.14
14.5	0.13
15–15.5	0.12
16	0.11
16.5–17	0.10
17.5–18	0.09
18.5–19	0.08
19.5–21.5	0.07
22–23.5	0.06
24–26	0.05
26.5–29.5	0.04
30–35.5	0.03
36–46	0.02
46.5 and above	0.01

(2) In order to adjust the residual component of the tier charge when there is a change in the number of channels on a tier, the operator shall perform the following calculations:

(i) Take the sum of the old total number of channels on tiers subject to regulation (*i.e.*, tiers that are, or could be, regulated) and the new total number of channels and divide the resulting number by two;

(ii) Consult the table in paragraph (e)(1) of this section to find the applicable per channel adjustment factor for the number of channels produced by the calculations in paragraph (e)(2)(i) of this section. For each tier for which there has been a change in the number of channels multiply the per-channel adjustment factor times the change in the number of channels on that tier. The result is the total adjustment for that tier. It is positive if the number of channels on the tier has increased and negative if the number of channels has decreased.

(f) Permitted charges for a tier shall be determined in accordance with forms and associated instructions established by the Commission.

4. Section 76.923 is amended by adding paragraph (l) to read as follows:

§ 76.923 Rates for equipment and installation used to receive the basic service tier.

* * * * *

(l) *Company-wide averaging of equipment costs.* For the purpose of developing unbundled equipment charges as required by paragraph (b) of this section, a cable operator may average the equipment costs of its small systems at any level, or several levels, within its operations. This company-wide averaging applies only to an operator's small systems as defined in § 76.901(c); is permitted only for equipment charges, not installation charges; and may be established only for similar types of equipment. When submitting its equipment costs based on average charges to the local franchising authority or the Commission, an operator that elects company-wide averaging of equipment costs must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable equipment rates. The local authority or the Commission may require the operator to set equipment rates based on the operator's level of averaging in effect on April 3, 1993, as required by § 76.924(d).

5. Section 76.934 is amended by redesignating the existing text as paragraph (a) and by adding new paragraphs (b), (c) and (d) to read as follows:

§ 76.934 Small Systems.

* * * * *

(b) *Initial regulation of small systems.* (1) If certified by the Commission, a local franchising authority may provide an initial notice of regulation to a small system, as defined by § 76.901(c), on May 15, 1994. Any initial notice of regulation issued by a certified local franchising authority prior to May 15, 1994 shall be considered as having been issued on May 15, 1994.

(2) The Commission will accept complaints concerning the rates for cable programming service tiers provided by small systems on or after May 15, 1994. Any complaints filed with the Commission about the rates for a cable programming service tier provided by a small system prior to May 15, 1994 shall be considered as having been filed on May 15, 1994.

(3) A small system that receives an initial notice of regulation from its local franchising authority, or a complaint filed with the Commission for its cable programming service tier, must respond within the time periods prescribed in §§ 76.930 and 76.956.

(c) *Statutory period for filing initial complaint.* A complaint concerning a rate for cable programming service or associated equipment provided by a small system that was in effect on May 15, 1994 must be filed within 180 days from May 15, 1994.

(d) *Petitions for extension of time.* Small systems may obtain an extension of time to establish compliance with rate regulations provided they can demonstrate that timely compliance would result in severe economic hardship. Requests for extension of time should be addressed to the local franchising authority concerning basic service and equipment rates and to the Commission concerning rates for a cable programming service tier and associated equipment. The filing of a request for an extension of time to comply with the rate regulations will not toll the effective date of rate regulation for small systems or alter refund liability for rates that exceed permitted levels after May 15, 1994.

6. Section 76.952 is amended by revising paragraph (a) to read as follows:

§ 76.952 Information to be provided by cable operator on monthly subscriber bills.

(a) The name, mailing address and phone number of the local franchising authority and the Cable Services Bureau of this Commission.

* * * * *

7. Section 76.953 is amended by revising paragraph (a) to read as follows:

§ 76.953 Limitation on filing a complaint.

(a) *Complaint regarding a rate in effect on September 1, 1993.* Notwithstanding paragraph (b) of this section, a complaint regarding a rate for cable programming service or associated equipment in effect on September 1, 1993, must be filed by February 28, 1994, except as provided in § 76.934(c) with respect to small systems.

* * * * *

8. Section. 76.958 is added to Subpart N to read as follows:

§ 76.958 Notice to Commission of rate change while complaint pending.

A regulated cable operator that proposes to change any rate while a cable service tier complaint is pending before the Commission shall provide the Commission at least 30 days notice of the proposed change.

9. Section 76.964 is amended by revising the section heading, redesignating the existing text as paragraph (a) and adding new paragraphs (b) and (c) to read as follows:

§ 76.964 Notices to subscribers.

* * * * *

(b) Cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily

understandable fashion the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notices to subscribers shall inform them of their right to file complaints about changes in cable programming service tier rates and services with this Commission within 45 days of the rate or service change being reflected in their bill, and shall provide the address and phone number of both the local franchising authority and the Cable Services Bureau of this Commission.

(c) Cable systems shall provide written notice to subscribers of subscribers' right to file with the Commission complaints concerning rate changes for cable programming service or associated equipment. This notice shall be provided at the same time as the notice required under paragraph (b) and additionally with the first bill reflecting the rate change. The notice shall state that the subscriber may file the complaint within forty-five days of the date the complainant receives the bill that reflects the rate change, and shall provide the address and phone number of the local franchising authority and the Commission. For rate changes becoming effective before July 15, 1994, operators may provide this notice by any reasonable and feasible means (such as on screen programming or newspaper publication) rather than the written notice otherwise required by this paragraph.

10. A new § 76.986 is added to Subpart N to read as follows:

§ 76.986 "A la carte" offerings.

(a) Collective offerings of unregulated per-channel or per-program ("a la carte") video programming shall not be regulated if:

(1) The price for the combined package does not exceed the sum of the individual charges for each component of service, and

(2) The cable operator continues to provide the component parts of the package to subscribers separately in addition to the collective offering. The second condition will be met only when the per channel offering provides consumers with a realistic service choice. Collective offerings available on April 1, 1993 shall not be regulated if subsequently offered on the same terms and conditions as were in effect on that date.

(b) In reviewing a basic service rate filing, local franchising authorities may make an initial decision addressing whether a collective offering of "a la carte" channels will be treated as an unregulated service or a regulated tier. The franchising authority must make this initial decision within the 30 day period established for review of basic cable rates and equipment costs in § 76.933(a), or within the first 60 days of an extended 120 day period (if the franchise authority has requested an additional 90 days) pursuant to § 76.933(b). The franchising authority shall provide notice of its decision to the cable system and shall provide public notice of its initial decision within seven days pursuant to local procedural rules for public notice. Operators or consumers may make an interlocutory appeal of the initial decision to the Commission within 14 days of the initial decision. Operators shall provide notice to franchise authorities of their decision whether or not to appeal to the Commission within this period. Consumers shall provide notice to franchise authorities of their decision to appeal to the Commission within this period.

(c) A limited initial decision under paragraph (b) of this section shall toll the time periods under § 76.933 within which local authorities must decide local rate cases. The time period shall resume running seven days after the Commission decides the interlocutory appeal, or seven days following the expiration of the period in which an interlocutory appeal pursuant to paragraph (b) of this section may be filed.

(d) A local franchising authority alternatively may decide whether a collective offering of "a la carte" channels will be treated as an unregulated service or a cable programming services tier as part of its final decision setting rates for the basic service tier. That decision may then be appealed to the Commission as provided for under § 76.945.

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47 CFR Part 76

[MM Docket Nos. 92–266, 92–262; FCC 94–40]

Cable Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In furtherance of the Commission's implementation of the rate regulation provision of the Cable Consumer Protection and Competition Act of 1992 ("1992 Cable Act," "Cable Act," or "Act"), the Commission adopted a Third Order on Reconsideration clarifying several of the cable rate regulations. The action disposes principally of issues unrelated to the calculation of rates that were raised on reconsideration of the Report and Order in MM Docket No. 92–266 ("Rate Order"), 58 FR 29736 (May 21, 1993), or that were encountered in the Commission's initial implementation of rate regulation. Specifically, the Commission further clarifies the definition of "effective competition" in section 623(l) of the Act; affirms the rules regarding tier buy-through prohibitions; addresses procedural and jurisdictional issues pertaining to the regulatory process, including certification, basic rate decisions, and refund issues; clarifies the rules governing negative option billing practices, evasions, grandfathering of rate agreements, subscriber bill itemization and advertising of rates; considers remaining issues regarding equipment and installation; and clarifies several points with regard to FCC Form 393 (the benchmark calculation form) and FCC Forms 1200 and 1205 (the new calculation forms).

EFFECTIVE DATE: May 15, 1994.

FOR FURTHER INFORMATION CONTACT: Amy Zoslov, (202) 416–0808, or Julie Buchanan, (202) 416–1170, Cable Services Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Third Order on Reconsideration, adopted February 22, 1994, released March 30, 1994. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of the Third Order on Reconsideration

I. Introduction

1. In furtherance of the Commission's implementation of the rate regulation provision of the Cable Consumer Protection and Competition Act of 1992 ("1992 Cable Act," "Cable Act," or "Act"), the Commission adopted a Third Order on Reconsideration clarifying several of the cable rate regulations. The action disposes principally of issues unrelated to the calculation of rates that were raised on reconsideration of the Report and Order in MM Docket No. 92–266 ("Rate Order"), 8 FCC Rcd 5631 (1993); 58 FR 29736 (May 21, 1993), or that were

encountered in the Commission's initial implementation of rate regulation. Specifically, we further clarify the definition of "effective competition" in section 623(l) of the Act, 47 U.S.C. 543(1); affirm our rules regarding tier buy-through prohibitions; address procedural and jurisdictional issues pertaining to the regulatory process, including certification, basic rate decisions, and refund issues; clarify our rules governing negative option billing practices, evasions, grandfathering of rate agreements, subscriber bill itemization and advertising of rates; consider remaining issues regarding equipment and installation; and clarify several points with regard to FCC Form 393 (the benchmark calculation form) and FCC Forms 1200 and 1205 (the new calculation forms).[1]

II. Competition Issues

A. Definitions and Findings of Effective Competition

2. Under the 1992 Cable Act, rate regulation applies only to cable systems that are not subject to "effective competition" as defined in that Act. 47 U.S.C. 543(a)(2). Section 623(l)(1) of the Act further provides that "effective competition" exists if one of three tests is met. Under the second test, effective competition exists if the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50% of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15% of the households in the franchise area. 47 U.S.C. 543(l)(1)(B).

3. *Measurement of subscribership.* We previously adopted various rules to implement this second test for effective competition. One of these rules provides that in calculating whether 15% or more of the households in a franchise area subscribe to all but the largest multichannel video programming distributor, we shall consider the subscribership of competing multichannel distributors on a cumulative basis. By this Order, we affirm our previous interpretation that only the subscribers of those multichannel distributors that offer programming to at least 50% of the households in the franchise area shall be included in this cumulative measurement.

4. *Presumption of availability—satellite-delivered services.* The second test for effective competition requires that at least two unaffiliated multichannel distributors each offer comparable programming to at least 50% of the households in a franchise area. We previously concluded that multichannel programming is "offered" if it is both technically available (*i.e.*, it can be delivered to a household with only minimal additional investment by the multichannel distributor) and actually available (*i.e.*, potential subscribers must be aware of its availability from marketing efforts). 47 CFR 76.905(e). The Rate Order stated that multichannel video programming distribution service received from satellites via satellite master antenna television service ("SMATV") or television receive-only earth station ("TVRO") reception is technically available nationwide in all franchise areas that do not, by regulation, restrict the use of home satellite dishes. Rate Order, 8 FCC Rcd at 5659, 60.

5. Because subscription to satellite service is accomplished alternatively through either SMATV or TVRO facilities, we permitted each to be included toward meeting the 15% subscription test, even through SMATV service, taken alone, might not be available to 50% of the households in a franchise area. This Order affirms our belief that satellite service is generally available from one or the other of these complementary sources, and it is reasonable to measure actual acceptance of satellite services in any area by collectively counting both SMATV and TVRO subscribership toward the 15% test.

6. *Program comparability.* The Rate Order also adopted a rule defining when a competing multichannel distributor is offering "comparable programming" under the second test for effective competition. Rate Order, 8 FCC Rcd at 5666, 67. The rule provides that "[i]n order to offer comparable programming * * * a competing multichannel video programming distributor must offer at least 12 channels of video programming, including at least one channel of nonbroadcast service programming." 47 CFR 76.905(g). Since we do not believe that actual channel parity is necessary to provide a competitive alternative, we reject the argument that multichannel distributors must offer roughly the same number of channels in order to meet the test for offering "comparable programming." We also affirm our belief that it is sufficient to use the minimum basic tier as the basis for comparison. Accordingly, we will not change the definition of "comparable programming" adopted in the Rate Order.

7. *Seasonal households and subscribers.* The Rate Order stated that "[e]ach separately billed or billable customer will count as a household subscribing to or being offered video programming services * * *." 47 CFR 76.905(c). In addition, individual units in multiple dwellings buildings are counted as separate households even though they may not be separately billed. *Id.*

8. The term "household" was defined for purposes of the 1990 Census as "all the persons who occupy a housing unit",[2] while "housing units" was defined to include both occupied and vacant units. Thus, "housing units" reflect the total dwelling units in a community, while a count of "households" reflects only occupied units. As used in the Cable Act, we presume that Congress did not intend "households" to have a different meaning than in the 1990 Census. In any event, we believe that the best and most constant indicator of local viewers' choices is represented by the full-time residents of an area. Moreover, it is the full-time residents who are most affected by the determination whether their cable rates are subject to regulation. Consequently, the operator should measure its penetration rate of full-time subscribers as a percentage of full-time households, *i.e.*, by excluding housing units used for seasonal, occasional, or recreational use.[3]

B. Geographically Uniform Rate Structure

9. The 1992 Cable Act requires cable operators to "have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over

[1] FCC Form 1200: "Setting Maximum Initial Permitted Rates for Regulated Cable Services Pursuant to Rules Adopted February 22, 1994—First-Time Filers Form"; FCC Form 1205: "Determining Current Equipment and Installation Rates—Equipment Form."

[2] Bureau of the Census, U.S. Dept. of Commerce, 1990 Census of Population, CP–1–1B, Appendix B at B–8.

[3] We will use the U.S. Census Bureau definition for seasonal, recreational, and occasional use:

These are vacant units used or intended for use only in certain seasons or for weekend or other occasional use throughout the year. Seasonal units include those used for summer or winter sports or recreation, such as beach cottages and hunting cabins. Seasonal units may also include quarters for such workers as herders and loggers. Interval ownership units, sometimes called shared ownership or time-sharing condominiums, are also included here.

1990 Census of Housing, General Housing Characteristics, Maryland, at B–12.

its cable system"[4] In the Rate Order, the Commission concluded that this provision was applicable only to regulated services in regulated markets. Rate Order, 8 FCC Rcd at 5896. The Commission then determined that the provision would be enforced on a franchise area by franchise area basis. *Id.* Finally, the Commission found that this provision did not prohibit all differences in rates between customers. Cable operators are not necessarily barred from distinguishing between seasonal and full-time subscribers and from offering promotional rates universally but for a limited time. Also, discounts for senior citizens or economically disadvantaged groups may be set. Additionally, nonpredatory bulk discounts to multiple dwelling units ("MDUs") are permissible if offered on a uniform basis. *Id.* at 5897, 98.

10. The Cable Act is unequivocal in requiring uniformity of rates within a franchise area. The provision is not limited to any particular class or classes of subscribers. In accordance with the statutory mandate, the Rate Order also specifically noted the Commission's concern that bulk discounts not be abused to displace other multichannel video providers from MDUs, which have become important footholds for the establishment of competition to incumbent cable systems. Rate Order, 8 FCC Rcd at 5898. Cable operators are not prevented from meeting competition—as long as the same rate structure is offered to all MDUs in the franchise area. Moreover, cable operators may offer different rates to MDUs of different sizes and may set rates based on the duration of the contract, provided that the operator can demonstrate that its cost savings vary with the size of the building and the duration of the contract, and as long as the same rate is offered to buildings of the same size and contracts of similar duration. Thus, bulk arrangements on a variable basis between MDUs of the same size and contractual duration, though currently allowed by some franchising authorities, are specifically prohibited by the Act.

11. However, we will allow cable operators' existing contracts with MDUs to be grandfathered. We believe that the elimination of existing contracts would be unnecessarily disruptive to those subscribers receiving discounts, as well as to those cable companies offering the discounts. Thus, contracts between cable operators and MDUs entered into on or before April 1, 1993, in which the contract rate is lower than the permitted regulated rate, may remain in effect until their previously agreed-upon expiration date. To the extent the Rate Order may have been interpreted by private parties to supersede existing contracts, which were accordingly rewritten, the terms of such contracts may be reinstituted without violating Commission rules.

12. In addition, we conclude on reconsideration that the uniform rate structure requirements of section 623(d), 47 U.S.C. 543(d), should apply in all franchise areas, irrespective of the presence of "effective competition" as defined in the Act. The specific harms that the rate uniformity provision is intended to prevent—charging different subscribers different rates with no economic justification and unfairly undercutting competitors' prices—could occur in areas with head-to-head competition or low penetration sufficient to meet the Act's definition of "effective competition." This would not only permit the charging of noncompetitive rates to consumers that are unprotected by either rate regulation or competitive pressure on rates, but also stifle the expansion of existing, especially nascent, competition. As the Senate Report states: "This provision is intended to prevent cable operators from having different rate structures in different parts of one cable franchise * * * (and) from dropping the rates in one portion of a franchise area to undercut a competitor temporarily."[5] The statutory language does not provide, and the Senate Report does not suggest, that the rate uniformity provision should be limited to franchise areas where "effective competition" is absent.

III. Tier Buy-Through Prohibition

13. The tier buy-through prohibition of the 1992 Cable Act prohibits cable operators from requiring subscribers to purchase a particular service tier, other than the basic service tier, in order to obtain access to video programming offered on a per-channel or per-program basis. 47 U.S.C. 543(b)(8). An exception is made for cable operators that are not technically capable of complying with this requirement during the next ten years. *Id.* In a previous decision, we adopted an implementing rule that (1) prohibits discrimination between subscribers of the basic service tier and other subscribers with regard to rates charged for video programming offered on a per-channel or per-program basis; (2) forbids any retiering of channels or services intended to frustrate the purpose of the tier buy-through provision; and (3) defines when cable systems are not technically capable of complying with this requirement. Report and Order in MM Docket No. 92–262 ("Tier Buy-Through Order"), 8 FCC Rcd 2274 (1993); 58 FR 19627 (Apr. 15, 1993); 47 CFR 76.921.[6] At that time, we also determined that all cable systems are subject to the tier buy-through prohibition and our implementing rules.[7] *Id.* at note 32.

14. We continue to believe that the tier buy-through provision applies to all cable systems, regardless of whether they are subject to rate regulation. The language of the provision clearly states, without limitation or qualification, that "a cable operator may not require the subscription to any tier other than the basic service tier * * * as a condition of access to video programming offered on a per channel or per program basis." 47 U.S.C. 543(b)(8). Congress could have easily limited this provision to regulated systems by expressly doing so. Accordingly, to provide all cable subscribers with the maximum possible flexibility in paying for those programs they desire, it is necessary to apply the tier buy-through provision to all cable systems.

IV. Procedural and Jurisdictional Issues

A. Certification Process

15. *Franchising authority's decision not to regulate.* In the Rate Order, we analyzed carefully whether we should assert the authority to regulate basic rates when a franchising authority had not sought certification. We emphasized that Congress had vested in local franchising authorities the primary authority to regulate basic rates and that we therefore did not want to override a locality's decision not to regulate rates.

[4] Communications Act of 1934, as amended, ("Communications Act") section 623(d), 47 U.S.C. 543(d).

[5] Senate Committee on Commerce, Science and Transportation, S. Rep. No. 92, 102d Cong., 1st Sess. at 76 (1991). This language also indicates that the term "geographic area" was intended to refer to "franchise area" and not a broader geographic area. See Rate Order, 8 FCC Rcd at 5896, where the Commission considered, and rejected, arguments to define "geographic area" more broadly than a franchise area.

[6] This rule was originally adopted as Section 76.900, but was renumbered and modified in the Rate Order.

[7] After the release of the Tier Buy-Through Order the Commission clarified in the Rate Order that the tier buy-through provision of the 1992 Cable Act "only precludes operators from conditioning access to programming offered on a per-channel or per-program basis on purchasing intermediate tiers." Rate Order, 8 FCC Rcd at 5903, n. 435. Therefore, the provision does not prohibit operators from requiring the purchase of an intermediate tier of cable programming services in order to obtain access to another tier of cable programming services. *Id.* See also 47 CFR 76.921(a). No petitions for reconsideration were filed in the rate proceeding regarding this clarification.

We concluded that we would not assume jurisdiction in cases where a franchising authority does not apply for certification or directly request that the Commission regulate rates. Rate Order, 8 FCC Rcd at 5676.

16. For the time being, we will continue to decline to assert jurisdiction over basic cable service where franchising authorities do not choose to regulate rates themselves. The Act's regulatory scheme vests in franchising authorities the initial decision whether their communities' basic cable service rates should be regulated. Rate Order, 8 FCC Rcd at 5676. In any case where this may work to the detriment of subscribers, they can seek relief from their local authorities through the political processes available to them. However, in the event that basic cable rates remain unregulated in a large number of communities despite evidence that cable operators in those communities are charging unreasonable rates, we will reexamine this issue.

17. *Franchise fee rebuttal showing.* We stated in the Rate Order that we would presume that franchising authorities receiving franchise fees have the resources to regulate rates. A franchising authority seeking to have the Commission exercise jurisdiction over basic rates is thus required to rebut this presumption with evidence showing why the proceeds of the franchise fees it obtains cannot be used to cover the cost of rate regulation. Rate Order, 8 FCC Rcd at 5676. This showing must consist of a detailed explanation of the franchising authority's regulatory program that shows why funds are insufficient to cover basic rate regulation. *Id.* The Commission will assume jurisdiction only if it determines that the franchise fees cannot reasonably be expected to cover the present regulatory program and basic rate regulation. *Id.*

18. We continue to believe that the rebuttal showing requirement is consistent with section 622(i) of the Communications Act. While the Act provides that the Commission cannot directly control the franchising authority's use of the proceeds from the franchise fees, nothing prevents the Commission from basing a judgment on whether to assume regulation of basic tier rates on whether the franchising authority indeed lacks the funds to do so.

19. As to the specific showing required, the franchising authority would simply have to document the funds it raises from franchise fees and any general taxes, estimate the cost of rate regulation, and provide an explanation as to why the funds are insufficient to cover those costs. Some of these factors may include whether the franchise fee collected is less than five percent of the cable operator's gross revenues,[8] and whether costs may be shared among several municipalities by filing joint certifications. As we gain experience reviewing such requests, we will establish standards on a case-by-case basis to determine whether the franchising authority has sufficiently justified its request that the Commission regulate basic cable rates in a particular community.

20. *Voluntary withdrawal of certification.* Although Congress did not specifically provide for the voluntary decertification of franchising authorities, we believe Congress envisioned that franchising authorities would ultimately decide whether rate regulation is appropriate in their communities. Indeed, the fact that franchising authorities have a choice as to whether to seek certification is part of Congress's scheme to vest primary regulatory responsibility in franchising authorities. Accordingly, we will allow certified franchising authorities to notify the Commission that they have decided not to regulate rates, upon their determination that rate regulation would no longer serve the best interests of local cable subscribers.[9] Franchising authorities are specifically prohibited from accepting consideration in exchange for their decision to decertify.

21. *Franchising authority's failure to meet certification requirements.* In the Rate Order, we stated that we would automatically assume jurisdiction over basic cable rates when a franchising authority seeking initial certification does not have the legal authority to regulate rates or does not have rate regulations that are consistent with those of the Commission. In accordance with the Act, we retain jurisdiction in such cases only until the franchising authority has qualified to exercise jurisdiction by submitting a new certification and meeting the required statutory standard. See 47 U.S.C. 543(a)(6); 47 CFR 76.913(a). We indicated, however, that we would allow the franchising authority to cure any defects in its procedural regulations governing rate proceedings before we would assume jurisdiction. Rate Order, 8 FCC Rcd at 5676, 77; 47 CFR 76.910.

22. We believe that our statutory obligations require us to assert jurisdiction over basic rates when a franchising authority's certification effort is denied for failure to adopt regulations that are consistent with the Commission's rate rules. We do not believe Congress intended for a franchising authority to regulate when its regulations will substantially or materially conflict with federal regulations.[10] Nor do we believe Congress intended that there be a regulatory vacuum when a franchising authority has affirmatively sought certification. Once a franchising authority has affirmatively sought certification because it believes basic rates to be unreasonable, and has indicated a willingness to regulate, we will step in to ensure that basic service rates are properly scrutinized until the franchising authority can become certified.

23. *Revocation or certification.* The 1992 Cable Act establishes conditions for the denial or revocation of a franchising authority's certification. As a threshold matter, a franchising authority that seeks to exercise regulatory jurisdiction must meet certain statutory requirements; otherwise the Commission can deny its request for initial certification.[11] If, after a franchising authority has been certified, the Commission finds that the franchising authority has acted inconsistently with the statutory requirements, "appropriate relief" may be granted. However, if the Commission determines, after the franchising authority has had a reasonable opportunity to comment, that the state and local laws and regulations are not

[8] Section 622(b) of the Communications Act allows franchising authorities to collect franchise fees in an amount up to five percent of a cable operator's gross revenues during any 12-month period. 47 U.S.C. 542(b).

[9] The Commission retains the right to review such determinations and seek an explanation from the franchising authority concerning the factual finding underlying its decision to decertify. We will not prohibit a franchising authority from again seeking certification, even after it has decertified. However, if a pattern of repeated certification and decertification develops, we reserve the right to examine the situation to determine whether the franchising authority can justify its determinations as to the propriety of rate regulation in its community.

[10] Indeed, in revocation cases where the Commission determines that a franchising authority's laws and regulations are not in conformance with Commission regulations, the statute instructs the Commission to assume jurisdiction directly. See Communications Act, section 623(a)(5), 47 U.S.C. 543(a)(5).

[11] There are three statutory requirements. First, the franchising authority must adopt and administer rate regulations that are consistent with those of the Commission. Second, the franchising authority must have the legal authority and personnel to implement the necessary regulations. Third, the franchising authority's procedural regulations for rate proceedings must provide interested parties with a reasonable opportunity to comment. See Communications Act, section 623(a)(3) (A)–(C), 47 U.S.C. 543(a)(3) (A)–(C). See also Communications Act, 623(a)(4) (A)–(C), 47 U.S.C. 543(a)(4) (A)–(C) (setting forth that failure to meet three factors is cause for certification disapproval).

in conformance with the regulations prescribed by the Commission to regulate rates, then the Commission must revoke the jurisdiction of the authority. 47 U.S.C. 543(a)(5).

24. We will modify our position on Commission assumption of jurisdiction in revocation cases involving nonconformance with Commission regulations. As a general matter, we will allow a franchising authority to cure any nonconformance with our rules that does not involve a substantial or material regulatory conflict before we will revoke its certification and assume jurisdiction. On the other hand, we believe that the statute compels us to revoke the certification of any franchising authority once we find, after there has been an opportunity to comment, that state and local regulations conflict with our regulations in a substantial and material manner. More specifically, we will revoke the jurisdiction of a franchising authority for nonconformance when the state and local laws involve a substantial and material conflict with our rate regulations.

B. Franchising Authority's Basic Rate Decision

25. *Cost-of-service showings for basic tier rates.* Some local franchising authorities may have resources and personnel sufficient to conduct a review of a rate-setting justification based on an FCC Form 393 (and/or FCC Forms 1200/1205), but not to examine and review a cost-based showing. This concern may have discouraged certification by many local franchising authorities. We believe that the Commission, consistent with the statutorily shared jurisdictional framework for regulation of the basic service tier, should provide assistance to certified local franchising authorities that are unable to conduct cost-based proceedings. Accordingly, on our own motion, we have decided to establish procedures under which the Commission, if requested by the local franchising authority in a petition for special relief under § 76.7 of the Commission's rules, will issue a ruling that makes cost determinations for the basic service tier. The ruling will also set an appropriate cost-based rate and will become binding on the local franchising authority and the cable operator. Specifically, local franchising authorities receiving cost-of-service showings from cable operators seeking to justify either initial rates or rate increases for the basic service tier will be able to obtain such a Commission ruling on their behalf for those submissions pending no more than 30 days before May 15, 1994, or those made on or after that date.

26. Under these procedures, upon receipt of a cost-of-service showing, a local franchising authority will have 30 days to decide whether to seek Commission assistance.[12] If the franchising authority decides to seek Commission assistance, the franchising authority must issue a brief order to that effect, and serve a copy (before the 30-day deadline) on the cable operator submitting the cost showing. In its request for Commission assistance, the local franchising authority must explain its reasons for seeking Commission assistance, such as lack of adequately trained personnel, lack of financial resources, or other exigent circumstances. Upon receipt of the local authority's notice to seek Commission assistance, the cable operator must deliver a copy of the cost showing together with all relevant attachments to the Commission within 15 days.[13]

27. The Commission's determination of cost-based rates for the basic service tier will be governed by Section 76.945 of the Commission's rules and will become binding upon the local franchising authority. The Commission will notify the local franchising authority and the cable operator of its determination and the basic service tier rate, as established by the Commission. The rate will take effect upon implementation by the local franchising authority and the appropriate remedy, if applicable, will be determined by the franchising authority. A cable operator or franchising authority may seek reconsideration by Commission staff, or review by the full Commission, of the staff ruling on the cost-based determination or the rate itself, pursuant to § 1.106 of § 1.115 of the Commission's rules.

28. *Delegation of authority and form of decision.* The Commission clarifies that the authority to make rate decisions and to issue written orders may be delegated to specified governmental agents such as a local cable commission. We find that the 1992 Cable Act does not prohibit franchising authorities, if so authorized by state and/or local law, from delegating their rate-making responsibilities to a local commission or other subordinate entity, even if that entity is not the "franchising authority" entitled to certification under the Act.[14] Any such subordinate entity will be acting as the authorized agent of and at the will and pleasure of the franchising authority, and its actions will be subject to at least the implicit, if not explicit, ratification of the full franchising authorities. In addition, provided that issuance of rate decisions satisfies the Rate Order's public notice requirements,[15] franchising authorities, or the state or local governments, may determine the particular form such rate decisions will take.

29. *Due process concerns.* In the Rate Order, we afforded franchising authorities considerable flexibility regarding the manner in which interested parties may participate in proceedings regarding rates for the basic service tier and accompanying equipment, as long as they provide a reasonable opportunity for consideration of the views of interested parties and act within the prescribed time periods. Rate Order, 8 FCC Rcd at 5716. We also gave franchising authorities the flexibility to decide whether and when to conduct formal or informal hearings, as long as they act on rate cases within the prescribed time periods to provide interested parties with notice and a meaningful opportunity to participate. *Id.*

30. Rather than impose specific procedural requirements on each individual franchising authority, we find it more appropriate at this juncture to remind franchising authorities to examine their current procedural requirements for other local proceedings and determine the best forum for providing due process to cable operators. In any event, a cable operator is not without redress if it determines that the franchising authority has denied the operator its due process rights. Pursuant to Section 76.944 of the Commission's Rules, the cable operator may raise that argument in its appeal to the local courts of the franchising authority's written decision. Rate Order, 8 FCC Rcd at 5729, n. 388; 47 CFR 76.944.

31. *Appeals.* We stated in the Rate Order that cable operators must file

[12] Under the Commission's current rules, if a franchising authority is able to determine that a cable operator's current rates for the basic service tier and accompanying equipment are reasonable under the Commission's rate regulations, the rates will go into effect 30 days after they are submitted. If the franchising authority is unable to determine the reasonableness of the rates within this period, and the operator has submitted a cost-of-service showing, the franchising authority may toll the effective date of the rates in question for an additional 150 days to evaluate the cost showing. See Rate Order, at para. 119; 47 CFR 76.930.

[13] We will classify referrals of cost-of-service cases from local franchising authorities as restricted proceedings for purposes of our *ex parte* rules. Accordingly, *ex parte* presentations are prohibited. See 47 CFR 1.1208 (1992).

[14] Section 602(10) of the Communications Act defines franchising authority as any governmental entity empowered by federal, state, or local law to grant a franchise. 47 U.S.C. 522(10).

[15] Rate Order, 8 FCC Rcd at 5715, 16.

appeals of local rate decisions with the Commission within 30 days of release of the text of the franchising authority's decision. Rate Order, 8 FCC Rcd at 5730, 31; 47 CFR 74.944(b). Oppositions may be filed within 15 days after the appeal is filed, and must be served on the party or parties appealing the rate decision. Replies may be filed seven days after the last day for oppositions and must be served on the parties to the proceeding. 47 CFR 76.944(b).

32. We will amend § 76.944(b) to require any party filing an appeal of a local rate decision to serve a copy of the appeal on the decisionmaking authority. Additionally, where the state is the appropriate decisionmaking authority, the state must forward a copy of the appeal to the appropriate local official(s).[16]

33. *Settlement of rate cases.* We stated in the Rate Order that the regulatory structure established by section 623 of the Communications Act, 47 U.S.C. 543, does not appear to give cable operators the latitude to settle rate cases. Rather, a franchising authority must follow procedures that are consistent with the Commission's rate regulations and make a reasoned decision based on the record. Rate Order, 8 FCC Rcd at 5715, n. 337.

34. For largely the same reasons that we prohibited agreements not to regulate basic rates,[17] we affirm our intention to disallow settlement agreements that are based on factors outside the record of a rate proceeding. permitting such settlements could potentially allow franchising authorities to bargain away subscribers' statutory protection against unreasonable rates. Furthermore, the availability of settlements could increase the number of cost-of-service showings, which would be more suited to negotiated resolutions. Parties in a rate-setting procedure may, of course, stipulate to particular facts and even the final rate level itself, as long as the basis for each such stipulation is clearly articulated, there is some support for each stipulation in the record, and it does not circumvent our rate regulations.

35. *Effective date of rate increases.* In the Rate Order, we noted that unless the franchising authority finds that a proposed increase in basic tier rates is unreasonable, the increase will go into effect 30 days after filing with the franchising authority. If the franchising authority is unable to determine whether the proposed rate increase is reasonable, or if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the presumptively reasonable level, the franchising authority may delay the effective date of the proposed rate for 90 days, or 150 days, respectively. Rate Order, 8 FCC Rcd at 5709.[18]

36. In this Order, we find that where the franchising authority is unable to determine whether a particular portion of a proposed rate increase is reasonable and the questionable portion is clearly severable, a franchising authority may, at its discretion, permit the implementation of portions of a rate increase it finds reasonable while it reviews the reasonableness of other portions. This policy will permit cable operators to recoup as promptly as possible those costs that are deemed acceptable by the franchising authority.

37. *Proprietary information.* In the Rate Order, we stated that franchising authorities will have the right to collect additional information—including proprietary information—to make a rate determination in those cases where cable operators have submitted initial rates or have proposed increases that exceed the Commission's presumptively reasonable level. Rate Order 8 FCC Rcd at 5718–19. We also required franchising authorities to adopt procedures analogous to those contained in Section 0.459 of the Commission's Rules.[19] *Id.*, n. 349. See 47 CFR 76.938.

38. With respect to the franchising authority's right of access to the cable operator's confidential business records, we find that franchising authorities and the parties to a rate proceeding must have access to the information upon which the rate justification is based. Such access is essential to permit the franchising authority to make an informed evaluation, based on complete information, of the reasonableness of the rate in question. Parties participating in the rate proceeding must have access to proprietary information submitted to the franchising authority in order to evaluate the arguments advanced by the cable operator and to help focus the issues. We clarify that franchising authorities are entitled to request information, including proprietary information, that is reasonably necessary to make a rate determination, whether pursuant to a cost-of-service showing or when applying the competitive differential, as clearly stated in the text of the final rule adopted. 47 CFR 76.938. Each request should clearly state the reason the information is needed, and where related to an FCC Form 393 (and/or FCC Form 1200/1205), indicate the question or section of the form to which the request specifically relates.

39. This right of access is limited to that information necessary to support the elements of the particular rate justification at issue, and extends to the franchising authority and, in appropriate circumstances, to the actual parties to a rate proceeding.[20] Section 76.938 governs such access and, to the extent that any state or local laws provide for more limited access to information than the federal rule, they are accordingly preempted.

40. With respect to franchising authorities' obligations regarding public disclosure of proprietary information submitted by cable operators, we find on further reflection that we should not require franchising authorities to adopt procedures that mirror § 0.459, although they may do so in their discretion. We find it neither necessary nor desirable to preempt state and local laws governing access to information. Thus, while as a general matter we believe franchising authorities should consider the interests of cable operators in protecting proprietary information, we now conclude that franchising authorities should proceed in accordance with applicable local and state law rather than mandating the adoption of procedures analogous to our rules. We therefore amend Section 76.938 accordingly.

41. *Forfeitures and fines.* To the extent that franchising authorities may be concerned with the enforcement of their own orders, decisions, and requests for information, we clarify that if a franchising authority has the power under state or local law to impose forfeitures or fines for violations of its rules, orders, or decisions, including filing deadlines and orders to provide information, we see nothing in the Cable Act or our rules which would prevent

[16] We will classify appeals of local rate decisions as restricted proceedings for purposes of our *ex parte* rules. Accordingly, *ex parte* presentations are prohibited. See 47 CFR 1.1208 (1992).

[17] First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking in MM Docket No. 92–266, 9 FCC Rcd 1164 (1993); 58 Fed. Reg. 46718 (Sept. 2, 1993) at para. 72 [hereinafter First Rates Reconsideration].

[18] To toll the effective date of the proposed rate, the franchising authority must issue a brief order, within the initial 30-day period, explaining that it needs additional time to review the proposed rate. *Id.*

[19] Section 0.459 provides that a party submitting information may request confidentiality with respect to specific portions of the material submitted. The party must make a showing, by a preponderance of the evidence, that non-disclosure is consistent with Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552, which authorizes the Commission to withhold from public disclosure confidential commercial or financial information.

[20] Franchising authorities should, in appropriate circumstances, adopt procedures or craft protective agreements to ensure that proprietary information is not disclosed publicly by the parties.

the franchising authority from taking such action.[21] A franchising authority would be free to report to us any apparent violation of our rules, and we could take appropriate enforcement action.[22] In addition, we are modifying our rules to require cable operators to respond to franchising authorities' reasonable requests for information, as well as our own such requests.[23]

42. *Franchising authority discretion.* We also take this opportunity to reiterate our general philosophy regarding rate proceedings before franchising authorities. Congress generally allocated to franchising authorities responsibility for reviewing basic service rates under the Act. While we have set out the general rules for regulation, we have not attempted, nor could we address, every detail of the rate regulation process. Certain latitude has been left to franchising authorities. As we stated in the Rate Order, we will not review decisions of franchising authorities *de novo*, but rather will sustain their decisions as long as there is a reasonable basis for those decisions. Rate Order, 8 FCC Rcd at 5731. This standard of review will apply as well with respect to franchising authority interpretations of any ambiguities in evaluating the responses or information provided on the FCC Form 393 or in a cost-of-service showing.

C. FCC Form 393 (FCC Forms 1200/1205) Issues/Failure to File

43. *Failure to file rate justification.* Under our rules, a cable operator has the burden of proving that its rates for regulated cable services are in compliance with the law.[24] An operator justifies its rates by submitting its rate schedule and by also filing a completed FCC Form 393 (and/or FCC Forms 1200/1205) or a cost-of-service showing. Our rules regarding regulated upper service tiers explicitly provide that if a cable operator fails to file and serve a rate justification as required, we may deem the operator in default and enter an order finding the operator's rates unreasonable and mandating appropriate relief.[25] However, the rules do not explicitly provide parallel remedies where an operator fails to timely justify its rates for the basic service tier.

44. On our own motion, we hereby correct the oversight. An operator that does not attempt to demonstrate the reasonableness of its rates has failed to carry its burden of proof. We are therefore amending our rules to make clear that authorities regulating basic service rates have authority to deem a non-responsive operator in default and enter an order finding the operator's rates unreasonable and mandating appropriate relief. This relief could include, for example, ordering a prospective rate reduction and a refund. Such a refund would be based on the best information available at the time. We note, however, that in the Second Order on Reconsideration, we establish certain adjustments to the timeframes set out in §§ 76.930 and 76.933 due to the transition from existing rules to the rules we establish today.[26] A franchising authority will be permitted to find in default a cable operator that files its rate justification in accordance with the scheme set forth in the Second Order on Reconsideration at paras. 144–149.

45. *Deficient rate justifications; additional information.* In the event a cable operator files a facially incomplete rate justification, *viz.*, fails to complete the FCC Form 393 or fails to include supporting information called for by the form, the franchising authority or the Commission may order the cable operator to file supplemental information. While the francishing authority is waiting to receive this information from the cable operator, the deadlines for the franchising authority to rule on the reasonableness of the proposed rates are tolled.

46. We distinguish an incomplete filing (for example, a form filed without a required explanation) from one which is complete and submitted in good faith, but about which the regulating authority has certain questions or reasonably feels it requires clarifying or substantiating information. However, we will not automatically toll the deadlines for franchising authorities to act in these circumstances, as we do for incomplete filings. If the information sought, however, is of such significance as to delay examination of the rest of the rate justification, or if the operator fails to supply the information promptly, the franchise authority could be justified in delaying its ruling accordingly.

47. In either case, it is obviously necessary for the franchising authority or the Commission to set reasonable deadlines for the submission of supplemental information in order to avoid delaying for consumers the benefits of rate regulation.[27] If the cable operator fails to provide the requested information within the required time or fails to provide complete information in good faith, the franchising authority or the Commission may then hold the cable operator in default and mandate appropriate sanctions as discussed elsewhere in this section, as if the operator failed to submit a response at all. We again emphasize that such authority must be exercised in a reasonable manner.

48. Finally, in order to assist the Commission and franchising authorities in verifying information contained in rate filings, cable operators filing after the effective date of our revised rules must include rate cards and channel line-ups along with their benchmark or cost-of-service filings. If there is any difference between the numbers on these documents and the numbers in the rate filing, the capable operator must attach an explanation. Rate cards and channel line-ups must be included for September 30, 1992, September 1, 1993, and for the rates being reviewed.

49. *Updating rate calculations.* We now turn to the issue that arises for numerous operators that promptly revised their rates in response to our rules, based on rate-setting facts in existence at the time of the revisions. These operators have not been required to justify those rates until recently, however, and several months after the revisions, some of the facts or data on which the rate-setting is based may have changed.[28] For example, tentative inflation adjustments have since become definite, equipment costs may have varied, or broadcast channels may have been added. We recognize that rates adopted in an effort to comply with our rules as quickly as possible may become unreasonable solely as a result of using later data to refresh the calculations. Operators should not be penalized for making good faith attempts to comply with our rules in a timely manner. In addition, if the cable operators are required to revise their rates immediately based on refreshed data, the changes will result in administrative expenses to the operators and confusion for subscribers. In most cases, we expect the resulting rate change would be minimal and would be in effect only until the cable operator seeks a rate

[21] See 47 CFR 76.943. As stated in the regulation, however, a franchising authority may not impose a forfeiture or fine simply because an operator's rates are unreasonable.

[22] See Communications Act, 503, 47 U.S.C. 503; 47 CFR 76.943, 76.963.

[23] See 47 CFR 76.943 (as modified).

[24] 47 CFR 76.937, 76.956(b).

[25] 47 CFR 76.956(e).

[26] Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket 92–266, FCC 94–38, adopted February 22, 1994 [hereinafter Second Order on Reconsideration].

[27] Supporting information that is called for in the FCC Form 393 itself should have been submitted with the form, and could reasonably be demanded within a short period of time.

[28] The same problem could arise any time rates are established at one point in time but subject to justification as of a later date.

change. At the same time, it is important that regulatory authorities are able to verify accurately the reasonableness of a current rate, and to avoid compounding any inaccuracies as subsequent rate increases are introduced, which are a function of the level of initial rates.

50. Accordingly, we will require the following actions when different rates are dictated by data used in initial rate-setting than by data current as of the time an FCC Form 393 (and/or FCC Forms 1200/1205) is actually submitted to the franchising authority or the Commission. When current rates are accurately justified by analysis using the old data (and that data was accurate at the time), cable operators will not be required to change their rates. In these circumstances, however, when such operators make any subsequent changes in their rates, (such as when seeking their annual inflation increase), those changes must be made from rates levels derived from the updated information.[29] When current rates are not justified by analysis using the old data (so that a rate adjustment would be necessary in any event), cable operators will be required to correct their rates pursuant to current data. In these circumstances, the resulting rates must be based on current data.[30]

51. *Computer-generated forms.* Many cable operators have filed their rate justifications on various substitute versions of FCC Form 393, often computer-generated. Indeed, our November 10, 1993 *Public Notice* specifically contemplated such substitutes, provided "the form is *identical* in overall appearance and format to FCC Form 393" (emphasis added). Unfortunately, our initial review of such filings has revealed a wide variety of substitute forms, none of which appears to be "identical in overall appearance and format to FCC Form 393."

52. Given the variations in these forms as filed and the difficulty in verifying their conformance to the official FCC Form 393, we conclude that the burden on franchising authorities and on the Commission of processing such non-standard forms would be substantial. We therefore decide that such substitute forms are unacceptable. All rate filings must be made on an actual FCC Form 393 (and/or FCC Forms 1200/1205), a copy of the actual form, or a copy generated by Commission software.

53. Accordingly, any future rate filing not made on an official FCC Form 393 (and/or FCC Forms 1200/1205), a copy of the form, or a copy generated by Commission software shall be deemed not to have been filed, and appropriate sanctions for failure to file may be imposed. For example, under appropriate circumstances, regulatory authorities may treat non-complying forms as patently defective, thus not requiring an opportunity to cure the defect as would be the case for a filing that is merely incomplete. Obviously, this sanction should not be imposed where an operator has made a good faith effort to comply with our rules. If, however, a cable operator has already made a rate filing on a non-FCC form prior to the effective date of these rules, the franchising authority may order that the form be refiled within 14 days of the effective date of this Order. The cable operator shall then have 14 days to submit its rate filing on an FCC Form 393 (and/or FCC Forms 1200/1205), during which time the deadline for the cable authority to rule on the reasonableness of the rates shall be tolled. Although we considered deeming non-standard forms already filed acceptable, we believe the administrative burden of attempting to implement the rules based on non-complying forms unacceptable. We hereby order all cable operators who have filed benchmark showings with us on a non-FCC form to refile within 14 days of the effective date of this Order. Furthermore, any benchmark showing that comes to the Commission on appeal must be on an official FCC Form 393 (and/or FCC Forms 1200/1205), a copy of the form, or a copy generated by Commission software.

D. Refund Issues

54. *Commission authority to allow franchising authority to order refunds on basic tier rates.* We stated in the April 1993 Rate Order that refunds are available with respect to basic tier service pursuant to our authority under sections 623(b) and 4(i) of the Communications Act, 47 U.S.C. 543(b), 154(i). We determined that the Communications Act's explicit reference to refund authority with respect to upper tier service should not be construed to bar refunds of unreasonable basic tier rates. Rate Order, 8 FCC Rcd at 5725. We noted that section 623(b)(5)(A), 47 U.S.C. 543(b)(5)(A), grants wide discretion to adopt procedures so that franchising authorities can enforce reasonable rates.

55. This Order affirms our belief that section 623(b)(5) grants the Commission wide discretion to craft procedures governing the enforcement of its overall regulatory regime with respect to basic tier rates. The mere fact that section 623(c) provides for refunds in the upper tier context does not persuade us that the Commission's authority under section 4(i), in conjunction with its rulemaking power under section 623(b), is not broad enough to permit the Commission to adopt rules providing for refunds with respect to basic tier rates.

56. *Refund computations.* Another issue which we need to address is that of refund computations for bundled charges. Our rules state that a franchising authority "may order a cable operator to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted tier charge or above the actual cost of equipment * * *."[31] Whereas maximum permitted rates are always determined on an unbundled basis, *i.e.*, separately for tier service and equipment, refund liability may stem from bundled rates.

57. We conclude that the refund liability should be calculated based on the difference between the old bundled rates and the sum of the new unbundled program service charge(s) and the new unbundled equipment charge(s). The intent of the refund mechanism is to place subscribers in the same position they would be had they been subject to "reasonable" rates. To not allow cable operators to factor in equipment charges could result in an operator being required to make a rate reduction that is greater than the maximum reduction required under application of the benchmark approach. This analysis is consistent with our earlier statement that "the cable operator must make prospective billing adjustments to refund overcharges (and offset any undercharges) in a reasonable manner."[32] This analysis also applies to unbundled charges where an operator was charging separately for program services and equipment but the rates did not comply with our rules (because, for example, the equipment rates were higher than actual cost). In this

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[29] We take this action on the assumption that any rate differentiation between analysis based on old and current data is quite small, so that the harm to consumers is small compared to the negative effects discussed above. In a particular case where this is not so, the franchising authority can petition for a waiver of our rules to impose an immediate rate reduction.

[30] In any case, the franchising authority retains the discretion to permit retention of an established rate that is close to, but not exactly, the rate justified by our rate formula, with a corresponding reduction taken from the next rate increase, in order to reduce rate churn, if it determines that this best serves the interests of the cable subscribers within its jurisdiction.

[31] 47 CFR 76.942(a).

[32] *Order* in MM Docket No. 92-266, 58 FR 41042, 41044 n.21 (Aug. 2, 1993) (discussing this issue in the context of cable operators not being able to adjust their rates in time when the effective date of regulation was moved from October 1, 1993 to September 1, 1993).

situation, the operator's overall refund liability will be calculated by adding the old charges together and comparing the total with the sum of the new, unbundled program service and equipment charges.

58. *Refunds as affecting franchise fee liability.* Section 622(b) of the Communications Act provides that "[f]or any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed five percent of such cable operator's gross revenues derived in such period from the operation of the cable system." 47 U.S.C. 542(b). We recognize that when a refund is ordered, a cable operator's gross revenue has been reduced, and its franchise fee may have to be reduced proportionately. We amend § 76.942 to provide that, to the extent that a franchise fee is calculated as a percentage of the cable operator's gross revenues and those revenues are reduced on account of refunds, the franchising authority must promptly return to the cable operator the amount that was overpaid as a result of the cable operator's newly-diminished gross revenues.[33]

59. *Calculation of refunds on basic rates.* In the Rate Order and in subsequent orders addressing the effective date of rate regulation,[34] we indicated that cable systems would be subject to potential refund liability for the basic service tier as of the effective date of our rules, which we ultimately determined to be September 1, 1993. See *e.g.*, Rate Order, 8 FCC Rcd at 5725, 26.[35] We will maintain September 1 as the earliest date for refund liability to begin. Any refund liability for this period will be based, of course, on the rate-setting rules and formulas in effect at that time. The new rate-setting rules adopted in the companion Second Order on Reconsideration will be applied prospectively only. The new rules will determine future rates and refund liability only after the effective date of those rules.

60. *Calculation of refunds on cable programming service complaints.* Section 623(c)(1)(C) of the Communications Act, 47 U.S.C. 543(c)(1)(C), requires the Commission to establish procedures (1) to reduce rates for upper tier services that the Commission determines to be unreasonable and (2) to refund overcharges paid by subscribers after the filing of a complaint that the Commission determines to have merit. In the Rate Order, we established that under our refund procedures the cumulative refund due subscribers would be calculated from the date a valid complaint is filed until the date a cable operator implements the reduced rate prospectively in bills to subscribers. Rate Order, 8 FCC Rcd at 5865.[36] We affirm this timeframe for the calculation of refunds and refuse to adopt a time limit on refund liability for unreasonable cable programming service tier rates.

E. Cable Programming Service Complaint Process

61. *Effective date of cable programming service regulation.* We reject suggestions that regulation of upper tier service should commence on the date the Commission's regulations take effect, rather than on the date a complaint is filed. Congress intended regulation of cable programming services to be complaint-driven (see 47 U.S.C. 543(c)(1)(B) and 543(c)(3)). The Commission cannot act on upper tier rates until a complaint is filed. We have decided that complaints that are filed before the effective date of the new rate reductions ordered today in the companion Second Order on Reconsideration will be adjudicated as follows: refunds for the time period in which the old rules were in effect will be based on the old rules, while refunds for the time period in which the new rules are in effect will be based on the new rules.

62. Section 623(c)(3) of the Act directs that complaints must be filed "within a reasonable period of time following a change in rates that is initiated after that effective date, including a change in rates that results from a change in that system's service tiers." 47 U.S.C. 543(c)(3). In the *Rate Order*, we interpreted that provision to require complainants to file such complaints within 45 days from the time a subscriber receives a bill from the cable operator that reflects the rate *increase*. *Rate Order*, 8 FCC Rcd at 5840 (emphasis supplied). We clarify that a subscriber may file a complaint any time there is a rate *change*, including an increase or decrease in rates, or a change in rates that results from a change in a system's service tiers. See 47 U.S.C. 543(c)(3). Such rate changes may involve implicit rate increases (such as deleting channels from a tier without a corresponding lowering of the rate for that tier).[37] As we stated in the *Rate Order*, the triggering mechanism for the filing of the complaint will be a reflection of any rate change on a subscriber's monthly bill. *Id.*[38]

IV. Provisions Applicable to Cable Service Generally

A. Negative Option Billing Practices

63. Section 3(f) of the 1992 Cable Act provides that "a cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name."[39] Unlike other subsections of Section 3, this provision does not specifically delineate the jurisdictional role, if any, of state and local governments in addressing negative option billing practices of cable operators.[40] Language in previous decisions in this proceeding has created confusion concerning this issue. Based on our careful examination of the 1992 Cable Act and its legislative history, we conclude that the Commission as well as state and local governments have concurrent

[33] With respect to money that constitutes a franchise fee overcharge resulting from a refund to subscribers pursuant to a rate-setting procedure, and thus owed by a franchising authority to a cable operator, the cable operator may deduct the amount from future franchise fees, rather than have the franchising authority return it in one immediate lump sum payment.

[34] As we have explained before, administrative difficulties necessitated deferral of the original June 21, 1993, effective date for rate regulation to September 1, 1993. See Order in MM Docket No. 92-266, FCC 93-304, 58 FR 33560 (June 18, 1993); Order in MM Docket No. 92-266, FCC 93-372, 58 FR 41042 (August 2, 1993). In all of these orders, we made clear that refund liability would begin as of the effective date of the rules.

[35] Our rules provide that an operator's liability for refunds for basic tier rates is limited to a one-year period, except in cases where an operator fails to comply with a valid rate order issued by a franchising authority or the Commission. In such cases, the operator can be held liable for refunds commencing from the effective date of the order until such time as the operator complies with the order. In all other cases, the refund period shall run as follows: (1) From the date the operator implements a prospective rate reduction back in time to the effective date of the rules, or one year, whichever is shorter; or (2) from the date a franchising authority issues an accounting order, and ending on the date the operator implements a prospective rate reduction ordered by a franchising authority, then back in time from the date of the accounting order to the effective date of the rules, or one year, whichever is sooner. See 47 CFR 76.942 (b) and (c). The effect of these provisions is that refund liability cannot extend back before the effective date of our rates rules.

[36] We further provided that refunds would include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments. Also, interest would accrue from the date a valid complaint is filed until the refund issues. Rate Order, 8 FCC Rcd at 5867. See also 47 CFR 76.961(a)–(d).

[37] See discussion of implicit rate increases in Rate Order, 8 FCC Rcd at 5917.

[38] We amend § 76.953(b), accordingly, to reflect this clarification.

[39] Communications Act, Section 623(f), 47 U.S.C. 543(f).

[40] Compare section 3(f) with section 3(a) (2), (3), providing that local franchising authorities may obtain jurisdiction to regulate basic service tier rates upon certification by the Commission. Communications Act, section 623(a) (2), (3), 47 U.S.C. 543(a) (2), (3).

jurisdiction to regulate negative option billing.

64. On reconsideration, on our own motion, we examine in greater detail whether, and under what circumstances, state and local governments have authority to regulate negative option billing practices of cable operators. We conclude that the 1992 Cable Act permits state and local governments to employ state or local consumer protection laws to regulate negative option billing. State and local government jurisdiction to regulate negative option billing under consumer protection laws is concurrent with the Commission's jurisdiction to regulate negative option billing under the Communications Act. Therefore, based on our close examination of the preemption issue in this order, we hereby substitute this analysis for two statements made in previous orders which could be read to preempt state and local government jurisdiction to regulate negative option billing practices under state and local consumer protection laws.[41]

65. The negative option billing provision appears in section 3 of the 1992 Cable Act, the section of the statute governing rate regulation. Unlike most of the other provisions of Section 3, however, the negative option billing provision is not limited in its application to those cable services and cable operators subject to rate regulation. Rather, than unqualified negative option billing prohibition applies to all cable services offered by all cable operators, regardless of whether the operators are subject to effective competition.[42] Thus, it appears that the negative option billing provision is more in the nature of a consumer protection measure rather than a rate regulation provision *per se*. Section 8(c)(1) of the 1992 Cable Act provides that "[n]othing in this title [Title VI] shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title."[43] Therefore, given that section 3(f) appears to be a consumer protection measure, unless "specifically preempted" elsewhere in title VI, section 8(c)(1) preserves the ability of a state or local government to exercise any authority it may have under state or local consumer protection laws to regulate negative option billing.

B. Prevention of Evasions

66. The 1992 Cable Act requires the Commission to establish and periodically review regulations to prevent evasion of the rate regulations, including evasion resulting from retiering. 47 U.S.C. 543(h). The Rate Order defined a prohibited evasion as "any practice or action which avoids the rate regulation provision of the Act or Commission rules contrary to the intent of the Act or its underlying policies." Rate Order, 8 FCC Rcd at 5915. The Commission generally opted for a case-by-case approach and declined to delineate specific actions that might constitute evasion. *Id.*[44]

67. In the Rate Order, we stated our belief that it would be virtually impossible to list potentially evasive practice or to determine that a practice constitutes evasion in the absence of a specific factual context, while expressing our expectations that evasions would be remedied by this Commission and local franchising authorities. *Id.* at 5915, 5916. While we still may be unable to list all prohibited practices at this time, certain patterns of conduct have emerged since the adoption of the rate regulations that we can characterize as creating, under certain circumstances, a possible evasion of the rate regulation rules. For example, moving groups of programming services that were offered in tiered packages to *a la carte* packages may be considered, in certain circumstances, an attempt to avoid the rate regulation of those services that had traditionally been offered to customers as part of the programming package intended for regulation by Congress. Such practices may not, depending on the particular circumstances, provide subscribers with the realistic option to purchase unregulated channels on an individual basis, a requirement set forth in the Rate Order.[45] Generally, as discussed in further detail in the Second Order on Reconsideration at Section II C ("*A la carte*" packages"), collective offerings of otherwise exempt per channel or per program services will not be considered an evasion if (1) the price for the combined package does not exceed the sum of the individual charges for each component of service; and (2) the cable operator continues to provide the component parts of the package separately (which requirement will be met if the *a la carte* offering constitutes a realistic service choice.[46]

68. Collapsing multiple tiers of service into the basic tier of service, which ultimately eliminates the service choice previously available to customers and that raises the price of cable service for all basic tier subscribers may also be considered an evasion by circumventing the rules intended to reduce the cost of cable service and to provide for the buy-through of only desired services.[47] Upon receipt of a complaint on any potential evasion, we will consider, *inter alia*, such circumstances as the timing of the cable operator's actions (*e.g.*, whether it occurred on the eve of regulation or in response to the filing of a complaint), the price to subscribers before and after the actions, a comparison of the level of service received by the subscriber before and after the cable operator's actions, and whether the action resulted in the avoidance of the tier buy-through prohibition. Practices that have the effect of increasing subscriber choice and/or reducing rates generally will not be found evasive of our rules.

69. Numerous other practices that have developed since the advent of rate regulation might also be found, depending on individual circumstances,

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[41] One of these statements, in footnote 1095 of the Rate Order, provides that "[w]e do not preclude state and local authorities from adopting rules or taking enforcement action relating to basic services or associated equipment consistent with the implementing rules we adopt and their powers under state law to impose penalties." Rate Order, 8 FCC Rcd at 5905 n.1095. The other statement, in footnote 127 of the First Rates Reconsideration, provides that:

We similarly affirm that franchising authorities may not regulate tier restructuring in a manner that is inconsistent with the 1992 Cable Act. See Communications Act, Sections 623 (a)(1), (f), 47 U.S.C. 543 (a)(1), (f). In particular, local authorities are precluded from regulating negative option billing to prevent tier restructuring regardless of how the local requirement is characterized. The Commission has ruled that cable operators may engage in revenue-neutral tier restructuring without violating the negative option billing procedure.

Id. at 46 n.127 (internal citation omitted).

[42] The legislative history confirms this conclusion. House Committee on Energy and Commerce, H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. at 65 (1992) (the prohibition covers, *inter alia*, "individually-priced programs or channels" that are not subject to rate regulation under the 1992 Cable Act); 138 Cong. Rec. S567–68 (daily ed. Jan. 29, 1992) (remarks of Sen. Gorton, sponsor of the provision).

[43] Communications Act, Section 632(c)(1), 47 U.S.C. 552(c)(1).

[44] In the Rate Order, the Commission did cite three practices that, if established by the evidence, would constitute evasions. This list, however, was not meant to be an exhaustive delineation of rate regulation evasions, but rather was to serve as the foundation for developing policies in this area. Rate Order, 8 FCC Rcd at 5917.

[45] *Id.* at 5837, n.808.

[46] See also interpretive guidelines on whether collective offerings of *a la carte* channels should be accorded regulated or nonregulated treatment, as discussed in the Second Order on Reconsideration at Section II C. As noted therein, packages of *a la carte* channels offered prior to April 1, 1993 will be accorded nonregulated treatment.

[47] The "price to subscribers" and "comparison of the level of service" for purposes of determining whether an operator's collective offering of *a la carte* channels should be accorded regulated or nonregulated treatment or will be considered an evasion will be evaluated within the context of the factors set forth in the Second Order on Reconsideration.

to constitute evasions of the rules or to violate the rules themselves. For instance, operators cannot now charge for services previously provided without extra charge (*e.g.*, routine service calls, program guides) unless the value of that service, as now reflected in the new charges, was removed from the base rate number when calculating the reduction in rates necessary to establish reasonable rates. Also, a single channel provided to the customer that may consist of two or more programming services can be counted only as one channel of service provided for rate-setting purposes. Charging customers to downgrade from service packages that were added without their explicit consent, even where those service packages include previously subscribed services, may be a violation or an evasion of the negative option prohibition. In addition, the delivery of new packages (ironically intended to represent subscriber choice) without an affirmative assent from the subscriber may violate negative option requirements and result in a refund to the customer. Adding previously unneeded equipment and charging for that equipment in order to provide customers with the same services they received previously may also be an evasion of our rules. Operators must realize that these and similar practices, and other practices which directly violate or evade our rules will not be permitted, and that sanctions will be imposed in appropriate circumstances.

C. Grandfathering of Rate Agreements

70. The 1992 Cable Act's grandfather clause allows a franchising authority with a franchise agreement executed before July 1, 1990, that was regulating basic cable rates at that time, to continue such regulation for the remaining term of that agreement without following the Commission's substantive rate standards. 47 U.S.C. 543(j). The Rate Order correctly limited this provision to its explicit terms. Rate Order, 8 FCC Rcd at 5926.

D. Subscriber Bill Itemization

71. *Special taxes.* The 1992 Cable Act allows a cable operator to separately identify certain charges on its bill. *i.e.* the amounts of the bill (1) assessed as a franchise fee (as well as the identity of the franchising authority); (2) assessed to satisfy any requirements the franchise agreement imposes on the operator for costs related to public, educational, or governmental (PEG) channels; and (3) attributable to charges a governmental authority imposes on the transaction between the operator and the subscriber. 47 U.S.C. 542(c). The Rate Order limited the itemization provision to its express terms and found that itemized costs must be direct and verifiable,[48] as well as a reasonable allocation of overhead, and for PEG costs, the sum of the per-channel costs for the number of channels used to meet franchise requirements. Rate Order, 8 FCC Rcd at 5967, 68. The Rate Order also made clear that section 622(c) does not require operators to undertake itemization of any costs. *Id.* at 5967. In the Rate Order, the Commission specifically determined that taxes imposed on rights-of-way and also applicable to other utilities would not be part of a franchise fee and thus could not be itemized, and specifically excluded from itemization California's possessory interest tax. *Id.* at 5968, n. 1399.

72. We have already found ourselves unable to conclude that the California possessory interest tax is, in every instance, a tax on the transaction between the operator and subscriber. See First Rates Reconsideration, *supra* note 17, at para. 106. We found that with varying applications of the tax in different jurisdictions within California, different treatments under our rules would pertain from case to case. Where the assessment of the possessory interest tax is directly related to subscriber revenues, such as where the tax is based on a value of intangible assets formula affectively calculated from the operator's income for the provision of cable service, then it could be accorded external cost treatment, and it similarly would be eligible for itemization on subscriber bills. *Id.* at para. 107. Otherwise it is eligible for neither treatment. As we stated in that earlier decision, we are prepared to allow itemization of utility user taxes in California, or any other jurisdiction, if additional evidence regarding their application in specific instances demonstrates such treatment is warranted under this analytical framework.

73. *Advertising of rates.* The Rate Order prohibited cable operators from advertising prices for cable service that do not include the amount of franchise fees. Rate Order, 8 FCC Rcd at 5972, n. 1415. We remain concerned that consumers could be misled as to the cost of cable services by advertisements which do not include complete rates, and cable operators generally will be required to advertise rates that include all costs and fees. However, in those cases where a system covers multiple franchise areas that have differing franchise fees or other franchise costs, different channel line-ups, or have slightly different rate structures, an operator should be permitted some flexibility for efficient advertising that will reasonably advise potential subscribers of the true cost of service. In such circumstances, an operator can advertise a range of fees, or a "fee plus," rate that indicates the core rate plus the range of possible additions, based on the particular location of the subscriber.[49] An operator need not indicate the total rate for each individual area in such circumstances.

74. *Itemization of "Franchise Related" costs.* We clarify that the costs required under a franchise agreement for "support of institutional networks, free wiring of public buildings, provision of special municipal video services and voice and data transmissions" are properly classified as PEG-related and are therefore itemizable under section 622(c)(2). Rate Order, 8 FCC Rcd at 5967–69.

V. Equipment and Installation

A. Promotions

75. In the Rate Order we stated that operators would be afforded substantial discretion to offer promotions, including a below cost offering for some equipment and installations. Rate Order, 8 FCC Rcd at 5819, 20. Additionally, we stated that certain limits would apply. *Id.* at 5820–21. Consistent with these statements, Section 76.923(j) of our rules allows promotions but limits the recovery, stating: "Operators may not recover the cost of promotional offerings by increasing program service rates above the maximum monthly charge per subscriber prescribed by these rules." Although the rules do not state how in the normal course of setting rates such recovery is to be effected, they do allow that "as part of a general cost-of-service showing, an operator may include the cost of promotions in its general system overhead costs."[50]

76. We believe that our rules do not prevent the recovery of costs of equipment and installations provided to customers free or at reduced rates for the purpose of promoting services. Further, we expect that the benchmark rates already reflect an element of promotional costs because, prior to the

[48] The House Report states that a cable operator shall itemize "only [the] direct and verifiable costs" associated with the categories of costs the Act specifies and should "not include in itemized costs indirect costs." House Committee on Energy and Commerce, H.R. Rep. No. 628, 102d Cong., 2d Sess. at 86 (1992).

[49] For instance, an advertisement might declare that basic service is $14.00 per month plus a franchise fee of 28¢ to 70¢, depending on location, or that it is $14.28 to $14.70, depending on location.

[50] 47 CFR 76.923(j).

inception of benchmark rates, it was fairly routine in the cable industry to periodically run promotional offerings to entice customers to purchase cable services. Considering this, we believe that we have adequately provided for the recovery of promotional offerings when setting the benchmark rates themselves. To the extent that this does not apply to any operator, that operator may attain recovery, if justified, by making a cost-of-service showing. In such case, the costs of promotional offerings may be included, pursuant to § 76.924, in general system overheads. We will, however, continue to monitor this issue. If we find that over time there is evidence that such costs have not been adequately provided for under our existing approach, we will consider any appropriate revisions to our rules or policies at that time.

B. Seasonal Property Related Charges

77. Some operators experience seasonally high maintenance costs associated with the need to turn service on and off at the beginning and end of the season for resort properties. Others provide special maintenance at a special fee that allows seasonal subscribers to avoid the inconvenience of having to disconnect and reconnect at the end and beginning of each season. We do not find that provision should be made for such operators to allow the rates for service to remain higher than average by allowing the cost for the seasonal turn-on and turn-off to remain in the rates for programming service. First of all, these operators are allowed to include the revenues from seasonal orders in their benchmark calculations of rates per channel in effect at September 30, 1992 and on the initial date of regulation.[51] They eliminate the associated costs in determining the maximum allowable rates because these costs are recoverable from separate rates for equipment. If seasonal operators wish to provide special charges for seasonal connect/disconnect services or for off-season maintenance, they may calculate rates for such on Line 7e of Form 393, Part III (or Line 7.e Step B, Equipment and Installation Worksheet, FCC Form 1205), in accordance with our rules.

C. Sale of Home Wiring

78. The Commission requires that upon termination of service, home wiring must be offered for sale to subscribers. Such wiring is to be priced at the replacement cost of the installed material on a per foot basis.[52] There is currently no required schedule for calculation of the charges allowable for home wiring sold to cable customers. It has not been demonstrated that a significantly unique and complicated situation prevails for pricing of home wiring and consequently that a special form is needed. We thus will not impose the additional burden of a special schedule for home wiring. Nevertheless, we clarify that adequate documentation should be maintained to demonstrate compliance with Commission pricing requirements for home wiring as well as for other equipment sold and for installations.

D. Time Lag

79. In the Rate Order, the Commission directed operators to establish an equipment basket for accumulation of equipment and installation costs but did not establish the time periods for measuring equipment basket costs. The Form 393 and related instructions, however, generally require inclusion of historical costs rather than historically-based projected costs. In other words, the actual costs of the year ending are used for the development of rates for the upcoming year instead of projected costs. However, we believe that our methodology, as modified on reconsideration, does not prevent timely recovery of unusually high costs for equipment and installation. We have provided a methodology that eliminates the cost of equipment from service rate calculation because there is a provision to calculate separate rates for installations and equipment. Further, we have clarified in the First Rates Reconsideration that adjustments for unusual changes in operations are permitted, subject to regulatory approval, by using a representative month for developing equipment rates. First Rates Reconsideration, *supra* note 17, at para. 67. Since we believe that this provision will allow operators to recover the full cost of equipment, we will not allow cable operators to use *pro forma* expense figures averaged over the life of the franchise.

VI. Ordering Clauses

80. Accordingly, *It is Ordered* That part 76 of the Commission's rules, 47 U.S.C. part 76, *Is Amended*, as indicated below, May 15, 1994.

81. *It is Further Ordered* That the Petitions for Reconsideration *Are Granted* in part, *Denied* in part, as indicated above, and to the extent that Petitions raise issues concerning leased access rates, they will be disposed of in future orders.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.905 is amended by revising paragraph (c) to read as follows:

§ 76.905 Standards for identification of cable systems subject to effective competition.

* * * * *

(c) For purposes of paragraphs (b)(1) through (b)(3) of this section, each separately billed or billable customer will count as a household subscribing to or being offered video programming services, with the exception of multiple dwelling buildings billed as a single customer. Individual units of multiple dwelling buildings will count as separate households. The term "households" shall not include those dwellings that are used solely for seasonal, occasional, or recreational use.

* * * * *

3. Section 76.914(a)(1) is revised to read as follows:

§ 76.914 Revocation of certification.

(a) A franchising authority's certification shall be revoked if:

(1) After the franchising authority has been given a reasonable opportunity to comment and cure any minor nonconformance, it is determined that state and local laws and regulations are in substantial and material conflict with the Commission's regulations governing cable rates.

* * * * *

4. Section 76.917 is added to subpart N to read as follows:

§ 76.917 Notification of certification withdrawal.

A franchising authority that has been certified to regulate rates may, at any time, notify the Commission that it no

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[51] 47 CFR 76.922.

[52] See Report and Order in MM Docket No. 92-260, 8 FCC Rcd 1435, 1437 (1993); 58 Fed. Reg. 11970 (Mar. 2, 1993), petitions for recon. pending. See also Communications Act, Section 624(i); 47 U.S.C. 544(i).

longer intends to regulate basic cable rates. Such notification shall include the franchising authority's determination that rate regulation no longer serves the interests of cable subscribers served by the cable system within the franchising authority's jurisdiction, and that it has received no consideration for its withdrawal of certification. Such notification shall be served on the cable operator. The Commission retains the right to review such determinations and to request the factual finding of the franchising authority underlying its decision to withdraw certification. The franchising authority's withdrawal becomes effective upon notification to the Commission.

5. Section 76.922(b) is amended by adding paragraph (b)(9) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(b) * * *

(9) *Updating Data Calculations.*

(i) For purposes of this section, if:

(A) A cable operator, prior to becoming subject to regulation, revised its rates to comply with the Commission's rules; and

(B) The data on which the cable operator relied was current and accurate at the time of revision, and the rate is accurate and justified by the prior data; and

(C) Through no fault of the cable operator, the rates that resulted from using such data differ from the rates that would result from using data current and accurate at the time the cable operator's system becomes subject to regulation;

then the cable operator is not required to change its rates to reflect the data current at the time it becomes subject to regulation.

(ii) Notwithstanding the above, any subsequent changes in a cable operator's rates must be made from rate levels derived from data [that was current as of the date of the rate change].

(iii) For purposes of this subsection, if the rates charged by a cable operator are not justified by an analysis based on the data available at the time it initially adjusted its rates, the cable operator must adjust its rates in accordance with the most accurate data available at the time of the analysis.

* * * * *

6. Section 76.923 is amended by adding paragraph (m) to read as follows:

§ 76.923 Rates for equipment and installation used to receive the basic service tier.

* * * * *

(m) Cable operators shall maintain adequate documentation to demonstrate that charges for the sale and lease of equipment and for installations have been developed in accordance with the rules set forth in this section.

7. Section 76.930 is revised to read as follows:

§ 76.930 Initiation of review of basic cable service and equipment rates.

A cable operator shall file its schedule of rates for the basic service tier and associated equipment with a franchising authority within 30 days of receiving written notification from the franchising authority that the franchising authority has been certified by the Commission to regulate rates for the basic service tier. Basic service and equipment rate schedule filings for existing rates or proposed rate increases (including increases in the baseline channel change that results from reductions in the number of channels in a tier) must use the appropriate official FCC form, a copy thereof, or a copy generated by FCC software. Failure to file on the official FCC form, a copy thereof, or a copy generated by FCC software, may result in the imposition of sanctions specified in § 76.937(d). A cable operator shall include rate cards and channel line-ups with its filing and include an explanation of any discrepancy in the figures provided in these documents and its rate filing.

8. Section 76.933 is amended by adding paragraph (d) to read as follows:

§ 76.933 Franchising authority review of basic cable rates and equipment costs.

* * * * *

(d) A franchising authority may request, pursuant to a petition for special relief under § 76.7, that the Commission examine a cable operator's cost-of-service showing, submitted to the franchising authority as justification of basic tier rates, within 30 days of receipt of a cost-of-service showing. In its petition, the franchising authority shall document its reasons for seeking Commission assistance. The franchising authority shall issue an order stating that it is seeking Commission assistance and serve a copy before the 30-day deadline on the cable operator submitting the cost showing. The cable operator shall deliver a copy of the cost showing, together with all relevant attachments, to the Commission within 15 days of receipt of the local authority's notice to seek Commission assistance. The Commission shall notify the local franchising authority and the cable operator of its ruling and of the basic tier rate, as established by the Commission. The rate shall take effect upon implementation by the franchising authority of such ruling and refund liability shall be governed thereon. The Commission's ruling shall be binding on the franchising authority and the cable operator. A cable operator or franchising authority may seek reconsideration of the ruling pursuant to § 1.106(a)(1) of this chapter or review by the Commission pursuant to § 1.115(a) of this chapter.

9. Section 76.937 is amended by adding paragraphs (d) and (e) to read as follows:

§ 76.937 Burden of proof.

* * * * *

(d) A franchising authority or the Commission may find a cable operator that does not attempt to demonstrate the reasonableness of its rates in default and, using the best information available, enter an order finding the cable operator's rates unreasonable and mandating appropriate relief, as specified in §§ 76.940, 76.941, and 76.942.

(e) A franchising authority or the Commission may order a cable operator that has filed a facially incomplete form to file supplemental information, and the franchising authority's deadline to rule on the reasonableness of the proposed rates will be tolled pending the receipt of such information. A franchising authority may set reasonable deadlines for the filing of such information, and may find the cable operator in default and mandate appropriate relief, pursuant to paragraph (d) of this section, for the cable operator's failure to comply with the deadline or otherwise provide complete information in good faith.

10. Section 76.938 is revised to read as follows:

§ 76.938 Proprietary information.

A franchising authority may require the production of proprietary information to make a rate determination in those cases where cable operators have submitted initial rates, or have proposed rate increases, pursuant to an FCC Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing. The franchising authority shall state a justification for each item of information requested and, where related to an FCC Form 393 (and/or FCC Forms 1200/1205) filing, indicate the question or section of the form to which the request specifically relates. Upon request to the franchising authority, the parties to a rate proceeding shall have access to such information, subject to the franchising authority's procedures governing non-disclosure by the parties. Public access

to such proprietary information shall be governed by applicable state or local law.

11. Section 76.939 is added to subpart N to read as follows:

§ 76.939 Truthful written statements and responses to requests of franchising authority.

Cable operators shall comply with franchising authorities' and the Commission's requests for information, orders, and decisions. No cable operator shall, in any information submitted to a franchising authority or the Commission in making a rate determination pursuant to an FCC Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing, make any misrepresentation or willful material omission bearing on any matter within the franchising authority's or the Commission's jurisdiction.

12. Section 76.942 is amended by revising paragraphs (a), (c)(2), and adding paragraphs (c)(3) and (f) to read as follows:

§ 76.942 Refunds.

(a) A franchising authority (or the Commission, pursuant to § 76.945) may order a cable operator to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted tier charge or above the actual cost of equipment, unless the operator has submitted a cost-of-service showing which justifies the rate charged as reasonable. An operator's liability for refunds shall be based on the difference between the old bundled rates and the sum of the new unbundled program service charge(s) and the new unbundled equipment charge(s). Where an operator was charging separately for program services and equipment but the rates were not in compliance with the Commission's rules, the operator's refund liability shall be based on the difference between the sum of the old charges and the sum of the new, unbundled program service and equipment charges. Before ordering a cable operator to refund previously paid rates to subscribers, a franchising authority (or the Commission) must give the operator notice and opportunity to comment.

* * * * *

(c) * * *

(2) From the date a franchising authority issues an accounting order pursuant to § 76.933(c), to the date a prospective rate reduction is issued, then back in time from the date of the accounting order to the effective date of the rules; however, the total refund period shall not exceed one year from the date of the accounting order.

(3) Refund liability shall be calculated on the reasonableness of the rates as determined by the rules in effect during the period under review by the franchising authority or the Commission.

* * * * *

(f) At the time a franchising authority (or the Commission, pursuant to paragraph (a) of this section) orders a cable operator to pay refunds to subscribers, the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchising authority must promptly return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments.

13. Section 76.943 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 76.943 Fines.

* * * * *

(b) If a cable operator willfully fails to comply with the terms of any franchising authority's order, decision, or request for information, as required by § 76.939, the Commission may, in addition to other remedies, impose a forfeiture pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b).

(c) A cable operator shall not be subject to forfeiture because its rate for basic service or equipment is determined to be unreasonable.

14. Section 76.944 is amended by revising paragraph (b) to read as follows:

§ 76.944 Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.

* * * * *

(b) Any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision as computed under § 1.4(b) of this chapter. Appeals shall be served on the franchising authority or other authority that issued the rate decision. Where the state is the appropriate decisionmaking authority, the state shall forward a copy of the appeal to the appropriate local official(s). Oppositions may be filed within 15 days after the appeals is filed, and must be served on the party(ies) appealing the rate decision. Replies may be filed 7 days after the last day for oppositions and shall be served on the parties to the proceeding.

15. Section 76.945(b) is revised to read as follows:

§ 76.945 Procedures for Commission review of basic service rates.

* * * * *

(b) Basic service and equipment rate schedule filings for existing rates or proposed rate increases (including increases in the baseline channel change that results from reductions in the number of channels in a tier) must use the official FCC form, a copy thereof, or a copy generated by FCC software. Failure to file on the official FCC form or a copy may result in the imposition of sanctions specified in § 76.937(d). Cable operators seeking to justify the reasonableness of existing or proposed rates above the permitted tier rate must submit a cost-of-service showing sufficient to support a finding that the rates are reasonable.

* * * * *

16. Section 76.946 is added to subpart N to read as follows:

§ 76.946 Advertising of rates.

Cable operators that advertise rates for basic service and cable programming service tiers shall be required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a "fee plus" rate that indicates the core rate plus the range of possible additions, depending on the particular location of the subscriber.

17. Section 76.953(b) is revised to read as follows:

§ 76.953 Limitation on filing a complaint.

* * * * *

(b) *Complaint regarding a rate change.* Except as provided in paragraph (a) of this section, a complaint alleging an unreasonable rate for cable programming service or associated equipment may be filed against a cable operator only in the event of a rate change, including an increase or decrease in rates, or a change in rates that results from a change in a system's service tiers. A rate change may involve an implicit rate increase (such as deleting channels from a tier without a corresponding lowering of the rate for that tier). A complaint regarding a rate change for cable programming service or associated equipment may be

filed against a cable operator only in the event of a rate change. A complaint regarding a rate change for cable programming service or associated equipment must be filed with the Commission within 45 days from the date the complainant receives a bill from the cable operator that reflects the rate change.

* * * * *

18. Section 76.956(a) is revised to read as follows:

§ 76.956 Cable operator response.

(a) Unless the Commission notifies a cable operator to the contrary, the cable operator must file with the Commission a response to the complaint filed on the applicable form, within 30 days of the date of service of the complaint. The response shall indicate when service occurred. Service by mail is complete upon mailing. See § 1.47(f) of this chapter. The response shall include the information required by the appropriate FCC form, including rate cards, channel line-ups, and an explanation of any discrepancy in the figures provided in these documents and the rate filing. The cable operator must serve its response on the complainant (and, if the complainant is a subscriber, the relevant franchising authority) via first class mail.

* * * * *

19. Section 76.961 is amended by revising paragraph (b) and adding paragraph (e) to read as follows:

§ 76.961 Refunds.

* * * * *

(b) The cumulative refund due subscribers shall be calculated from the date a valid complaint is filed until the date a cable operator implements a prospective rate reduction as ordered by the Commission pursuant to § 76.960. The Commission shall calculate refund liability according to the rules in effect for determining the reasonableness of the rates for the period of time covered by the complaint.

* * * * *

(e) At the time the Commission orders a cable operator to pay refunds to subscribers, the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchising authority may return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments.

20. Section 76.984 is revised to read as follows:

§ 76.984 Geographically uniform rate structure.

(a) The rates charged by cable operators for basic service, cable programming service, and associated equipment and installation shall be provided pursuant to a rate structure that is uniform throughout each franchise area in which cable service is provided.

(b) This section does not prohibit the establishment by cable operators of reasonable categories of service and customers with separate rates and terms and conditions of service, within a franchise area. Cable operators may offer different rates to multiple dwelling units of different sizes and may set rates based on the duration of the contract, provided that the operator can demonstrate that its costs savings vary with the size of the building and the duration of the contract, and as long as the same rate is offered to buildings of the same size with contracts of similar duration.

(c) Contracts between cable operators and multiple dwelling units entered into on or before April 1, 1993 may remain in effect until their previously agreed-upon expiration date.

[FR Doc. 94–9050 Filed 4–14–94; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 93–215, CS Docket No. 94–28; FCC 94–39]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order and a Further Notice of Proposed Rulemaking establishing rules to implement the cost of service alternative to the primary benchmark/price cap approach to setting regulated cable service rates. The Further Notice of Proposed Rulemaking (FNPRM) segment may be found elsewhere in this **Federal Register**. The Report and Order sets forth regulatory requirements to govern cost-of-service showings for cable operators who elect to justify rates above levels determined under benchmark/price cap requirements. The Report and Order, summarized here, adopts a regulatory model based on the cost-of-service formulation that permits cable operators to recover reasonable operating expenses and a fair return on investment, while protecting consumers from unreasonably high rates. Although the Report and Order adopts requirements designed to be consistent with the Commission's telephone ratebase/rate of return formula, the requirements are simpler and easier to administer than the telephone model and can accommodate individual case review. The Report and Order establishes (1) procedural and filing requirements for cost-of-service showings; (2) rules for determining the cable operator's ratebase; (3) rules for determining the appropriate level of recoverable expenses; (4) an interim overall return of 11.25% on ratebase; (5) accounting and cost allocation requirements; (6) accounting and cost allocation requirements for external cost treatment; (7) requirements for affiliated transactions; (8) streamlined filing requirements for small systems; (9) streamlined filing requirements for network upgrades; (10) procedures for emergency rate review based on a showing of special circumstances; and (11) an experimental Upgrade Incentive Plan.

EFFECTIVE DATE: May 15, 1994.

FOR FURTHER INFORMATION CONTACT: JoAnn Lucanik (202) 416–1163; Paul D'Ari (202) 416–1166; John Adams (202) 416–1165.

SUPPLEMENTARY INFORMATION: The text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Report and Order

The Commission began its implementation of the 1992 Cable Act with an initial Notice of Proposed Rulemaking (Notice of Proposed Rulemaking in CC Docket No. 93–215, FCC 93–353, 58 FR 40762, released July 30, 1993), and established initial rules to implement the Cable Act of 1992 in the Rate Order.[1] The Commission adopted a benchmark and price cap approach to serve as the primary regulatory mechanism for setting initial

[1] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Notice of Proposed Rulemaking in MM Docket No. 92–266, 58 FR 48, released January 4, 1993; (NPRM); Report and Order and Further Notice of Proposed Rulemaking, 58 FR 29736, released May 21, 1993 (Rate Order); Second Further Notice of Proposed Rulemaking in MM Docket No. 92–266, 58 FR 41042, released August 18, 1993 (Second Notice); First Reconsideration Order, Second Report and Order, and Third Further Notice of Proposed Rulemaking in MM Docket No. 92–266, 58 FR 4678, released Sept. 29, 1993 (First Rates Reconsideration); Third Report and Order in MM Docket No. 92–266, 58 FR 60141, released November 15, 1993.

regulated rates and for governing rates on a going forward basis. The Commission also concluded in the Rate Order that the benchmark/price cap framework might not produce fully compensatory rates in all cases, and accordingly decided to permit cable systems to establish rates based on costs pursuant to individual cost-of-service showings. The cost-of-service approach was to serve as a backup to the benchmark/price cap mechanism which a cable operator could invoke if it believed that the maximum rate under the benchmark/price cap formula would not enable the operator to recover costs that it reasonably incurred in the provision of regulated cable services.

The Rate Order concluded that the use of the benchmark/price cap approach as the primary regulatory mechanism, and the use of a cost-of-service safety valve as a supplemental mechanism, for regulating cable services is fully consistent with the applicable statutory requirements. However, the record in MM Docket 92–266 did not provide sufficient information to allow for development of detailed cost-of-service rules for the cable industry. Accordingly, the Commission indicated that general cost of service principles would apply for cost-of-service showings for the time being, and the present proceeding was initiated by issuing a Notice of Proposed Rulemaking that invited comment on the adoption of cost-of-service goals and rules, and on the role that a cost-based approach to ratemaking should play in our regulation of cable service rates.[2]

This Report and Order establishes rules implementing a cost of service alternative to our primary benchmark and price cap approach to setting regulated cable service rates.[3] In this Report and Order the following regulatory requirements to govern cost-of-service showings are adopted:

The regulatory requirements adopted in the Report and Order are on an interim basis, pending completion of cost studies of the cable industry as described elsewhere in the FNPRM. The interim rules, which apply only in cases where the cable operator elects to rely on a cost-of-service showing rather than on benchmark/price cap requirements, will apply to rates charged or to be charged after the effective date of the cost rules; general cost of service principles will govern rates in effect prior to the effective date of these rules. Thus, to the extent that a franchising authority's examination of basic rates relates to both periods, it would apply the appropriate rules to each period. The Commission will take a similar approach to resolve cable programming complaints that cover both periods. Subsequent cable programming service complaint proceedings or basic tier proceedings relating to rates while the interim rules remain effective will be determined in accordance with the interim rules if the cable operator elects to justify rates as cost-based. If the permanent rules differ from the interim rules, the permanent rules will apply to proceedings relating to rates after their effective date.

Cost of Service Rates Effective

The Report and Order requires that the rate established in a cost-of-service proceeding is the permitted rate, even if it is lower than the rate that would have been determined under the benchmark/price cap approach. Once a rate is established through a cost-of-service proceeding, the rate will be governed by the price cap mechanism.

(1) Procedural and Filing Requirements

Two year interval and election by cable operator only. The Report and Order requires that after setting initial regulated rates under either the benchmark or cost-of-service approach, absent a special showing, operators may not file a cost-of-service showing to justify a new rate for two years. This two-year period will be measured from the effective date of the rates set in a local or Commission decision. The Report and Order finds that a period of two years is a reasonable frequency limitation and will adequately reflect changes in both cost and revenue. A two-year period will also allow for the development of regulatory stability, and the reduction of regulatory burdens. This approach will lessen the administrative burdens of duplicative cost-of-service showings, while furnishing operators a reasonable opportunity to recoup the costs of providing regulated cable services. Although the rules adopted in the Report and Order do not foreclose a cable operator's presenting new cost-of-service data to justify a rate that exceeds the capped rate after a two-year period, multiple cost-of-service showings should be rare, since future adjustments to rates are provided for under the price cap mechanism. The Commission may find it reasonable, following a cost-of-service showing, to set rates that include a scheduled reduction or other adjustment; or may establish rates that are not expected to change, other than under the price cap, pending subsequent cost-of-service showings.

The Report and Order does not allow for local franchising authorities to initiate cost-of-service proceedings or general data collections. Any benefits that might be derived from such a provision would be outweighed by the cost, and could conflict with the statutory requirement to minimize the administrative burdens of rate regulation. Moreover, the primary benchmark/price cap approach to setting rates will assure that rates for regulated cable service are reasonable. Accordingly, the election to choose to set rates pursuant to a cost-of-service showing remains with the cable operator, the Report and Order does not provide for local authorities to initiate cost of service regulation.

Presumptive standards. While the rules adopted in the Report and Order are of general applicability, the rules establish presumptive standards that operators may seek to overcome in individual proceedings. Thus, in certain circumstances, as described further in the Report and Order, operators can present evidence seeking to justify higher rates than would otherwise be permitted under the cost rules. This provision assures that application of the cost rules will not adversely impact the cable industry, and achieves the goal of assuring that cable operators can recover reasonable costs of providing service in high cost areas. Thus, the cost of service alternative provides a safeguard for the industry from possible adverse effects in individual cases of the primary, benchmark/price cap approach and from any adverse effects resulting from general applicability of the cost rules.

Cost of service form. The Report and Order adopts the use of a uniform cost of service form. Use of a form will lessen administrative burdens for industry and regulators by providing uniformity in presentation and review of cost information. The cost of service form will provide a clear standard for the cost support required from operators, and permit easy comparison with previously filed information. The Report and Order adopts a general cost of service form and a simplified cost of service form for small systems; operators seeking to justify rates based on cost of service are required to use one of these two forms. Form 1220 is the general cost of service form in hard copy; Form 1225 is the simplified

[2] Notice of Proposed Rulemaking in MM Docket No. 93–215, FCC 93–353, 58 FR 40762, released July 30, 1993 (Notice).

[3] In a separate decision, the Commission is adopting significant modifications to the benchmark and price cap approach to setting regulated cable service rates. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket 92–266, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, FCC 94–38 (Benchmark Order).

version of the cost of service form, for small systems, in hard copy. The forms are being released as separate documents. Operators may attach additional worksheets to explain form entries or unusual circumstances. In addition, cable operators must submit with their cost of service form, FCC Forms 1200, 1210, 1211, and 1215 to show the rate that will be permitted under the benchmark/price cap approach.

For purposes of evaluating proposed rates in pending cost-of-service proceedings for the period that commences after the effective date of these new cost rules, the Report and Order requires that all cable operators with pending cost-of-service proceedings for any regulated tier file the cost of service forms that are being adopted with this Report and Order by July 14, 1994.

(2) Rules for Determining Ratebase

The Report and Order adopts the used and useful and prudent investment standards to govern amounts that may be included in the ratebase. The used and useful and prudent investment standards allow into the ratebase portions of plant that directly benefit the ratepayer, and exclude any imprudent, fraudulent, or extravagant outlays.

Valuation of ratebase at original cost. The Commission considered various approaches to determining the value of plant included in the ratebase, including: Market value, original cost, replacement cost, reproduction cost, a combination of these approaches, and other approaches that were proposed by commenters. The Report and Order notes that under applicable judicial precedent, regulators have wide discretion to select a methodology for purposes of valuating ratebase, provided that the end result is reasonable, and the approach selected should be the one that best implements the goals for cost-based rates of cable service.

The Report and Order concludes that an original cost approach is most likely to produce fair and reliable valuations of plant in service, and allows the best opportunity for balancing operators' reasonable recovery of costs with consumers' payment of rates that reflect only costs reasonably incurred in providing regulated service. The Report and Order goes into considerable detail addressing the other methods proposed by commenters for valuation of the ratebase, and finds that none of the other valuation approaches provides the same reliability and fairness as the original cost valuation approach.

For purposes of the cable cost-of-service rules, the Report and Order defines original cost as the actual money cost (or the money value of any consideration other than money) of property at the time it was first used to provide cable service. Costs for both constructed and purchased systems will be subject to scrutiny by the appropriate regulatory authority to determine whether the investment was prudent and the plant is used and useful.[4]

The Report and Order notes that original cost is the normal, now traditional method used for public utility valuation, and is the method this Commission has long used for telephone companies. By relying on actual expenditures rather than speculative or contentious valuation methods, original cost is far more likely to achieve the desired result: Reasonable rates for customers, a fair opportunity for a reasonable return for operators, and reduce administrative burdens. The practical benefits of original cost valuation in general are that it is less administratively burdensome on all involved, and well understood.

Thus, unlike the other valuation approaches, original cost does not require estimates of current values that may be difficult or expensive to determine, and that are in any event likely to be largely matters of opinion. Unlike market-based valuation methods, it does not present the problem of circularity, where the valuation method chosen itself affects the value that the market is likely to place on the system. It is also not constantly changing as the economy, technology, and customer needs change. Original cost valuation is also recognized and defined, and used for financial accounting purposes, as part of Generally Accepted Accounting Principles (GAAP). Indeed, it has been the Commission's policy in recent years to bring its regulatory accounting into conformance with GAAP as far as possible.[5] Use of original cost for cable systems will help implement this policy and minimize regulatory accounting burdens.

The Report and Order took note of the numerous comments arguing that original cost is often simply unascertainable, and found that there is validity in this argument in some cases for purchased systems. The Report and Order acknowledges that use of an estimated original cost when actual original cost is not available is provided for under telephone regulation, 47 CFR 32.2000(b)(2)(ii). Because this approach creates the need for individual scrutiny not only of the estimated original cost but also of underlying "particulars," this is not a preferred alternative to original cost for cable services regulation. However, the Report and Order determines that in the event that an operator does not possess adequate records of original cost, the operator will be permitted to estimate original cost. The operator will be required to show the basis for the estimate with supporting documentation. In addition, the Report and Order permits valuation of tangible plant in service at the book value recorded by the operator at the time of acquisition, if the operator can demonstrate that book value approximates original cost. All cost showings for acquired systems must include the book value of tangible plant in service as recorded at the time of acquisition, as required on Forms 1220 and 1225.

The Report and Order recognizes that original cost valuation, like any valuation methodology, has theoretical limitations—in this case, that it is a backward-looking approach to costs. However, these limitations do not prevent it from being a practical, workable foundation for establishing the value of tangible plant in service. To the extent that use of original cost for computing the ratebase affects the risks that investors may assign to cable systems, the Report and Order takes account of such risks in determining a reasonable rate of return that will allow the system to operate successfully and attract the necessary capital. Thus, in setting the rate of return, the Commission has adopted a rate toward the high end of the zone of reasonable returns, as a cautious approach to assure continued incentives for future investment.

Accumulated start-up loses. The Report and Order concludes that some accumulated start-up losses, to the extent that they reflect operating losses in the early years of the system, should be included in the ratebase. These losses could be considered to meet the used and useful standard in that it is

[4] The regulator may examine whether the construction costs were reasonable, whether plant is operating at a reasonable level of capacity, and whether costs are properly apportioned between regulated and nonregulated activities. In this respect the Commission requires operators subject to regulation under section 623 of the Communications Act, 47 U.S.C. 543, to keep, maintain and protect records subject to regulations adopted in this Report and Order for a period of not less than 5 years. The Commission has authority to take this action under sections 4(i) and 623 of the Communications Act, 47 U.S.C. 4(i) and 543.

[5] See, *e.g.*, Revision of Uniform System of Accounts, Classes A, B, and C Telephone Companies, CC Docket No. 78–196, Report and Order, 51 FR 43498, Dec. 2, 1986. Continuing this Commission's reliance on GAAP, the Commission directs that GAAP shall generally apply in our regulation of cable rates, unless specifically noted otherwise.

frequently necessary for businesses during a start-up phase to sustain a period of losses prior to profitability. As such, the losses benefit customers because it is necessary for the operator to incur them in order to bring future service to subscribers. There is a concern, however, that current customers not be burdened with excessive or unreasonable costs from previous periods of operation; that cable operators' recovery of these costs not be unlimited in time, especially after the losses have been recouped; and that subscribers not pay for losses incurred in expectation of recovery of future supra-competitive profits.

The Report and Order relies on Financial Accounting Statements Board Standard No. 51 ("FASB 51") which suggests that a two-year period is a reasonable and representative start-up time for cable systems. Based on the record, the Report and Order determines that this period would permit recovery of losses necessary for start-up of a cable system, and that a subscriber base is likely to be well established by the end of the second year of operation. Therefore, an allowance is made for recovery in the ratebase of accumulated start-up losses that are equal to the lesser of the first two years of operating costs or accumulated losses incurred until the system reaches the end of its prematurity stage as defined by FASB 51. The Commission believes that losses incurred during this period are most directly linked to the creation of the system that is currently providing services to subscribers.

Cable operators are, of course, free to make a showing that demonstrates the appropriateness of a practical adjustment to this rule in light of their particular circumstances. Operators are also free to present evidence to rebut disallowance of other accumulated losses. In challenging this or any presumptive disallowance, the operator must present detailed evidence demonstrating that the cost has produced a tangible benefit for subscribers that would not have existed but for the cost; and that the relevant plant is used and useful in the provision of regulated cable service, and represents a prudent investment. The operator may present evidence that allowance is necessary for compensatory rates. In making its determination, the regulatory authority should take into account the effect that allowance of these will have on the operator's rates in comparison to rates that would have developed in a competitive environment, and whether allowance of these costs will produce reasonable rates.

The Report and Order finds that these accumulated start-up losses may be included in the ratebase, and the operator may earn on them the reasonable rate of return as defined below. However, these accumulated losses must be amortized over a reasonable period. The Report and Order finds that presumptively this amortization period should not be longer than fifteen years. The Report and Order requires the cable operator to submit detailed evidence of the effect the amortization period has on rates in comparison to competitive rates of similar systems. The Report and Order allows the regulatory authority, after careful scrutiny, to revisit the amortization period if it will produce unreasonable rates. The Report and Order holds that, unless otherwise provided by this Commission, amortization, for purposes of the rules adopted in this proceeding, shall be computed on the straight-line method, *i.e.*, equal amounts shall be recovered in each year of the amortization period. This approach has been applied successfully in common carrier regulation; see 47 CFR § 32.2000(h). Finally, recovery of these costs is permitted only to the extent that they are recorded on the company's books as such. The amortization of allowed start-up losses must begin at the end of the prematurity phase of operation, and should generally be completed during the service life of the longest-lived depreciable assets.

Other losses. The Report and Order concludes that other losses are presumptively excluded from the ratebase: These include continuing operating losses after the system reaches maturity (for these purposes a system reached maturity as defined by FASB 51, *i.e.*, presumptively within two years), and accumulated losses associated with amortization of disallowed goodwill or interest expenses associated with disallowed goodwill. This treatment is appropriate because these costs presumably benefited past subscribers, or were incurred in the expectation of monopoly profits or profits from nonregulated activities, and thus should not be borne by current and future subscribers.

Cable operators have the opportunity of making a showing to overcome this presumption. Such a showing would demonstrate that these costs benefit both current and future ratepayers, and that they were prudently invested in plant that is used and useful in the provision of regulated services. Operators may also present evidence that allowance is necessary to produce compensatory rates.

Treatment of intangibles. The Report and Order addresses the treatment of intangibles in the ratebase. In instances where there is a lack of effective competition, as in the period prior to the adoption of the Cable Act of 1992, the Report and Order finds that acquisition prices are likely to include amounts paid in expectation of supra-competitive profits and growth premiums for unregulated services. Traditional principles of ratemaking and the policies embodied in the Cable Act of 1992 also warrant disallowance of costs that do not represent reasonable costs of providing regulated services to customers, equivalent to the costs that would be incurred under competition. This generally includes acquisition costs recorded as goodwill. The Report and Order makes clear that disallowance of these costs, contrary to some parties' assertions, is not a penalty but part of the normal and proper balancing of the interests of investors and ratepayers.

However, the Report and Order finds that operators are correct in pointing out that some intangible costs do represent cost of providing service that are legitimately included in the operator's ratebase or revenue requirement. This is true whether the operator is an original owner or a purchaser of an established system. Further, such allowance is consistent with the Commission's Part 32 rules, which allow telephone companies to recover intangible costs related to "organizing and incorporating the company, original costs of franchise rights, patent rights, and other intangible property having a life of more than one year." (47 CFR 32.2690). These costs produce assets that provide benefits to subscribers and are reasonably recoverable from subscribers.

To balance investors' and ratepayers' interests fairly, the Report and Order holds that in some cases intangible costs are presumptively allowed in the ratebase. Intangible costs that are generally reasonable costs of providing service, that would be incurred under competition, and that are used and useful in the provision of regulated services, are properly recoverable in rates. In some cases intangible costs may be included in the ratebase; in other cases, they may be treated as an expense, and amortized over a period of years. The Report and Order holds that other intangible costs, including goodwill, will be presumptively excluded.

Organizational costs. The Report and Order finds that organizational costs are presumptively allowed into the ratebase to the extent they are prudently invested and are useful in the provision of

regulated cable service. Organizational costs typically consist of the cost of organizing and incorporating the company. They will ordinarily have been incurred by the entity originally providing cable service in the franchise area in question. These organizational costs should represent costs that benefit customers, in that they must necessarily be incurred for the entity to be able to provide service. See 47 CFR 32.2690. The Report and Order however presumptively disallows from this category stock given to the organizer the value of which is in excess of reasonable salary.

The Report and Order allows operators to continue to recover their capitalized organizational costs based on GAAP through amortization over a reasonable period, subject to scrutiny by the appropriate regulatory authority as to the reasonableness of rates produced by the recovery period. However, the Report and Order notes that it is not necessarily the case that the time period until renewal of a franchise is the appropriate capitalization period for organizational costs, because generally there is an expectation of franchise renewal. Proponents of some period other than the franchise period should support their proposal.

Franchise costs. The Report and Order concludes that the original costs associated with a government franchise are allowed into the ratebase if the costs: (1) Are associated with the costs of winning the franchise; and (2) in the case of purchased systems, are costs that were directly borne by the seller. The Report and Order finds that these costs are presumptively allowed to the extent they are prudently invested and are useful in the provision of regulated cable service. The Report and Order notes that original costs of government franchises are often allowed into the ratebase under traditional cost-of-service principles, because they must necessarily be incurred for the entity to be able to provide service. (See 47 CFR 32.2690). The Report and Order holds that operators will be allowed to continue to recover their capitalized franchise right based on GAAP through amortization over a reasonable period, subject to scrutiny by the appropriate regulatory authority as to the reasonableness of rates produced by the recovery period.

Customer lists. The Report and Order finds that customer lists, too, are presumptively allowed into the ratebase, to the extent that they reflect costs capitalized during prematurity, as defined by FASB 51, and are prudently invested and useful in the provision of regulated cable service. Operators will be allowed to continue to recover these costs through amortization over a reasonable period based on GAAP, subject to scrutiny by the appropriate regulatory authority as to the reasonableness of rates produced by the recovery period.

Acquisition costs. The issue of whether the acquisition costs of cable systems should be considered or accepted for computing ratebases and revenue requirements overlaps to a degree with the question of the plant valuation method that should apply. But the Report and Order emphasizes that the two matters are distinct, especially under the particular circumstances presented by the reimposition of cable service rate regulation by the Cable Act of 1992. Regardless of the valuation method that might be applied now and in the future, the issue cable operators raise is whether the cost-of-service methodology should recognize the prices paid for cable systems in the past, especially during the period when systems were unregulated. The Report and Order concludes that the prices paid for cable systems, especially during the period when those systems possessed market power, are not a reliable or reasonable basis for ratemaking, and that excess acquisition costs, or "goodwill", are therefore from ratebase.

The Report and Order defines "goodwill" as the portion of plant purchase price that cannot be assigned specifically to identifiable property acquired and that is not recorded on the operators' books of account as accumulated losses, subscriber lists, franchise rights, patent rights or organizational costs. The Report and Order concludes that "goodwill," including going-concern value, should be presumptively disallowed from the ratebase because it is likely to represent expectations of supra-competitive profits and other outlays that should not be borne by regulated service customers.

The Report and Order recognizes the importance and controversy that this issue generates, both for operators and customers, because many cable systems changed hands during the years when cable service was essentially unregulated, and in many cases the prices paid exceeded the original cost or the book value of the purchased cable system's tangible assets. These costs to the buyer, termed "excess acquisition costs," are generally recorded as "goodwill". The Report and Order addresses the many arguments made by cable operators for recognition of acquisition costs for computing costs of service. Cable operators claim, variously, that the price paid is either a measure of the fair value of the system, or the proper valuation for assets brought into regulation, or a proper exception to the usual valuation rules to recognize the need for a transition tailored to the characteristics of the cable industry, or a constitutional requirement to prevent confiscation.

The Report and Order sustains the Commission's belief that the prices paid for cable systems, especially during the period when those systems possessed market power, are not a reliable or reasonable basis for ratemaking, and that their use is not required or supported by public utility practice, the purposes of the Cable Act of 1992, or the Constitution. The Report and Order notes that on the FCC's own analysis conducted as part of the development of governing rates set under the benchmark approach, and the study submitted in support of the use of acquisition prices, the Kolbe/Vitka Study, by Viacom, one of the largest cable operators, in reaching the conclusion that acquisition prices often include some expectation of supra-competitive profits that the market power of cable systems operating in a less than fully competitive environment could expect to generate. The Report and Order notes that the magnitude of this expectation probably varied over time, increased by the growing list of cable channels that could be obtained only by subscribing to cable service, and discounted by investors' assessment of the risks of competitive entry and re-regulation. Buyers and sellers negotiating acquisition prices clearly took into account the competitive status of cable systems and their consequent market power. Individual investors purchasing shares in cable companies no doubt also included this factor.

The Report and Order further notes that it is likely that acquisition prices included assessments of the profits that might be gained from emerging cable services that remain unregulated but could be expected to experience more rapid growth and penetration than those services that were made subject to regulation. Premium services such as HBO and Showtime, pay-preview services, interactive services such as home shopping, and other offerings all represent newer sources of profit with greater potential for expansion. System prices can reasonably be expected to include the potential earnings for these actual and planned offerings. Moreover, it is certainly possible that even arm's-length transactions resulted in prices that were simply too high; transactions were based upon overly optimistic projections of growth, the direction of the economy, and the buyer's ability to

reduce operating costs or increase the value to customers. The Report and Order finds that acceptance of these prices as a fair measure of the value of the facilities used to provide regulated services would require customers for those services to act as guarantors of the recovery of those prices, regardless of how inflated they might have been. Such allowance would not be appropriate or reasonable or in the public interest.

The Report and Order points out that traditionally, such excess acquisition costs have been partly or wholly excluded from the ratebase of regulated concerns, because these costs are seen as inappropriate costs for ratepayers to bear. (*E.g.*, 47 CFR 32.2005, 32.2007; *San Diego Land & Town Co.* v. *National City*, 174 U.S. 739, 757–758 (1899); *Simpson* v. *Shepard (Minnesota Rate Cases)*, 230 U.S. 352, 454 (1913)). This is because these costs typically benefit the seller, not the ratepayer; they do not contribute to the plant supporting regulated service. The Report and Order also notes that disallowance of goodwill for monopoly cable systems is consistent with findings of the United States Tax Court in *Tele-Communications, Inc.* v. *Commissioner of Internal Revenue*, 95 T.C. No. 36 (1990).

The Report and Order holds that the decision to disallow acquisition costs, to the extent they include capitalized supra-competitive profits, is consistent with, if not indeed compelled by, the theory and purposes of the Cable Act of 1992. The Act does not instruct the consideration of acquisition costs or the prices individual shareholders paid for cable companies before the adoption of the Act. The language and legislative history of the Cable Act of 1992 demonstrate a primary concern with preventing the undue market power of cable operators subject to neither regulation nor effective competition from setting supra-competitive rates. The Report and Order concludes that allowance of the acquisition price of cable systems as part of the costs of service would present a substantial probability of passing on to customers costs that reflect neither the costs of providing service nor the costs that would be incurred under competition.

Operating efficiencies provide rebuttable presumption. The Report and Order recognizes that there may be sales of cable systems, as some commenters claim, that benefit subscribers by generating operating efficiencies that are unobtainable by the seller. The Report and Order finds that it is appropriate to consider whether these efficiency gains warrant inclusion of some part of the goodwill in the rate calculation. However, in any such case, the Report and Order requires that the operator clearly rebut the presumption against including goodwill by demonstrating the nature and value of the net efficiency gains and, most importantly, that these gains resulted in concrete, tangible benefits to subscribers, especially in the form of better and more varied regulated services. Efficiency gains that permitted the buyer to improve its margins but did not benefit subscribers will not lay the foundation for allowing goodwill to be included in the rates subscribers pay.

The Report and Order requires that operators wishing to overcome the presumption that goodwill is excluded from inclusion in the ratebase demonstrate that allowance of these costs will result in reasonable rates, that the costs are the result of an arm's-length transaction, and that the goodwill has produced for subscribers concrete benefits that would not have been realized otherwise. To the extent that the operator seeks to justify rates above competitive levels based on inclusion of goodwill, there is a heavy presumption against inclusion of these costs. Operators making such a showing will be required to show the nature of each cost they are seeking to justify for inclusion in the ratebase, and should provide all pertinent data relating to the acquisition. At a minimum, this includes the purchase price of plant, its book value, a description of plant, the effect on subscribers, the results of a valuation study, and the results of any request for franchise approval.

The Report and Order provides that in reviewing such showings, the franchising authority or the Commission is to scrutinize the extent to which inclusion of these costs will produce rates above competitive levels. To the extent that they do, the operator will need to demonstrate why its particular situation justifies inclusion of these costs in the ratebase.

Plant under construction. The Report and Order adopts the capitalization method to govern ratemaking treatment of plant under construction. The capitalization method is the traditional method for considering plant under construction. Under this approach, plant under construction is excluded from the ratebase, but the operator calculates an allowance for funds used during construction (AFUDC) and includes this allowance in the cost of construction. As construction is completed and the plant is placed into service, the cost of construction (including AFUDC) is included in the ratebase and recovered through depreciation. This method has been used by various regulatory authorities to provide reasonable rates for utilities. Further, this method will allow operators to recover interest from the construction period only after the plant is placed in service. Interest is to be computed at prime rate or at the operator's demonstrated cost of the funds used for the construction. AFUDC is allowed only to the extent the related costs are not already included in start-up losses.

Cash working capital. The Report and Order adopts a presumption of a zero allowance for cash working capital. The Report and Order finds that cable subscribers are generally billed in advance for regulated cable services, and billed in arrears for nonregulated services such as pay-per-view. Cable operators generally pay vendors, employees, and taxing authorities in arrears. The Report and Order also notes that it is possible, where receipts lead outlays, to establish a negative cash working capital allowance. Given these circumstances, the Report and Order finds it appropriate to adopt a presumption that a zero allowance is needed to support the regulated cable services. A cable operator may rebut the presumption by establishing that its operations do not fit the industry mold, and that it requires the establishment of a cash working capital allowance.

Excess capacity. The Report and Order concludes that operators are allowed to include in the ratebase any excess capacity that will be used within a twelve-month period. As with start-up losses, recovery of these costs is allowed only to the extent that they are recorded on the company's books as such. The amortization of allowed costs must begin at the end of the prematurity phase of operation, and should generally be completed during the service life of the longest-lived depreciable assets. This will generally be no longer than fifteen years.

The Report and Order notes that the price cap adjustment and network upgrade plans (discussed below) make adequate provision for the addition of channels and capacity. Thus, while there is an allowance in the ratebase for any facilities that are not currently used and useful, but will be used and useful within one year, if they are included in the ratebase, they may not in any part be reflected in annual operating expenses or in any price cap adjustment. This will assure that no double or excessive recovery of costs, and no double payment for capacity, can occur.

Cost overruns. The Report and Order determines that cost overruns should be

presumptively disallowed from the ratebase. Subscribers should not bear the burden for unnecessary, extravagant, or imprudent expenses, which cost overruns may be. At the same time, however, the Report and Order recognizes that cable operators should be able to recover the costs of overruns that have occurred through no fault of the operator. Therefore, cable operators may overcome this presumption on a case-by-case basis by showing that the costs were prudently invested. In reviewing such showing, factors that will be considered include whether the overrun was preventable, who was responsible for the overrun, and whether including the overrun in the ratebase will produce reasonable rates.

Premature abandonments. The Report and Order finds that the cost of premature abandonments should be a recoverable operating expense rather than an element in the ratebase. In removing prematurely abandoned plant from the ratebase, a cable operator must bring plant to full recovery before retiring it. Plant that has never entered into service cannot be retired and expensed, but is disallowed. To retire plant, the operator must remove both plant and accumulated depreciation reserve from the balance sheet. Once the plant is retired, an operator may amortize the unrecovered investment (*i.e.*, the original cost less accumulated depreciation) over a term equal to the remainder of the original expected life.

(3) Rules for Determining Recoverable Expenses

Operating expenses. The Report and Order permits recovery of all operating expenses normally incurred by cable operators in the provision of regulated cable service. Thus cable operators may recover fully the reasonable costs of providing regulated service, and subscribers are protected from paying rates that reflect costs not reasonably associated with regulated services. The Report and Order affirms the decision to exclude from recovery those operating expenses and other costs unrelated to the provision of regulated cable service. Generally, costs incurred in the provision of regulated cable service are recoverable if legitimate and reasonable. The Report and Order directs that the Commission and local franchising authorities review operating expenses in each cost showing to assure that they are in conformance with the cost standards.

The Report and Order also adopts the tentative conclusion that certain special expenses (47 CFR 76.924 (f) and (g)) are presumptively excluded from recovery as not reasonably related to the provision of regulated cable services. Cable subscribers should not be responsible for reimbursing cable operators for unreasonable costs. Further, the Report and Order concludes that GAAP should guide the determination of what costs are to be expensed and what capitalized.

Depreciation. The Report and Order declines to adopt the tentative conclusion to prescribe depreciation rates. The Report and Order finds that prescription of depreciation rates is unnecessary, at least pending completion of the cost study and analysis that the Cable Bureau is to undertake. See, FNPRM elsewhere in this **Federal Register**. Further, the Report and Order finds that a depreciation prescription requirement would impose unjustified burdens without providing a balancing benefit to subscribers. Instead, the Report and Order directs regulators to monitor industry depreciation practices closely, and to review depreciation showings in individual cost proceedings carefully to assure that these depreciation practices are reasonable. In addition, the Report and Order notes that the Commission and local franchising authorities will examine depreciation practices of operators in individual cases to assure that resulting rates are reasonable.

Taxes. The Report and Order develops a method of income tax treatment that permits recovery of income taxes regardless of the form of ownership of the regulated cable service enterprise. The Report and Order maintains the principle that taxes related to the provision of regulated service may be recovered from subscribers, but taxes on dividends paid to owners may not. The Report and Order affirms the tentative conclusion that Chapter C corporations will be allowed to include in annual expense calculations all taxes on the provision of regulated cable service. For other ownership forms of cable operators—subchapter S corporations, partnerships, sole proprietors—the income tax allowance is to be determined as follows: The permitted rate of return on the ratebase is first calculated; this amount is adjusted to remove any portion of the previous year's distributions after adjustment for capital contributions and interest paid; the resulting sum, the amount retained in cable operations, will constitute the cable operator's earnings subject to the income tax calculation. The allowed income tax will be calculated by applying the grossed-up federal and state statutory corporate tax rates (as opposed to individual tax rates) to the amount calculated as subject to the income tax calculation, regardless of the actual business form. The calculated tax amount may then be included in calculating the total revenue requirement.

The Report and Order notes that while traditional cost-of-service regulation allows for recovery of allowable tax expense on an annual basis, it is possible that cable rates set by cost of service will not be reviewed, nor any further cost support submitted, for a substantial period of time. Retained earnings depend closely upon the cable system's current financial requirements. Because this is a showing the Commission does not intend to revisit, proposed tax expense in a cable cost-of-service showing should incorporate an adjustment of retained earnings to reflect likely changes. The following illustration of tax calculation methodology adjusts retained earnings over a three-year period:

	Year 1	Year 2	Year 3
1. Ratebase	1000000	1000000	1000000
2. Allowed Return (@ 11%)	110000	110000	110000
3. Less Interest Expense	(10000)	(10000)	(10000)
4. Tax Gross-up:			
5. Allowed Taxable Return	100000	100000	100000
6. Distributions	50000	25000	160000
7. Capital Contributions	0	25000	10000
8. Amount Subject to Tax calc.	50000	100000	(50000)
9. Tax allowed at corp. rate (@ estimate 34% grossed up)	25758	51515	(25758)
10. Revenue Requirement:			
11. Allowed Return	110000	110000	110000
12. Tax Allowed	25758	51515	(25758)
13. Expenses	500000	500000	500000

	Year 1	Year 2	Year 3
14. Total Revenue Requirement	635758	662515	584242
15. Cumulative Tax Allowed:			
16. Beginning Balance	0	25758	77273
17. Current Provision	25758	51515	(25758)
18. Ending Balance[6]	25758	77273	51515

[6] Explanation of terms and calculations:
1. Line 3: An eleven percent rate of return is used only for purposes of illustration.
Line 6: A portion of distributions made must be associated with the provision of regulated cable services.
Line 7: A portion of contributions made must be associated with the provision of regulated cable services.
Line 8: Tax allowed is determined by subtracting distributions from allowed return and adding the amount of capital contributions. The amount of contributions added shall be no more than the amount of distributions for the period, however.
Line 9: The rate used in this illustration is a federal tax rate grossed up as follows: (.34/(1–.34))=.51515)
2. Lines 8–9 of Year 3 demonstrate that, where distributions offset the total of allowed return and capital contributions, the amount subject to the tax calculation may be negative. In effect, this calculation would require operators to pay back to subscribers the tax benefits associated with earnings that had been achieved previously but were distributed in the current period. Since no annual adjustment will be made, this offset should be reflected in an operator's one-time showing.

The Report and Order does not require the three-year calculation shown above. However, it does require that cost-of-service showings that include a tax allowance show some calculation of likely changes in retained earnings.

The Report and Order also adopts the Commission's tentative conclusion that cable operators may include state and federal taxes, such as property and sales taxes, incurred on the provision of regulated cable service as an operating expense regardless of business form.

Test year methodology. The Report and Order adopts the use of an adjusted historic test year. The test year may be adjusted for "known and measurable" changes that have occurred by the time the rates take effect. The Report and Order further finds that the historic test year should be the operator's fiscal year. Thus, cost-of-service showings must be based upon the operator's most recently completed fiscal year. In the case of a cost-of-service showing arising in response to a complaint, the fiscal year should be the one most recently completed at the time of the filing of the complaint. In the case of new systems, for which no historic data are available, projected data may be used, but careful scrutiny shall be paid to the assumptions used.

(4) Use of Unitary 11.25% Rate of Return

A major component of the ratemaking methodology for cable operators that elect cost-of-service regulation is the rate of return those operators will be given an opportunity to earn on their allowed ratebase. The Report and Order prescribes an interim, overall rate of return of 11.25% for use in cable cost-of-service proceedings.

Uniform rate of return. The Report and Order finds that the record confirms that the burden of establishing an individualized rate of return for each cable operator that elects cost-of-service regulation would be substantial. Such an undertaking would require cable operators to present, and franchising authorities or the Commission to review, analyses of matters such as the risks individual cable systems encounter in providing regulated cable service and the sources of capital available to finance those risks. Not persuaded that it is necessary for cable operators and regulators to undertake such analyses to ensure that cable operators can attract the capital needed to provide regulated cable service, the Report and Order defines a uniform rate of return for use by all cable operators in cost-of-service showings.

Presumptive. The Report and Order acknowledges that some cable operators may believe that the overall rate of return is inadequate to compensate them for the risks they encounter in providing regulated cable service. Similarly, consumers may find this overall rate excessive, given the individual operator's specific circumstances. To ensure the reasonableness of all rates set in cable cost-of-service proceedings, the Report and Order states that parties to such proceedings are not foreclosed from attempting to justify different rates of return. Parties that seek rates of return different from the prescribed interim rate of return, or any subsequently prescribed rate of return, bear a heavy burden. In particular, each cable operator seeking a higher rate of return is required to show exceptional facts and circumstances that make its cost of capital for regulated cable services exceed the prescribed rate of return, and must demonstrate that those facts and circumstances will persist. All necessary supporting information shall be included in the challenging cable operator's initial cost-of-service showing. Similarly, local franchising authorities may collect and consider evidence that the operator's cost of capital for the individual system is lower than the prescribed rate. The Commission will review all evidence relied upon by local franchising authorities in setting rates of return different from the prescribed rate.

General methodology. The Report and Order determines to use the weighted average cost of capital as the methodology for establishing the rate of return. The Report and Order describes in detail each of the components: Cost of equity, cost of debt, and capital structure. This weighted average cost of capital approach assumes a post-tax return on equity.

In applying this methodology, an estimate of the cost of the capital contributing to the provision of regulated cable service is required, since most cable companies have diverse operations. The record provided no company which engaged only in provision of regulated cable service. Thus, the Commission selected surrogate firms to represent the risks of regulated cable for capital analysis.

The Report and Order notes that the surrogate firms must operate a levels of risks comparable to those of regulated cable service in order to be consistent with the fundamental goal of determining the return required to compensate investors for the perceived risks of regulated cable service and to attract capital to that service. In choosing surrogate firms, recognition is given to the limitations imposed by the available information. Because different kinds of information are available with regard to cost of equity, cost of debt, and capital structure, each of these components of the overall cost of capital is addressed separately.

Cost of equity. The Report and Order espouses the principle that the ideal cost of equity estimate should accurately reflect investor expectations as to the returns, in terms of both capital gains and dividends, investors will earn. Since investor expectations are not directly measurable, a variety of indirect methods are used. The Report and Order

reviews the methods used by commenters in this proceeding, which fall into three categories: risk premium, discounted cash flow (DCF), and comparable earnings. Commenters submitted four studies, using the capital asset pricing model (CAPM) version of the risk premium method, one study relying upon the DCF method to analyze the Standard & Poors 400 (S&P 400), and one applying the comparable earnings methodology. In Attachment D to the Report and Order, these three methods of estimating the cost of equity are described and analyzed.

The Report and Order concludes that the DCF methodology will be applied to the S&P 400 to develop the cost of equity for companies providing regulated cable service. The Report and Order and the separate attachment present the basis for rejecting commenters' arguments against use of the DCF methodology and against the use of the S&P 400 as a surrogate, and rejects other approaches suggested in the cost of equity studies by commenters. Thus, the Report and Order affirms the tentative proposal in the Notice to apply the DCF method to the companies composing the S&P 400. (*Notice* at ¶ 52).

The DCF method, like the other methods the parties advocate, requires an assessment of the risks of regulated cable service in comparison to those of the chosen surrogate. The record provides little definitive analysis of the risks of regulated cable service and thus does not make clear which specific subgroup of the S&P 400 regulated cable most resembles in terms of risks. Given the paucity of the record, the Report and Order determines that the S&P 400 should be viewed broadly and a broad zone of reasonableness for the cost of equity should be defined. Based on the Vander Weide analysis, estimates for the cost of equity for regulated cable service are between 11.80% (the midpoint of the DCF cost of equity estimates for the first quartile of the S&P 400) and 15.11% (the midpoint of the DCF cost of equity estimates for the third quartile). The Report and Order finds that these estimates provide reasonable outside bounds for the cost of equity for regulated cable service, approximately 12% and 15%. The Report and Order adopts use of this range, in combination with other elements of the weighted average cost of capital, to develop a zone of reasonable rates of return for regulated cable service.

Cost of debt. The record on the cost of debt includes compilations of debt costs for specific cable operators. The information is both industry-specific and concrete. The Report and Order concludes that it appropriate to rely on this information, instead of S&P 400 data, as a surrogate for the cost of debt for regulated cable service, because it is industry-specific and provides a sufficient basis for estimating that cost of debt. Thus, the tentative conclusion to rely on the cost of debt of the surrogate is rejected.

The cost of debt found by Vander Weide for six cable companies was 7.8%. AUS found an 8.5% cost of debt based on 1992 data and notes it would be lower with more recent data. Several parties suggest higher debt costs, but provide no supporting documentation. Adelphia's SEC Form 10K for 1993 states that its floating note interest rates ranged from LIBOR plus 1.0% to LIBOR plus 1.5%. Its March 31, 1993 average debt rate was 8.65%. TCI's SEC Form 10K for 1991 states 55% of its debt was fixed rate, with an average cost of 9.9% and 45% percent was variable rate, floating at the prime rate. The prime rate on February 18, 1994, was 6% and LIBOR was 3.56% (90 day) and 3.75% (180 day).

The Report and Order computes the range for the average cost of fixed rate debt established by this information for the most recently available period (1992–93) as 7.8% to 8.65%. The Report and Order determines that the reasonable estimate of the cost of debt for cable is 8.5%. In addition to reflecting historical debt costs, this rate allows for an increase in the cost of floating rate debt above current rates.

Capital structure. The Report and Order addresses the recommendations of commenters that provided analysis of the capital structure for the cable industry as requested in the Notice. The Report and Order notes the difficulty encountered in evaluating current cable industry practices. The Report and Order evaluates the proposals for establishing a capital structure and discusses in detail the problems arising with each proposal. The Report and Order further notes that the long-term average capital structure of the industry is not clear at this time. Thus, instead of adopting a single capital structure, the Report and Order finds that a capital structure range, for use in the determination of the overall cost of capital for regulated cable operations, is appropriate. Based on the record, the Report and Order determines that a wide range of capital structures, extending from 40% debt to 70% debt, is justified, and is consistent with the range for cost of equity estimates and the cost of debt.

Overall cost of capital. The Report and Order reviews recommendations for establishing an overall cost of capital, and reflects on requirements of The Cable Act of 1992 that the cable rate regulations provide cable operators the opportunity to earn "a reasonable profit" while "protecting subscribers * * * from rates * * * that exceed what would be charged * * * if such cable system were subject to effective competition." 46 U.S.C. 623(b)(2)(C)(vii) and (b)(1), respectively. Companies regulated under this standard must be allowed an opportunity to earn a return sufficiently high to maintain financial integrity and attract new capital. At the same time, the prescribed return must not produce rates that are unreasonable. The courts have recognized that there is a zone of reasonableness within which reasonable rates may fall, and that regulatory agencies have broad discretion to select a return within that zone.

Given this standard, the Report and Order develops its determination of a reasonable range for the cost of equity for regulated cable service, cost of debt, and a reasonable range for the capital structure. The following table combines all these elements and presents the overall cost of capital implied by these ranges.

CALCULATION OF OVERALL RATE OF RETURN DEBT PORTION OF CAPITAL STRUCTURE

	In percent			
	40	50	60	70
Equity estimate (in percent):				
12	10.6	10.3	9.9	9.6
13	11.2	10.8	10.3	9.9
14	11.8	11.3	10.7	10.2
15	12.4	11.8	11.1	10.5
Average	11.5	11.0	10.5	10.0

Debt Cost: 8.50 percent.

No particular weight is given to any one cell in this table. Instead, consideration is given to the averages that are produced, as shown on the last row. Based on these averages, the Report and Order finds that the overall cost of capital for regulated cable service lies within a "zone of reasonableness" of 10.0% to 11.5%.

The Report and Order notes the concerns in selecting a rate within this zone, since the record is less than perfect. Also, the risks of regulated cable operations are not known with certainty, since those risks are dependent in part on the cost-of-service rules and principles adopted in this Order and on the revised benchmark methodology. Additionally, there is a recognized desire to encourage

infrastructure development. Thus, the Report and Order determines that prescribing a return toward the upper end of the zone of reasonableness will enable cable operators to attract the capital needed to provide regulated cable service and to expand their regulated offerings. Based on these considerations, the Report and Order prescribes an overall cost of capital of 11.25%.

Interim rate. The Report and Order notes that the rate of return prescription is an interim one. The FNPRM (published elsewhere in this **Federal Register**) seeks information on the relative risks of cable operations given recent actions by the FCC, and further analysis of S&P 400 companies' costs of capital.

(5) Accounting and Cost Allocation Requirements

Existing requirements. Under existing rules, regulated cable operators are required to maintain their accounts in accordance with GAAP. 47 CFR 76.924(b). They are also required to maintain their accounts in a manner that will allow for identification of appropriate costs and application of cost assignment and cost allocation procedures necessary for rate adjustments to reflect changes in external costs and for cost-of-service showings. 47 CFR 76.924(c). In addition, for accounting purposes, cable operators are generally required to aggregate expenses and revenues at either the franchise, system, regional or company level in a manner consistent with the practices of the operator as of April 3, 1993. 47 CFR 76.924(d). (The initial rules erroneously identified this date as April 3, 1992. The rules adopted with this Report and Order correct this error). Costs associated with franchise fees, franchise requirements, local taxes, and local programming must be identified at the franchise level. *Id.*

Interim summary level accounts. The Report and Order adopts an interim summary accounting system for use by cable operators that elect cost of service regulation. This interim summary account system will be required until a permanent system of accounts is in place. Cable operators that elect cost of service regulation shall identify costs in 55 summary level accounts contained in FCC Form 1220. This form requires that cost-of-service showings include a balance of broad summary level investment, expense, and revenue categories.

The Report and Order expresses concern that even this summary accounting approach may be burdensome for some small systems. In order to provide further relief to small systems, the summary level of accounts that small operators are required to report as a part of the cost of service filings are aggregated further. The Report and Order thus, adopts the requirement that small cable system operators may identify their costs in FCC Form 1225, which contains 32 summary level accounts.

Filing instructions. With regard to the level at which these accounting requirements apply, the Report and Order requires that cable operators electing cost-of-service regulation identify all amounts associated with each revenue and cost category, as provided for in FCC Forms 1220 and 1225, at the franchise, system, regional and/or company level, depending upon the organizational level at which the operator identified revenues and costs for accounting purposes as of April 3, 1993. (§ 76.924(c)). The FNPRM (published elsewhere in this **Federal Register**) will provide for cost studies to explore the extent to which operators should be permitted or required to report average costs at levels different than those in effect on April 3, 1993.

Further, the Report and Order requires cable operators to provide any additional financial data and explanations reasonably requested by franchising authorities and the FCC to substantiate cost-of-service showings or other related proceedings. Where a reasonable response is not forthcoming, franchising authorities and the Commission are authorized to make such disallowance as are appropriate, pending the presentation of convincing evidence by cable operators.

Cost allocation requirements. The Report and Order finds that it is necessary to require allocation of costs to nonregulated service categories to help ensure that the allocation of costs to regulated services is fair and reasonable in relation to the allocation of costs to nonregulated services. The current rules require that costs be allocated among the basic service tier and each tier of cable programming service. 47 CFR 76.924(e)(2). The Report and Order amends the rule to require that, in addition to the basic and cable programming service tiers, cable operators shall allocate costs to nonregulated programming service activities, other cable activities, and non-cable activities.

The Report and Order requires that, after revenues and costs are identified at the appropriate organizational level(s), cable operators shall allocate costs among the equipment basket (47 CFR 76.923(d)) and the following service cost categories: Basic service, cable programming services, nonregulated cable programming services, other cable activities and non-cable activities. These allocations shall be used for cost-of-service showings and for allocating external costs. For the purpose of allocating their costs and revenues among the service cost categories and the equipment basket in cost-of-service proceedings, cable operators shall use FCC Form 1220 or FCC Form 1225 (for use by small cable system operators).

The Report and Order also requires direct assignment of all costs, to the extent possible, among the equipment basket and the service cost categories. Direct assignment applies when costs are incurred exclusively to support the equipment basket or a specific service cost category. For example, most programming charges from program suppliers relate to specific programming. Those charges should therefore be directly assigned to the tier on which the programming is offered. In making this determination, the Report and Order modifies the existing requirement that, with a few exceptions, cost categories identified at the franchise level be generally allocated to the basic tier based on the ratio of channels in the basic tier to the total number of channels offered in the franchise area, and that costs allocated to each tier of cable programming be based on the ratio of channels in each cable programming services tier to the total number of channels offered in the franchise area. The Report and Order finds that when direct assignment is possible, it is preferable to a standard allocator because, while cost allocation provides an estimate of the origination of certain costs, direct assignment is simpler to apply, and more accurately reflects cost causality.

The Report and Order requires that cable operators allocate among the service cost categories and the equipment basket any costs that cannot be directly assigned, using methodologies that are consistent with the procedures in § 76.924(f)(5). These procedures require that, when direct assignment is not possible, operators must first attempt to allocate costs through direct analysis of their origin. 47 CFR 76.924(f)(5)(i). Where direct analysis is not possible, operators must attempt to establish cost-causative linkage to other costs directly assigned or allocated by direct analysis. 47 CFR 76.924(f)(5)(ii). Finally, where no direct or indirect linkage can be made, operators are required to allocated on the basis of the totals of all costs directly assigned and allocated using direct assignment, direct analysis and indirect linkage. 47 CFR 76.924(f)(5)(iii). The

Report and Order requires the Commission and local franchising authorities to review the allocators proposed by cable operators on a case-by-case basis to determine whether the allocators achieve reasonable results.

The Report and Order maintains the current requirement that cable operators allocate costs that were identified at higher levels to the franchise level on the ratio of the total number of subscribers at the franchise level to the total number of subscribers served at the higher level. 47 CFR 924(e)(1). The Report and Order amends the rule, however, to specify the particular procedures that must be followed for allocating costs to the franchise level. First, recoverable costs that have been aggregated at the highest organizational level at which costs have been identified are allocated to the next (lower) organizational level at which recoverable costs have been identified on the basis of the ratio of the total number of subscribers served at the lower level to the total number of subscribers served at the higher level. Second, this procedure is repeated at every organizational level at which recoverable costs have been identified, until all costs have been allocated to the franchise level.

(6) Accounting and Cost Allocation Requirements for External Costs

Definition. External costs are categories of costs that cable operators may pass through to subscribers without a cost-of-service showing under our price cap rules. Such costs include retransmission consent fees, other programming costs, taxes, franchise fees, and costs of other franchise requirements. See § 76.922(d)(3).

Treatment for rate adjustments. To provide for a readily ascertainable basis for proposed external cost adjustments, the accounting and cost allocation rules adopted in this Report and Order will apply to external cost calculations. The Report and Order requires that the following external costs be identified at the franchise level: Franchise requirements, franchise fees, local taxes and local programming. Cable operators are required to identify all other external costs at the franchise, system, regional and/or company level, depending upon the organizational level at which they identified costs for accounting purposes as of April 3, 1993. These costs shall be identified on FCC Form 1210. After external costs have been identified at the appropriate organizational level(s), cable operators are required to allocate such costs among the service cost categories and the equipment basket in the manner specified for cost-of-service showings.

With respect to the specific requirements for allocating certain external costs, the Report and Order requires that the costs of programming and retransmission consent be allocated to the service cost category on which the signal or programming is offered. The phrase "*tier*" on which the programming or broadcast signal at issue is offered" is replaced with the phrase "service cost category in which the programming or broadcast signal at issue is offered." See § 76.924(f)(1) (emphasis added). The Report and Order also requires that the costs of public, educational, and governmental access channels carried on the basic tier be directly assigned to basic service cost category where possible. The Report and Order modifies the allocation requirements for franchise fees. Under the current rule, "franchise fees shall be allocated among equipment and installations, program service tiers and subscribers in a manner that is most consistent with the methodology of assessment of franchise fees by local authorities." Consistent with the treatment of § 76.924(f)(1), the phrase "program service tiers" is replaced with the phrase "service cost categories." See § 76.924(f)(2). While the franchise fee should be allocated among the equipment basket and the service cost categories as the rules currently require, the rules should not list subscribers as a category to which such costs should be allocated. The equipment basket and the service cost categories are the only appropriate categories for allocation purposes. As already noted, the cost of franchise fees must be identified at the franchise level.

The Report and Order also modifies existing rules to require that, to the extent possible, all external costs be directly assigned among the service cost categories. When direct assignment is possible, it is preferable to a standard allocator because it is simpler to apply and it more accurately reflects cost causality. For those external costs that cannot be directly assigned, the Commission requires that cable operators propose specific allocators that reasonably allocate costs among the service cost categories and the equipment basket. The Commission and franchising authorities shall review the allocators proposed by cable operators on a case-by-case basis and determine whether the allocators achieve reasonable results.

For the purpose of establishing external costs at the franchise level, the Report and Order retains the current requirement that cable operators allocate costs that were identified at higher levels to the franchise level on the ratio of the total number of subscribers at the franchise level to the total number of subscribers served at the higher level. However, the Report and Order amends the rules to specify the particular procedures that must be followed for allocating costs to the franchise level in the case of adjustments to external costs as well as cost of service regulation.

(7) Requirements for Affiliate Transactions

The report and Order adopts rules for affiliate transactions that will apply to cable operators who either elect cost-of-service regulation or seek to adjust benchmark/price cap rates for affiliated programming costs. For those operators electing to use the benchmark/price cap approach, the affiliate transaction rules will only be applicable to affiliate transactions involving programming. In Docket No. 92–266, under price caps, cable operators may pass-through affiliated programming costs that exceed inflation as long as the prices charged to the affiliated cable system operators reflect either prevailing company prices offered in the marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of programming. First Order on Reconsideration at ¶ 114.

Under the rules adopted in the Report and Order, cable operators that elect cost-of-service regulation or who seek to adjust benchmark/price cap rates for affiliated programming costs shall be required to apply valuation methods that are similar to those telephone companies are now required to apply. Although the rules for telephone companies specify the manner of accounting for affiliates transactions, the affiliate transaction rules adopted for cable operators in this Report and Order do not impose accounting requirements. The affiliate transaction rules adopted with this Report and Order merely set the limits for inclusion of investment and expense in rates set on a cost-of-service basis. They will also govern external cost treatment of programming cable operators purchase from affiliates. These methods distinguish between asset transfers and the provision of services.

When a cable operator sells assets to an affiliate or buys assets from an affiliate, the assets shall be valued at the asset provider's prevailing company price, if the provider has sold the same kind of asset to a substantial number of third parties at a generally available price. Absent a prevailing company price, the cable operator shall value the

asset at the higher of net book cost and estimated fair market value when the regulated cable system is the seller, and at the lower of net book cost and estimated fair market value when the regulated cable system is the buyer.

When a cable operator sells services to an affiliate or buys services from an affiliate, the services shall be valued at the provider's prevailing company price, if the provider has sold the same kind of service to a substantial number of third parties at a generally available price. When the provider has established no prevailing company price, the cable operator must value the service at the service provider's cost.

In determining the prevailing company price, the Report and Order requires that it be based on the price at which the provider has sold the same kind of asset or service to a substantial number of third parties at a generally available price. In determining the cost of both assets and services, cable operators shall apply the costing methods and the rate of return adopted in the Report and Order for cable cost-of-service showings, to the extent applicable, and shall otherwise use reasonable costing methods. Where there is no prevailing company price, affiliate transactions must be carefully scrutinized to ensure that costs are calculated accurately and, for asset transfers, that fair market value is estimated properly. Therefore, cable operators must be prepared to demonstrate that any affiliated transactions costs they claim as regulated costs reflect the cost-of-service methodologies adopt with the Report and Order.

For the purpose of evaluating affiliate transactions that involve programming, the Report and Order determines to classify programming as an asset. Hence, for the purpose of establishing initial costs for programming purchased by a cable operator from an affiliate, the cost of the programming shall equal the provider's prevailing company price, if the provider has sold the same kind of programming to a substantial number of third parties at a generally available price. Absent a prevailing company price, the cost of the programming shall equal the lower of the provider's net book cost and the programming's estimated fair market value. Except to the extent that they are relevant for estimating fair market value, the Report and Order does not allow for the establishment of affiliate prices by reference to the prices independent suppliers charge third parties for the same or similar products.

The Report and Order applies the rules adopted in the program access proceeding to define affiliated programmers. Rate Order, 8 FCC Rcd at 5788, n.601, citing Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition and Diversity Act of 1992—Development of Competition and Diversity in Video Programming Distribution and Carriage, Report and Order, FCC 93–178, 58 FR 27658, released May 11, 1993. Under those rules, an affiliated programmer is a programmer with an ownership interest of five percent or more, including general partnership interests, direct ownership interests, and stock interests in a corporation where such stockholders are officers or directors or who directly or indirectly own five percent or more of the outstanding stock, whether voting or nonvoting. Such interests include limited partnership interests of five percent.

The Report and Order requires cable operators to provide detailed disclosure of affiliate transactions so that the Commission and franchising authorities can ensure that affiliate transactions are treated consistent with the limits of this Report and Order. Where cable operators have not demonstrated that their affiliate transactions meet the requirements of the affiliate transaction rules, disallowances shall be made by the Commission and franchising authorities.

(8) Streamlined Filing and Review for Small Systems

The Report and Order acknowledges Congress' directive under the Cable Act of 1992 to reduce the administrative burdens of, and costs of compliance with, cable regulations for small cable systems. 47 U.S.C. 623(i). The Report and Order adopts an abbreviated cost of service form for use by small systems, Form 1225. This will reduce the administrative burdens of cost showings for small system operators, while retaining the necessary regulatory oversight and assurance of reasonable rates. The Report and Order further requires that information provided on the abbreviated cost of service form be certified by the operator as correct; it will be subject to audit by the local franchising authority and by the Commission.

Independent small systems and small systems operated by small MSO's may use Form 1225. Small MSO's are those multiple system operators that (1) Serve 250,000 subscribers or less, (2) own only small systems with less than 10,000 subscribers, and (3) have an average system size of 1,000 or fewer subscribers. This is the same standard of eligibility that the Commission adopts for other small system administrative relief in the Benchmark/price cap Order, which is summarized elsewhere in the **Federal Register**.

However, The Report and Order does not allow use of this form for small operators affiliated with larger systems. The Report and Order adopts the same affiliation standards employed for small system administrative relief generally. Use of the small system relief form (Form 1225) is not permitted by companies in which a larger company holds more than a 20 percent equity interest (active or passive) or over which a larger company exercises actual working control (such as through a general partnership or majority voting shareholder interest). This affiliated standard also governs eligibility for the use of the abbreviated summary level accounts for small systems.

Finally, the Report and Order notes that while all cable companies that choose to make cost-of-service filings should be subject to the uniform accounting requirements as proposed here, at least in abbreviated form, such accounting requirements may increase the administrative burden on small operators to the point of hardship, and small operators may be unlikely to require the same level of regulatory oversight as larger entities. Thus, in our Further Notice, comment is sought on whether to exempt small systems and/or small operators from these requirements entirely. The Commission also is adopting reduced accounting requirements for small systems.

(9) Streamlined Filing Requirements for Network Upgrades

The Report and Order concludes that an abbreviated cost-of-service showing for network upgrades, with safeguards, provides an appropriate way to implement the goals of the Cable Act of 1992, to promote the availability of diverse cable services and facilities, encourage economically justified upgrades, and reduce regulatory burdens, while ensuring reasonable rates for regulated services.

The Report and Order notes that for many systems, this option will be unnecessary or inapplicable. The benchmark/price cap mechanism is already based on the rates of competitive systems, including those with upgraded networks. The rates charged by those systems presumably recover their capital costs. The benchmark also includes factors reflecting the number of channels a system furnishes to customers. Nevertheless, there may be cases where the benchmark rates do not provide sufficient revenue to attract capital for

upgrades because of unusual costs associated with capital improvements. For these cases the abbreviated cost-of-service showing should provide the ability to attract the capital needed for the upgrade.

The abbreviated cost of service showing for network upgrades is available only for significant upgrades requiring added capital investment, such as expansion of band width capability and conversion to fiber optics, and for system rebuilds. Normal improvements and expansions of service will remain subject to the usual rate review process. The Report and Order finds that to justify an increase in the rates for regulated services, the operator will be required to demonstrate that the capital investment actually will benefit subscribers through improvements in the regulated services subject to the rate increase. The Report and Order also holds that, except to the extent provided by our AFUDC policy, the upgrade rate increase should not be assessed on customers until the upgrade is complete and providing these benefits to customers of the regulated services. This is consistent with the general cost-of-service standard that only used and useful property should be included in the ratebase. Any costs that are not used and useful, will be deducted from total cost. Issues of allowable costs can be resolved if raised by comparison with costs of similar systems and, in particular, systems subject to competition.

To assure that the upgrade rate increase is justified by higher costs, the Report and Order requires that the operator bear the burden of demonstrating the amount of the net increase in costs, taking into account current depreciation expense, likely changes in maintenance and other costs, changes in revenues, and expected economies of scale. The Report and Order requires that the operator must also allocate the net increase in costs in conformance with the cost allocation rules for cost-of-service showings, to assure that only costs allocable to regulated services are imposed on subscribers to those services.

The Report and Order explains that the permitted rate (based upon the showing of the net increase in allowable costs associated with the capital improvement) would be provided in two elements. The first element is the benchmark rate, as governed by the Rate Order and the price cap. The second element is the capital improvement add-on. The sum of these two elements yield the maximum allowable rate that might be charged to subscribers. The capital improvement add-on is not adjusted for inflation but is a fee charged over the useful life of the improvement determined in accordance with our cost-of-service requirements.

The Report and Order delegates to the Cable Services Bureau the development of appropriate forms for these abbreviated showings.

(10) Hardship Rate Relief for Operators

The Report and Order recognizes that, in extraordinary cases, the cable industry may face special problems as it moves into a regulated environment, and that it is conceivable that the particular circumstances of an operator could be such that the practical result of applying any of these rate options could still be to threaten the financial health of the operator and its continued ability to provide cable service.

The Report and Order addresses this possibility, and notes that the Commission will consider the need for special rate relief for operators in individual cases. To demonstrate eligibility for such extraordinary relief, the operator should establish that the rates permitted by the benchmark/price cap and cost-of-service mechanisms undermine the financial health of the operator so that it is unable to attract capital and maintain credit necessary to operate, despite prudent and efficient management. The operator should also establish that the resulting rates, though higher than those justified by the operator's costs, will nevertheless not be unreasonable or exploitative of customers. For example, the operator should demonstrate that the rates are not excessive in comparison with similarly situated systems, particularly systems subject to competition.

The Report and Order requires that this hardship showing must be made for the MSO level, or in any event at the highest level of the operator's cable system organization. The operator should provide all information and legal authority on which it seeks to rely, and all factors it believes the Commission should consider, to demonstrate that the end result of the other ratesetting options available to it would place the operator in financial difficulty warranting rate relief, and that on balance this relief would not result in unreasonable rates for customers. If the operator makes an adequate initial showing of facts which, if proved, might warrant rate relief, the Commission will subsequently provide the operator with an opportunity to prove the facts alleged and demonstrate that, balancing the relevant interests of investors and ratepayers, rate relief is warranted.

(11) Experimental Upgrade Incentive Plan

The Report and Order determines that the goal of promoting economically justified system upgrades, as well as the goals of the Cable Act and of this proceeding, would be furthered by development of an incentive regulation approach to upgrading cable services, similar to the incentive plans implemented for telephone carriers. The Report and Order outlines the incentive approach as follows. Basically, an operator would be permitted to enter into a "social contract" with its customers under which the operator would be given substantial flexibility in setting rates for new regulated services it introduces, such as new service tiers offering additional program channels. In exchange, customers would be guaranteed that rates for current services would be kept stable and reasonable, no higher than rates before the contract takes effect or the benchmark/price cap rate (which might include adjustments for inflation and external cost changes), and that this would purchase at least the same program channels, or channels of equivalent value to customers. The operator would also commit to otherwise maintaining or improving its service quality. The contract would be effective for a term of years and would be overseen by this Commission, and reviewed before the end of the term.

The Report and Order notes that a plan such as this, which protects the rates and quality of current cable service tiers, while providing profit incentives for operators to introduce new and improved regulated services, may help carry out the purposes of the Cable Act while also being fair to customers of current services, less burdensome on cable operators and those responsible for their regulation, and more likely to encourage worthwhile investments to upgrade cable service.

The Report and Order contemplates that this plan will generate a strong incentive for the operator to undertake only upgrades that are economically justified and that best meet customer needs, and to make such upgrades in the most efficient manner possible. In order to profit from the planned upgrade, an operator must provide customers with additional or upgraded services they want to buy. Marketplace forces, not this Commission, will determine which services succeed. A properly designed incentive plan for system upgrades should help achieve other goals. It should, for example, help encourage operators to provide additional tiers of services. An incentive regulation plan should also reduce regulatory burdens,

even below those likely under the add-on rate proposal. Regulatory review should only encompass whether the operator is continuing to offer existing services at rates no higher and quality no lower than the operator contracted to provide. The Commission would not expect to investigate complaints regarding rates for additional regulated services unless they were clearly outside a wide range of reasonable rates, as evidenced, for example, by similar systems.

Offering substantial rate flexibility may also be appropriate to encourage operators to take the entrepreneurial risk of investing in the upgrades needed to offer such services, while replicating competitive marketplace forces. In competitive markets, entrepreneurs offering new and improved services can hope to reap above-market profits for some period, at least until competitors catch up, but also take the risk that the services will not succeed in the marketplace. Permitting cable operators to take the risks and to keep the rewards of introducing new and improved services, at least for a reasonable period, should have similar benefits when applied to cable operators.

The Report and Order notes that additional services will be indirectly regulated by the price cap on current regulated services. The added services and capabilities must effectively compete with the other regulated services, whose rates are limited by regulation. Customers are likely to subscribe to and pay for the added services and capabilities only if they offer additional value at a reasonable price, in comparison to those offered by current tiers.

The Report and Order observes that to generate an incentive plan that is effective in encouraging operators to invest in worthwhile upgrades, but also fair to customers, the rate limits on existing services and the rate flexibility for new services would apply for a substantial period, but would be subject to eventual review. For instance, in the case of telephone companies, an initial review is made during the fourth year of the price cap incentive plan. In view of the initial start-up issues for any incentive plan for cable operators, a longer period is probably desirable, both to permit operators to understand and respond to the plan and to assure strong efficiency incentives. Thus, the Report and Order proposes that the Commission review the plan in the fifth year of operation.

The Report and Order adopts the Upgrade Incentive Plan on an experimental basis. Cable systems that commit to meet the basic obligations of freezing rates for current services that have been adjusted to benchmark/price cap or cost of service levels, or conforming their rates to the price cap, and maintaining programming and service quality that is at least as valued by customers as that offered currently, will be permitted substantial rate flexibility in the rates they might wish to introduce for additional regulated services and capabilities for a term of years, up to five years, from the acceptance of the plan. These experimental plans will then be monitored and reviewed no later than the fifth year to evaluate their performance.

To gain experience with this approach, the Report and Order states that the Commission will consider proposals from cable operators that will implement the Upgrade Incentive Plan on an experimental case-by-case basis, for a limited term of years. Cable operators wishing to participate should submit a proposal to the Commission's Cable Services Bureau outlining a proposal and explaining how it would implement the objectives outlined here. The proposal should also be accompanied by a written statement by any certified franchising authority with jurisdiction over cable systems affected by the plan of its views concerning the proposed agreement.

Regulatory Flexibility Analysis

Final Regulatory Flexibility Analysis for the Report and Order

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Sections 601–12, the Commission's final analysis with respect to the Report and Order is as follows:

Need and purpose of this action: The Commission, in compliance with sections 3 and 14 and those portions of section 9 of the Cable Television Protection and Compliance Act of 1992 (the Act) pertaining to rate regulation, adopts rules and procedures intended to ensure cable subscribers of reasonable rates for cable services with minimum regulatory and administrative burdens on cable entities.

Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA): The Chief Counsel for Advocacy of the United States Small Business Administration ("Office of Advocacy") offers several remarks in response to the IRFA. The Office Advocacy expresses concern that numerous small cable operators cannot operate profitably, if at all, under the constraints imposed by the benchmark. It agrees with the Commission that some other process must be developed to permit small cable operators to demonstrate the reasonableness of rates. The Office of Advocacy believes the Commission's experience with regulation of common carriers may prove beneficial in developing mechanisms that balance the need for exactitude with administrative simplicity.

First, the Office of Advocacy opines that the 1,000 subscriber standard in the 1992 Act does not provide an adequate definition of small operator. It recommends defining small cable operators at those with less than $7.5 million in gross revenues, a standard roughly equivalent to 20–25,000 subscribers. Within this category it recommends separate tiers at 1,000, 3,500, and 10,000 subscribers.

Second, the Office of Advocacy commends the Commission for its compliance with the Regulatory Flexibility Act and its extensive examination of alternative regulatory regimes. It supports the Commission's proposal to streamline cost of service showings for smaller firms, if a relatively simple form can be developed to show what these costs are. It also supports the Commission's proposal of an abbreviated cost showing for significant capital expenditures. The Office of Advocacy also suggests that the Commission consider use of average cost schedules, maintained by an organization of cable operators to provide the same functions for the cable industry that the National Exchange Carrier Association performs for local telephone companies. It opposes use of 1986 rates adjusted for inflation and productivity as an alternative.

Third, the Office of Advocacy also supports considering exemptions for small cable operators, provided certain principles are maintained, including a Commission finding that exempt operators' rates are reasonable.

The Commission also is adopting its proposals for streamlined cost of service studies for small companies, based on a simplified form, and abbreviated cost of service showings for significant capital expenditures. The Commission is also seeking the information needed to consider development of average cost schedules. The Upgrade Incentive Plan that the Commission is adopting on an experimental basis, and seeking comment on, may also be an attractive alternative form of regulation, with substantially reduced administrative burdens, for small operators.

The Commission agrees with the Office of Advocacy that we must ensure that rates for regulated services are reasonable for all cable operators. We are also willing to consider proposals

for pooling cable system costs and revenues in a manner similar to that employed for small telephone companies. It is unclear to us, however, that cable operators are sufficiently interested in such an approach to make its adoption worthwhile. Our consideration of average cost schedule approaches in the Further Notice may provide insight on this matter.

The Commission has also considered the other comments and proposals regarding small cable operators, as we discuss in more detail in the body of the Report and Order. For example, in response to a proposal in comments from Small Systems, we have broadened the definition of small systems for purposes of the cost of service mechanisms to include MSOs with 250,000 or fewer subscribers, who do not own any system with more than 10,000 subscribers, and whose average system size is 1,000 subscribers or less. Interested persons will also have the opportunity to submit further comments on these interim rules in the Further Notice so that we may consider appropriate revisions before these rules become final.

Paperwork Reduction Act

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

Accordingly, *It is ordered* That, pursuant to sections 4(i), 4(j), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 532, 542(c) and 543, the rules, requirements, and policies discussed in the foregoing Report & Order *are adopted*, and that part 76 of the Commission's rules, 47 CFR part 76, *is amended* as set forth below.

It is further ordered that, the rules, policies, and requirements adopted herein *shall be effective* May 15, 1994.

It is further ordered That, the Secretary shall send a copy of this Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

It is further ordered That *authority is delegated* to the Chief, Cable Services Bureau to conduct cost studies in conjunction with this proceeding and to develop forms necessary and appropriate to implement this Order.

It is further ordered Pursuant to sections 4(i) 4(j), 623(b), and 623(c) of the Communications Act, 47 U.S.C. 154(i), 154(j), 543 (b) and (c), that the Upgrade Incentive Plan described herein is *adopted on an experimental basis.* Authority is delegated to the Chief, Cable Services Bureau to implement this plan.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of title 47 of the CFR is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. Section 76.922 is amended by adding paragraphs (g) through (k) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(g) *Cost of service charge.* (1) For purpose of this section, a monthly cost-of-service charge for a basic service tier or a cable programming service tier is an amount equal to the annual revenue requirement for that their divided by a number that is equal to 12 times the average number of subscribers to that tier during the test year, except that a monthly charge for a system or tier in service less than one year shall be equal to the projected annual revenue requirement for the first 12 months of operation or service divided by a number that is equal to 12 times the projected average number of subscribers during the first 12 months of operation or service. The calculation of the average number of subscribers shall include all subscribers, regardless of whether they receive service at full rates or at discounts.

(2) A test year for an initial regulated charge is the cable operator's fiscal year preceding the initial date of regulation. A test year for a change in the basic service charge that is after the initial date of regulation is the cable operator's fiscal year preceding the mailing or other delivery of written notice pursuant to § 76.932. A test year for a change in a cable programming service charge after the initial rate of regulation is the cable operator's fiscal year preceding the filing of a complaint regarding the increase.

(3) The annual revenue requirement for a tier is the sum of the return component and the expense component for that tier.

(4) The return component for a tier is the average allowable test year ratebase allocable to the tier adjusted for known and measurable changes occurring between the end of the test year and the effective date of the rate multiplied by the rate of return specified by the Commission or franchising authority.

(5) The expense component for a tier is the sum of allowable test year expenses allocable to the tier adjusted for known and measurable changes occurring between the end of the test year and the effective date of the rate.

(6) The ratebase may include the following:

(i) Prudent investment by a cable operator in tangible plant that is used and useful in the provision of cable services less accumulated depreciation. Tangible plant in service shall be valued at the actual money cost (or the money value of any consideration other than money) of property at the time it was first used to provide cable service. The actual money cost of plant may include an allowance for funds used during construction at the prime rate or at the operator's actual cost of funds used during construction. Cost overruns are presumed to be imprudent investment in the absence of a showing that the overrun occurred through no fault of the operator.

(ii) An allowance for start-up losses, if any, that is equal to the lesser of the first two years of operating costs or accumulated losses incurred until the system reached the end of its prematurity stage as defined in Financial Accounting Standards Board Standard 51 ("FASB 51") less straight-line amortization over a reasonable period not exceeding 15 years that commences at the end of the prematurity phase of operation. FASB 51 is available from: Financial Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856–5116.

(iii) Intangible assets less amortization that reflect the original costs prudently incurred by a cable operator in organizing and incorporating a company that provides regulated cable services, obtaining a government franchise to provide regulated cable services, or

obtaining patents that are used and useful in the provision of cable services.

(iv) The cost of customer lists if such costs were capitalized during the prematurity phase of operations less amortization.

(v) An amount for working capital to the extent that an allowance or disallowance for funds needed to sustain the ongoing operations of the regulated cable service is demonstrated.

(vi) Other intangible assets to the extent the cable operator demonstrates that the asset reflects costs incurred in an activity or transaction that produced concrete benefits or savings for subscribers to regulated cable services that would not have been realized otherwise and the cable operator demonstrates that a return on such an asset does not exceed the value of such a subscriber benefit.

(vii) The portion of the capacity of plant not currently in service that will be placed in service within twelve months of the end of the test year.

(7) Deferred income taxes shall be deducted from items included in the ratebase.

(8) Allowable expenses may include the following:

(i) All regular expenses normally incurred by a cable operator in the provision of regulated cable service, but not including any lobbying expense, charitable contributions, penalties and fines paid on account of violations of statutes or rules, or membership fees in social, service, recreational or athletic clubs or organizations.

(ii) Reasonable depreciation expense attributable to tangible assets allowable in the ratebase.

(iii) Reasonable amortization expense for prematurely abandoned tangible assets formerly includable in the ratebase that are amortized over the remainder of the original expected life of the asset.

(iv) Reasonable amortization expense for start-up losses and capitalized intangible assets that are includable in ratebase.

(v) Taxes other than income taxes attributable to the provision of regulated cable services.

(vi) An income tax allowance.

(h) *Network upgrade rate increase.* (1) Cable operators that undertake significant network upgrades requiring added capital investment may justify an increase in rates for regulated services by demonstrating that the capital investment will benefit subscribers.

(2) A rate increase on account of upgrades shall not be assessed on customers until the upgrade is complete and providing benefits to customers of regulated services.

(3) Cable operators seeking an upgrade rate increase have the burden of demonstrating the amount of the net increase in costs, taking into account current depreciation expense, likely changes in maintenance and other costs, changes in regulated revenues and expected economies of scale.

(4) Cable operators seeking a rate increase for network upgrades shall allocate net cost increases in conformance with the cost allocation rules as set forth in § 76.924.

(5) Cable operators that undertake significant upgrades shall be permitted to increase rates by adding the benchmark/price cap rate to the rate increment necessary to recover the net increase in cost attributable to the upgrade.

(i) *Hardship rate relief.* A cable operator may adjust charges by an amount specified by the Commission for the cable programming service tier or the franchising authority for the basic service tier if it is determined that:

(1) Total revenues from cable operations, measured at the highest level of the cable operator's cable service organization, will not be sufficient to enable the operator to attract capital or maintain credit necessary to enable the operator to continue to provide cable service;

(2) The cable operator has prudent and efficient management; and

(3) Adjusted charges on account of hardship will not result in total charges for regulated cable services that are excessive in comparison to charges of similarly situated systems.

(j) *Cost of service showing.* A cable operator that elects to establish a charge, or to justify an existing or changed charge for regulated cable service, based on a cost-of-service showing must submit data to the Commission or the franchising authority in accordance with forms established by the Commission. The cable operator must also submit any additional information requested by franchising authorities or the Commission to resolve questions in cost-of-service proceedings.

(k) *Subsequent cost of service charges.* No cable operator may use a cost-of-service showing to justify an increase in any charge established on a cost-of-service basis for a period of 2 years after that rate takes effect, except that the Commission or the franchising authority may waive this prohibition upon a showing of unusual circumstances that would create undue hardship for a cable operator.

3. Section 76.924 is amended by revising paragraphs (b) (c), (d), (e), and (f), redesignating paragraph (g) as paragraph (j), and adding new paragraphs (g) and (i) to read as follows:

§ 76.924 Cost accounting and cost allocation requirements.

* * * * *

(b) *Accounting requirements.* Cable operators electing cost-of-service regulation or seeking rate adjustments due to changes in external costs shall maintain their accounts:

(1) in accordance with generally accepted accounting principles; and

(2) in a manner that will enable identification of appropriate investments, revenues, and expenses.

(c) *Accounts level.* Except to the extent indicated below, cable operators electing cost of service regulation or seeking adjustments due to changes in external costs shall identify investments, expenses and revenues at the franchise, system, regional, and/or company level(s) in a manner consistent with the accounting practices of the operator on April 3, 1993. However, in all events, cable operators shall identify at the franchise level their costs of franchise requirements, franchise fees, local taxes and local programming.

(d) *Summary accounts.* (1) Cable operators filing for cost-of-service regulation, other than small operators, as defined by § 76.922(b)(5)(i), shall report all investments, expenses, and revenue and income adjustments accounted for at the franchise, system, regional and/or company level(s) to the summary accounts listed below:

(i) **Ratebase:**

(A) Net Working Capital.

(B) Headend.

(C) Trunk and Distribution Facilities.

(D) Drops.

(E) Customer Premises Equipment.

(F) Construction/Maintenance Facilities and Equipment.

(G) Programming Production Facilities and Equipment.

(H) Business Offices Facilities and Equipment.

(I) Other Tangible Assets.

(J) Accumulated Depreciation.

(K) Plant Under Construction.

(L) Organizational and Franchise Costs.

(M) Subscriber Lists.

(N) Capitalized Start-up Losses.

(O) Goodwill.

(P) Other Intangibles.

(Q) Accumulated Amortization.

(R) Deferred Taxes.

(ii) **Operating Expenses:**

(A) Cable Plant Employee Payroll.

(B) Cable Plant Power Expense.

(C) Pole Rental, Duct, Other Rental for Cable Plant.

(D) Cable Plant Depreciation Expense.

(E) Cable Plant Expenses—Other.

(F) Plant Support Employee Payroll Expense.
(G) Plant Support Depreciation Expense.
(H) Plant Support Expense—Other.
(I) Programming Activities Employee Payroll.
(J) Programming Acquisition Expense.
(K) Programming Activities Depreciation Expense.
(L) Programming Expense—Other.
(M) Customer Services Expense.
(N) Advertising Activities Expense.
(O) Management Fees.
(P) General and Administrative Expenses.
(Q) Selling General and Administrative Depreciation Expenses.
(R) Selling General and Administrative Expenses—Other.
(S) Amortization Expense—Franchise and Organizational Costs.
(T) Amortization Expense—Customer Lists.
(U) Amortization Expense—Capitalized Start-up Loss.
(V) Amortization Expense—Goodwill.
(W) Amortization Expense—Other Intangibles.
(X) Operating Taxes.
(Y) Other Expenses (Excluding Franchise Fees).
(Z) Franchise Fees.
(AA) Interest on Funded Debt.
(BB) Interest on Capital Leases.
(CC) Other Interest Expenses.
(iii) **Revenue and Income Adjustments:**
(A) Advertising Revenues.
(B) Other Cable Revenue Offsets.
(C) Gains and Losses on Sale of Assets.
(D) Extraordinary Items.
(E) Other Adjustments.

(2) Small operators, as defined by § 76.922(b)(5)(i), that file for cost of service regulation shall report all investments, expenses, and revenue and income adjustments accounted for at the franchise, system, regional and/or company level(s) to the following summary accounts:
(i) **Ratebase:**
(A) Net Working Capital.
(B) Headend, Trunk and Distribution System and Support Facilities and Equipment.
(C) Drops.
(D) Customer Premises Equipment.
(E) Production and Office Facilities, Furniture and Equipment.
(F) Other Tangible Assets.
(G) Accumulated Depreciation.
(H) Plant Under Construction.
(I) Goodwill.
(J) Other Intangibles.
(K) Accumulated Amortization.
(L) Deferred Taxes.
(ii) **Operating Expenses:**
(A) Cable Plant Maintenance, Support and Operations Expense.
(B) Programming Production and Acquisition Expense.
(C) Customer Services Expense.
(D) Advertising Activities Expense.
(E) Management Fees.
(F) Selling, General and Administrative Expenses.
(G) Depreciation Expense.
(H) Amortization Expense—Goodwill.
(I) Amortization Expense—Other Intangibles.
(J) Other Operating Expense (Excluding Franchise Fees).
(K) Franchise Fees.
(L) Interest Expense.
(iii) **Revenue and Income Adjustments:**
(A) Advertising Revenues.
(B) Other Cable Revenue Offsets.
(C) Gains and Losses on Sale of Assets.
(D) Extraordinary Items.
(E) Other Adjustments.

(3) Cable operators shall not be required to report their investments, expenses and revenues to the summary accounts listed in paragraphs (d)(1) and (d)(2) of this section for purposes of adjusting rates based on changes in their external costs.

(e) *Allocation to service cost categories.*

(1) For cable operators electing cost-of-service regulation, investments, expenses, and revenues contained in the summary accounts identified in paragraph (d) of this section shall be allocated among the Equipment Basket, as specified in § 76.923, and the following service cost categories:

(i) Basic service cost category. The basic service category, shall include the cost of providing basic service as defined by § 76.901(a). The basic service cost category may only include allowable costs as defined by §§ 76.922(g) through 76.922(k).

(ii) Cable programming services cost category. The cable programming services category shall include the cost of providing cable programming services as defined by § 76.901(b). This service cost category shall contain subcategories that represent each programming tier that is offered as a part of the operator's cable programming services. All costs that are allocated to the cable programming service cost cateogry shall be further allocated among the programming tiers in this category. The cable programming service cost category may include only allowable costs as defined in § 76.922(g) through 76.922(k).

(iii) Nonregulated cable programming services cost category. The nonregulated cable programming service cost category shall include the cost of providing video programming that is not carried on either the basic service tier or a cable programming service tier. It includes video programming that is offered.
(A) On a pay-per-channel basis;
(B) On a pay-per-program basis; or
(C) As any combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service consists of commonly-identified video programming and is not bundled with any regulated tier of service.

(iv) Other cable activities service cost category. The other cable activities service cost category shall include the cost of providing all cable services that are not included in the basic service, cable programming services, or nonregulated cable programming services categories. Other cable activities include leased commercial access, billing and collection services, studio and nonregulated equipment engineering and rental services, sale of nonregulated equipment, and maintenance of nonregulated equipment sold to customers.

(v) Non-cable activities service cost category. The noncable service cost category shall include the cost of providing all activities of a cable operator that are not related to the provision of cable services.

(2) Cable operators seeking an adjustment due to changes in external costs identified in FCC Form 1210 shall allocate such costs among the equipment basket, as specified in § 76.923, and the following service cost categories:
(i) The basic service category as defined by paragraph (e)(1)(i) of this section;
(ii) The cable programming services category as defined by paragraph (e)(1)(ii) of this section;
(iii) The nonregulated cable programming services cost category as defined by paragraph (e)(1)(iii) of this section;
(iv) The other cable activities service costs category as defined by paragraph (e)(1)(iv) of this section; and
(v) The non-cable activities service cost category as defined by paragraph (e)(1)(v) of this section.

(f) *Cost allocation requirements.* (1) Allocations of investments, expenses and revenues among the service cost categories and the equipment basket shall be made at the organizational level in which such costs and revenues have been identified for accounting purposes pursuant to § 76.924(c).

(2) Costs of programming and retransmission consent fees shall be

directly assigned or allocated only to the service cost category in which the programming or broadcast signal at issue is offered.

(3) Costs of franchise fees shall be allocated among the equipment basket and the service cost categories in a manner that is most consistent with the methodology of assessment of franchise fees by local authorities.

(4) Costs of public, educational, and governmental access channels carried on the basic tier shall be directly assigned to the basic tier where possible.

(5) All other costs that are incurred exclusively to support the equipment basket or a specific service cost category shall be directly assigned to that service cost category or the equipment basket where possible.

(6) Costs that are not directly assigned shall be allocated to the service cost categories in accordance with the following allocation procedures:

(i) Wherever possible, common costs for which no allocator has been specified by the Commission are to be allocated among the service cost categories and the equipment basket based on direct analysis of the origin of the costs.

(ii) Where allocation based on direct analysis is not possible, common costs for which no allocator has been specified by the Commission shall, if possible, be allocated among the service costs categories and the equipment basket based on indirect, cost-causative linkage to other costs directly assigned or allocated to the service cost categories and the equipment basket.

(iii) Where neither direct nor indirect measures of cost allocation can be found, common costs shall be allocated to each service cost category based on the ratio of all other costs directly assigned and attributed to a service cost category over total costs directly or indirectly assigned and directly or indirectly attributable.

(g) *Cost identification at the franchise level.* After costs have been directly assigned to and allocated among the service cost categories and the equipment basket, cable operators that have aggregated costs at a higher level than the franchise level must identify all applicable costs at the franchise level in the following manner:

(1) Recoverable costs that have been identified at the highest organizational level at which costs have been identified shall be allocated to the next (lower) organizational level at which recoverable costs have been identified on the basis of the ratio of the total number of subscribers served at the lower level to the total number of subscribers served at the higher level.

(2) Cable operators shall repeat the procedure specified in paragraph (g)(1) of this section at every organizational level at which recoverable costs have been identified until such costs have been allocated to the franchise level.

* * * * *

(i) *Transactions and affiliates.* Adjustments on account of external costs and rates set on a cost-of-service basis shall exclude any amounts not calculated in accordance with the following:

(1) Charges for assets purchased by or transferred to the regulated activity of a cable operator from affiliates shall equal the invoice price if that price is determined by a prevailing company price. The invoice price is the prevailing company price if the affiliate has sold a substantial number of like assets to nonaffiliates. If a prevailing company price for the assets received by the regulated activity is not available, the changes for such assets shall be the lower of their cost to the originating activity of the affiliated group less all applicable valuation reserves, or their fair market value.

(2) The proceeds from assets sold or transferred from the regulated activity of the cable operator to affiliates shall equal the prevailing company price if the cable operator has sold a substantial number of like assets to nonaffiliates. If a prevailing company price is not available, the proceeds from such sales shall be determined at the higher of cost less all applicable valuation reserves, or estimated fair market value of the asset.

(3) Charges for services provided to the regulated activity of a cable operator by an affiliate shall equal the invoice price if that price is determined by a prevailing company price. The invoice price is the prevailing company price if the affiliate has sold like services to a substantial number of nonaffiliates. If a prevailing company price for the services received by the regulated activity is not available, the charges of such services shall be at cost.

(4) The proceeds from services sold or transferred from the regulated activity of the cable operator to affiliates shall equal the prevailing company price if the cable operator has sold like services to a substantial number of nonaffiliates. If a prevailing company price is not available, the proceeds from such sales shall be determined at cost.

(5) For purposes of § 76.924(i)(1) through 76.924(i)(4), costs shall be determined in accordance with the standards and procedures specified in § 76.922 and paragraphs (b) and (d) of this section.

[FR Doc. 94–9078 Filed 4–14–94; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 87]

RIN 2127–AE79

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule allows manufacturers of all replacement seat belt assemblies intended for use only in specifically stated motor vehicles a choice of two means of providing information regarding the seating positions and vehicle models for which the assemblies are appropriate. The information may be provided either on the assembly itself or in the installation instruction sheet currently required to accompany the assembly. This final rule also removes the labeling requirement for two types of seat belt assemblies when they are installed as original equipment in a new motor vehicle. NHTSA believes that this final rule provides manufacturers more flexibility in the manner of providing this information without decreasing the likelihood that belts will be correctly installed.

DATES: *Effective Date:* The amendments made in this rule are effective October 12, 1994.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than May 16, 1994.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel S. Cohen, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4911.

SUPPLEMENTARY INFORMATION:

Background

Standard No. 209 takes three different approaches to requiring manufacturers of replacement seat belt assemblies to provide information regarding the vehicle models and seating positions for which the assemblies are appropriate. The standard requires some seat belt assemblies to be labeled, some to be both labeled and accompanied by an installation instruction sheet, and some to be accompanied by an installation instruction sheet. The following belts are required to be labeled:

- Dynamically tested belts with load limiters installed in new motor vehicles (section S4.5(c)); and
- Dynamically tested manual belts installed in new trucks and multipurpose passenger vehicles with a gross vehicle weight rating of 8,500 pounds or less and an unloaded weight of less than 5,500 pounds (LTVs) (section S4.6(b)).

The following belts are required to be both labeled and accompanied by an installation instruction sheet:

- Dynamically tested replacement belts with load limiters (sections S4.1(k) and S4.5(c)); and
- Dynamically tested manual replacement belts for LTVs (sections S4.1(k) and S4.6(b)).

All other replacement belts are required to be accompanied by an installation instruction sheet (section S4.1(k)).

On May 10, 1993, NHTSA published a notice of proposed rulemaking (NPRM) proposing to replace these three different sets of requirements with a single provision allowing manufacturers of replacement seat belt assemblies a choice of one of two means of providing information regarding the seating positions and vehicle models for which the assemblies are appropriate: Either on the assembly or in the installation instruction sheet currently required to accompany the assembly. The NPRM also proposed to exclude from the proposed labeling requirement those seat belt assemblies that are installed as original equipment in a new motor vehicle.

NHTSA received six comments on the NPRM. Four of the commenters supported the agency's adopting the amendments proposed in the NPRM. None of the commenters objected to the proposed exclusion of seat belt assemblies installed as original equipment. This exclusion has been adopted as proposed.

General Motors (GM) raised issues regarding the types of replacement belts subject to the two proposed options, regarding the means of providing the required information, and regarding the effect of the proposal on current inventories. Volkswagen (VW) suggested that the agency rescind the requirement to provide installation instructions. All of the comments were considered in the formulation of this final rule and are addressed below. Since the final rule will provide manufacturers more flexibility in the manner of providing installation information without decreasing the likelihood that belts will be correctly installed, NHTSA is adopting the provision regarding the choice of two means of providing the information as proposed.

Note: On May 28, 1993, the Association of International Automobile Manufacturers submitted a petition for rulemaking requesting the agency to rescind the requirement that replacement seat belt assemblies be accompanied by installation instructions. Elsewhere in this issue of the Federal Register, the agency has published a notice denying this petition.

Applicability

In the NPRM, NHTSA proposed a 30 day leadtime based on its belief that all belts which comply with the current requirements would comply with the new requirement. GM disagreed with this assumption. GM correctly stated that make/model information is currently required only on certain dynamically tested belts. The proposed language required this information to be either on all replacement belts or on the instruction sheet for all replacement belts.

This final rule will require the addition of only one sentence on either the belt or the instruction sheet for some dynamically tested belts. For all other replacement belts, no change will be necessary. In order to provide manufacturers with sufficient time to design, fabricate, and attach new labels, or to change, edit, and approve the additional text for the instruction sheet to be provided with the replacement belt assembly, NHTSA has provided for a leadtime of 180 days.

Current Inventories

GM also expressed concern that the proposed requirement would apply to replacement belts in inventory which had not been installed prior to the effective date of the final rule. GM is incorrect. Only products manufactured on or after the effective date of an applicable requirement in a Federal motor vehicle safety standard must comply with that requirement. Therefore, only replacement belt assemblies manufactured on or after the effective date of the final rule would be required to comply with the new requirements.

Allow "Alternative Means" or Rescind Requirement

Citing recent agency grants of petitions for inconsequential noncompliance with S4.1(k) of Standard No. 209, GM suggested that the agency should amend the proposed language to allow other "alternative means" of providing installation information in addition to placing it on the belt or on an instruction sheet in the box. GM did not identify any specific "alternative means" or provide any other guidance on how the agency would determine that a seat belt assembly met such a requirement. Also citing the grants of petitions for inconsequential noncompliance, VW suggested that the agency should rescind the requirement to provide installation instructions completely. As explained below, the agency disagrees with both commenters.

With regard to GM's request that "alternative means" of providing the required information be allowed, NHTSA believes that the language suggested by GM is not sufficiently objective to satisfy the requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*). Therefore, NHTSA has not altered the proposed language as GM suggested.

With regard to VW's comment, the agency notes that since November 5, 1992, it has received seven petitions for inconsequential noncompliance because replacement belt assemblies were not accompanied by required installation information. These petitions were granted because the petitioner demonstrated that the noncompliance was inconsequential due to other procedures or practices that provided the information in another format than that required by Standard No. 209. The other procedures or practices involved a determination by a mechanic or technician of physical differences unique to a particular design. These practices and procedures may work well, but their success depends on the vigilance and experience of the installer. VW did not provide any information indicating that any of these procedures or practices would ensure that an untrained person could correctly install the belts. NHTSA notes that not all belts are replaced by a trained mechanic. Moreover, a change in the standard to remove this requirement would substantially magnify the potential risk of improper installation, given that no evidence was provided that all seat belt or vehicle manufacturers have such a practice or procedure.

The grant of a petition for inconsequential noncompliance exempts the manufacturer from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*). An inconsequentiality proceeding is retrospective, and, in the case of the failure to provide installation instructions, the granting of petitions was based, in part, on the fact that there was no evidence that any of the replacement belt assemblies had been installed incorrectly. A rulemaking proceeding is, by contrast, prospective, looking at whether all future seat belt assemblies should be excluded from the requirement to provide installation information. VW did not demonstrate that the installation information would get to all users in a reliable and effective manner absent the requirement that it be provided with the belt. Thus, NHTSA disagrees with VW that this requirement should be rescinded.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action was not reviewed under the Executive Order. With respect to the DOT policies and procedures, this action has been determined not to be significant. This final rule allows manufacturers an option of either providing information with seat belt assemblies or labeling the seat belt assemblies. Except for some dynamically tested belts, seat belt assemblies currently are required to comply with one of these options. The cost savings associated with deleting some of the requirements should more than offset any additional minor costs associated with adding make/model information to the installation instruction sheets. Therefore, the agency has determined that there will be minimal additional costs with respect to some assemblies.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, the agency has determined that this final rule will have only a minimal cost impact on some seat belt assemblies. Accordingly, a regulatory evaluation has not been prepared for this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. Section 571.208 is amended by adding a new S4.5.3.5 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.5.3.5 A replacement automatic belt shall meet the requirements of S4.1(k) of Standard No. 209.

* * * * *

§ 571.209 [Amended]

3. Section 571.209 is amended by removing S4.5(c) and S4.6(b), and by revising S4.1(k) to read as follows:

§ 571.209 Standard No. 209; Seat belt assemblies.

* * * * *

S4.1 * * *

* * * * *

(k) *Installation instructions.* A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, "Motor Vehicle Seat Belt Installations," November 1973. If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., "front right"] in [insert specific vehicle make(s) and model(s)].

* * * * *

Issued on April 11, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–9086 Filed 4–14–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC01

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Royal Snail and Anthony's Riversnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status for the royal snail (*Pyrgulopsis* (=*Marstonia*) *ogmorhaphe*) and Anthony's riversnail (*Athearnia*

anthonyi) under the Endangered Species Act of 1973, as amended (Act). The royal snail is known only from two spring runs on public lands in the Sequatchie River system, Marion County, Tennessee. The extremely limited distribution of the royal snail and the limited amount of occupied habitat make this species extremely vulnerable to extinction. Anthony's riversnail is known from two small populations—one in the Sequatchie River, Marion County, Tennessee, and one in Limestone Creek, Limestone County, Alabama. These populations are threatened by the general water quality deterioration that has resulted from siltation and other pollutants contributed by such factors as coal mining, poor land use practices, and waste discharges. The protection and recovery provisions afforded by the Act for the royal snail and Anthony's riversnail are implemented by this final rule.

EFFECTIVE DATE: May 16, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff or Mr. Richard G. Biggins at the above address (704/665–1195, Ext. 229 or 228, respectively).

SUPPLEMENTARY INFORMATION:

Background

Royal Snail

The royal snail (*Marstonia ogmorhaphe*) was described by Thompson in 1977 and was later reassigned to the genus *Pyrgulopsis* by Hershler and Thompson (1987). The royal snail is a small (usually less than 5 millimeters (0.25 inch) in length) annual species distinguished from other closely related species by (1) its relatively large size; (2) its large number of whorls (5.2 to 5.8); (3) its deeply incised, suture-producing, strongly shouldered whorls, which are almost flat above; (4) its complete aperture, which is broadly ovate in shape with a rounded posterior corner; (5) its outer lip, which is slightly arched forward in lateral profile; (6) its thin shell; (7) its conical-terete shape; and (8) its enlarged bursa copulatrix with a completely exposed duct (Thompson 1977).

The royal snail is known from only two spring runs in the Sequatchie River system in Marion County, Tennessee. Royal snails are generally found in the diatomaceous "ooze" and on leaves and twigs in the quieter pools downstream from the spring source.

While no populations of the royal snail are known to have been lost, the general deterioration of the water quality that has resulted from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges likely are impacting the species. This could result in serious, irreversible decline of the species. Additionally, because both existing populations inhabit extremely limited areas, they are very vulnerable to extirpation from accidental toxic chemical spills or vandalism.

On December 17, 1992, the Service notified by mail (28 letters) the potentially affected Federal and State agencies, local governments, and interested individuals within the species' present range that a status review of the royal snail was being conducted. Three agencies and one private organization responded. The Tennessee Valley Authority supported proposing the species for listing. The Tennessee Wildlife Resources Agency, U.S. Soil Conservation Service, and the one responding private organization did not take a position on the potential listing. No objections to the potential listing of the royal snail were received.

Anthony's Riversnail

Anthony's riversnail was originally described from specimens collected in the Holston River, near Knoxville, Tennessee ("Budd," in Redfield 1854). This relatively large freshwater snail, which grows to about 2.5 centimeters (1 inch) in length, is ovate and olive green to yellowish brown in color. Anthony's riversnail is listed by the Tennessee Department of Environment and Conservation as a threatened species (Bogan and Parmalee 1983).

Anthony's riversnail is primarily a big-river species that was historically associated with shoal areas in the main stem of the Tennessee River and the lower reaches of some of its tributaries. There are historical records of the species from the lower French Broad River, Knox County, Tennessee; Nolichucky River, Green County, Tennessee; Clinch River, Jefferson County, Tennessee; Beaver Creek, Knox County, Tennessee; Little Tennessee River, Monroe and Loudon Counties, Tennessee; Tellico River, Monroe County, Tennessee; Sequatchie and Little Sequatchie Rivers and Battle Creek, Marion County, Tennessee; South Chickamauga and Tiger Creeks, Catoosa County, Georgia; Limestone Creek, Limestone County, Alabama; and Tennessee River, Knox and Loudon Counties, Tennessee, and Jackson, Limestone, and Lauderdale Counties, Alabama (Bogan and Parmalee 1983; Gordon 1991; F. Thompson, Florida Museum of Natural History, personal communication, 1991). Presently, only two small populations are known to survive—one in the Sequatchie River, Marion County, Tennessee (M. Gordon, Tennessee Technological University, and S. Ahlstedt, Tennessee Valley Authority, personal communications 1991), and one in Limestone Creek, Limestone County, Alabama (Thompson, personal communication, 1991; Garner 1992). Many populations were lost when much of the Tennessee River and the lower reaches of its tributaries were impounded. The general water quality deterioration that has resulted from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges was likely responsible for the species' further decline. These factors continue to impact the Sequatchie River and Limestone Creek populations.

Both existing populations inhabit short river reaches; thus, they are very vulnerable to extirpation from accidental toxic chemical spills. As the Sequatchie River and Limestone Creek are isolated by impoundments from other Tennessee River tributaries, recolonization of any extirpated populations would be unlikely without human intervention. Additionally, because these populations are isolated, their long-term genetic viability is questionable.

Anthony's riversnail (*Athearnia anthonyi*) first appeared as a candidate species (category 2) on May 22, 1984, in the Invertebrate Notice or Review (49 FR 21664–21675). This taxon was reassigned from category 2 to category 3B on January 6, 1989, in the Animal Notice of Review (54 FR 554–579). The change in category was based on information that Anthony's riversnail was not a distinct species, but that it was instead the same as another category 2 species, the boulder snail (*Leptoxis* (=*Athearnia*) *crassa*). Gordon (1991) examined juveniles of both species and concluded that the two snails are distinct species. However, as the boulder snail is apparently extinct (Bogan and Parmalee 1983, Gordon 1991), their distinctiveness is irrelevant.

On June 12, 1992, the Service notified by mail (37 letters) the potentially affected Federal and State agencies, local governments, and interested individuals within the species' present range that a status review of the Anthony's riversnail was being conducted. Four agencies responded. The Tennessee Department of Environment and Conservation

supported proposing the species for listing. The Tennessee Valley Authority, U.S. Soil Conservation Service, and Tennessee State Planning Office responded to the notification letter but did not take a position on the potential listing. No objections to the potential listing of the Anthony's riversnail were received.

Summary of Comments and Recommendations

In the August 5, 1993, proposed rule (58 FR 41690) on the royal snail and Anthony's riversnail and through associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule for the royal snail and Anthony's riversnail. Appropriate Federal and State agencies, and interested parties were contacted by letters dated August 16, 1993. Legal notices were published in the Chattanooga Times and Chattanooga News-Free Press on August 19, 1993, and in the Decatur Daily on August 23, 1993.

One written comment was received on the proposed rule to list the royal snail an Anthony's riversnail. The U.S. Soil Conservation Service responded by stating they had no additional information on either of the species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the royal snail and Anthony's riversnail should be classified as endangered species. Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the royal snail (*Pyrgulopsis* (=*Marstonia*) *ogmorhaphe*) and Anthony's riversnail (*Athearnia anthonyi*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The royal snail is known from only two spring runs in the Sequatchie River system in Marion County, Tennessee, and has never been found outside these areas. This extremely limited distribution, the limited amount of occupied habitat, the ease of accessibility, and the species' annual life cycle make the royal snail extremely vulnerable to extinction. Threats to the species include siltation; road construction; logging; agricultural, municipal, industrial, and mining runoff (both direct and from sub surface flows); cattle grazing; vandalism; and pollution from trash thrown in the springs. Further, timber harvesting for wood chip mills proposed for southeastern Tennessee and northeastern Alabama could impact this species.

Anthony's riversnail was once rather widespread in the Tennessee River system. (See "Background" section for a discussion of the species' historic range.) Presently, only two small populations are known to survive—one in the Sequatchie River, Marion County, Tennessee (Gordon and Ahlstedt, personal Communications, 1991), and one in Limestone Creek, Limestone County, Alabama (Thompson, personal Communication, 1991; Garner 1992).

Anthony's riversnail is primarily a big-river species that was historically associated with shoal areas in the main stem of the Tennessee River and the lower reaches of some of its tributaries. When the Tennessee River impoundments were constructed, most of the Tennessee River's riverine habitat was lost, and the lower reaches of its tributaries were also inundated. Populations that were able to survive in the remaining limited unimpounded habitat were apparently lost due to the general deterioration of water quality that has resulted from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. These factors continue to impact the Sequatchie River and Limestone Creek populations. Additionally, timber harvesting for wood chip mills proposed for southeastern Tennessee and northeastern Alabama could impact the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no indication that over-utilization has been a problem for the royal snail or Anthony's riversnail. The specific areas inhabited by these species are presently not known by the general public; until the proposed rule was published, they were likely unaware of the presence of these rare snails. If the specific areas inhabited by these two species were revealed, it would be extremely easy for vandals to seriously impact them. Therefore, the present range of these species has been described only in general terms.

C. Disease or Predation

Although the royal snail and Anthony's riversnail are consumed by predatory animals, there is no evidence that predation or disease are serious threats to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Tennessee prohibits taking fish and wildlife, including freshwater snails, for scientific purposes without a State collecting permit. However, the royal snail and Anthony's riversnail are generally not protected from other threats. Federal listing will provide additional protection for these species from collectors by requiring Federal endangered species permits to take these species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Because the royal snail is presently restricted to two small spring runs, it is very vulnerable to extinction from accidental toxic chemical spills; and because the populations are physically isolated from each other, recolonization of an extirpated population would not be possible without human intervention. Additionally, because natural gene flow among populations is not possible, the long-term genetic viability of these remaining isolated populations is questionable.

Both existing Anthony's riversnail populations inhabit short river reaches; thus, they are vulnerable to extirpation from accidental toxic chemical spills. As the Sequatchie River and Limestone Creek are isolated by impoundments from other Tennessee River tributaries, recolonization of any extirpated populations would be unlikely without human intervention. Additionally, because these populations are isolated, their long-term genetic viability is questionable.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the royal snail and Anthony's riversnail as endangered. The royal snail is known from only two populations in spring runs in Marion County, Tennessee. Anthony's riversnail is currently known from two small populations—one in the Sequatchie River, Marion County, Tennessee, and one in Limestone Creek, Limestone County, Alabama. These snails and their habitats have been and continue to be threatened, and Anthony's riversnail has undergone a

significant range reduction. Their limited distribution also makes them vulnerable to toxic chemical spills. Because of their restricted distributions and both snails' vulnerability to extinction, endangered status appear to be the most appropriate classification for these species. (See "Critical Habitat" for a discussion of why critical habitat is not being designated for these snails.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or

(2) The designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to these species, and designation of critical habitat could further threaten both species.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify its critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. (See "Available Conservation Measures" section for a further discussion of section 7.) As part of the development of the proposed rules, Federal and State agencies were notified of the snail's general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the two species. No specific projects were identified. Should any future projects be proposed in areas inhabited by these snails, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action; if needed, more specific distributional information would be provided.

Each of these snails occupies very restricted stream reaches. Thus, as any significant adverse modification or destruction of these species' habitat would likely jeopardize their continued existence, no additional protection for the species would accrue from critical habitat designation that would not also accrue from listing the species. Therefore, habitat protection for these species will be accomplished through the section 7 jeopardy standard and section 9 prohibitions against take.

In addition, because these species are very rare, with populations restricted to extremely short stream reaches, unregulated taking for any purpose could threaten their continued existence. The publication of critical habitat maps in the **Federal Register** and local newspapers and any other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism, especially during the often controversial critical habitat designation process. (See "Summary of Factors Affecting the Species" section for a further discussion of threats to these species from vandals.) The locations of populations of these species have consequently been described only in general terms in this final rule. Precise locality data is available to appropriate Federal, State, and local government agencies and individuals from the service office described in the **ADDRESSES** section and from the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, local, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that could have programs affecting these species. No specific proposed Federal actions were identified that would likely affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. It has been the experience of the Service, however, that nearly all Section 7 consultations can be resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (include harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. These species are not in trade, and such permit requests are not expected.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bogan, A. E., and P. W. Parmalee. 1983. Tennessee's rare wildlife, Volume II: the mollusks. 123 pp.

Garner, J. T. 1992. A survey for Anthony's river snail, *Athearnia anthonyi* ("Budd," in Redfield 1854), in tributaries of the middle reaches of the Tennessee River. Unpublished report prepared for the U.S. Fish and Wildlife Service. 25 pp.

Gordon, M. E. 1991. Species accounts for Anthony's riversnail (*Athearnia anthonyi*). Unpublished report to The Nature Conservancy. 4 pp.

Hershler, Robert, and Fred G. Thompson. 1987. North American Hydrobiidae (Gastropoda: Rissoacea): Redescription and Systematic Relationships of *Tryonia* Stimpson, 1865, and *Pyrgulopsis* Call and Pilsbry, 1886. The Nautilus 101(1):25–32.

Refield, J. H. 1854. Descriptions of new species of shells. Ann. Lyc. Nat. Hist. New York 6:130–132.

Thompson, Fred G. 1977. The Hydrobiid snail genus *Marstonia*. Bull. Florida State. Mus., Biol. Sci., Vol. 21, No. 3, pp. 113–158.

Author

The primary authors of this final rule are Mr. J. Allen Ratzlaff and Mr. Richard G. Biggins (see **ADDRESSES** section) (704/665–1195, Ext. 229 and 228, respectively).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order, under snails, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
*	*	*	*	*	*		*
Snail, royal	*Pyrgulopsis* (=*Marstonia*) *oqmorhaphe.*	U.S.A. (TN)	NA	E	438	NA	NA
*	*	*	*	*	*		*
Riversnail, Anthony's	*Athearnia anthonyi*	U.S.A. (AL, GA, TN)	NA	E	438	NA	NA
*	*	*	*	*	*		*

Dated: April 1, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–9070 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 59, No. 73
Friday, April 15, 1994

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 92–067–1]

RIN 0579–AA50

Dry-Cured Pork Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow certain dry-cured pork products processed in a specified manner to be imported into the United States from countries where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists. It appears that certain dry-cured pork products, if processed in accordance with the proposed requirements, can be imported into the United States without presenting a significant risk of introducing these specified diseases.

DATES: Consideration will be given only to comments received on or before June 14, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–067–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Blackwell, Senior Staff Microbiologist, Import-Export Products Staff, National Center for Import-Export, VS, APHIS, USDA, room 758, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (the regulations) regulate, among other things, the importation into the United States of pork and pork products in order to prevent the introduction into the United States of foot-and-mouth disease (FMD), rinderpest, African swine fever (ASF), hog cholera (HC), and swine vesicular disease (SVD).

The government of Spain has requested that the regulations be amended to allow the importation into the United States of certain dry-cured pork products that have been processed in accordance with procedures used in Spain to manufacture products known as Serrano hams, Iberian hams, Iberian pork shoulders, and Iberian pork loins. To produce these dry-cured pork products, cuts of raw pork from certain breeds of swine are subjected to controlled curing and long-term drying.

Under current regulations, these kinds of dry-cured pork products are not allowed to be imported into the United States from any country infected with FMD, rinderpest, ASF, HC, or SVD (see §§ 94.4, 94.8, 94.9, and 94.12, respectively). Spain is infected with ASF and SVD. Therefore, products such as these may not currently be imported into the United States from Spain.

We have carefully considered the Spanish government's request. To that end, in cooperation with the Ministry of Agriculture, Fisheries, and Nutrition of Spain and other agencies within the United States Department of Agriculture (the Department), we have conducted research concerning the procedures currently used in Spain to manufacture these types of dry-cured pork products. This research has demonstrated that dry-cured pork products processed in accordance with our proposed regulations would be free of the viruses of FMD, rinderpest, ASF, HC, and SVD, and could be imported into the United States from countries where FMD, rinderpest, ASF, HC, or SVD exists, without any significant risk of these diseases being introduced into the United States.

Therefore, we are proposing to amend current § 94.17, which governs the importation of certain dry-cured hams, to allow the importation of these additional types of dry-cured hams, pork shoulders, and pork loins.

We propose to add requirements to allow dry-cured pork products from swine of specified breeds to be imported into the United States if, among other things, they are processed in a specified manner.

The proposed requirements specify steps for the controlled drying of Serrano hams, Iberian hams, Iberian shoulders, and Iberian pork loins. These steps have been shown to inactivate the viral agents of FMD, rinderpest, ASF, HC, and SVD.

Product differences account for the different processing requirements proposed for Serrano hams, Iberian hams, Iberian pork shoulders, and Iberian pork loins. These processing requirements satisfy the technical need to inactivate viral agents without disrupting the nonregulatory processing steps (such as salting and curing) that produce the distinctive flavor, color, and texture of each dry-cured pork product.

The Department's Foreign Animal Disease Diagnostic Laboratory (FADDL) has tested the dry-cured pork product processing procedures specified in the proposed regulations. The testing by FADDL [1] has demonstrated that the processing procedures set forth in proposed §§ 94.17(i)(2) through (i)(5) are adequate to destroy the viruses of FMD, rinderpest, ASF, HC, and SVD that might have been present in the pork prior to processing. Testing was limited to Serrano hams, Iberian hams, Iberian pork shoulders, and Iberian pork loins as requested by the Spanish government; comparable tests to evaluate the virucidal effectiveness of processing procedures for other dry-cured pork products have not been performed. Therefore, the proposed regulations refer only to Serrano hams, Iberian hams, Iberian shoulders, and Iberian pork loins.

In accordance with the tests conducted by FADDL, proposed § 94.17(m)(2) requires that Serrano hams come only from breeds of large white pigs, including, but not limited to, Landrace, Pietrain, Duroc, Jersey, Hampshire, and Yorkshire breeds and

[1] Laboratory results can be obtained from Dr. Charles A. Mebus, Foreign Animal Disease Diagnostic Laboratory, NVSL, VS, APHIS, USDA, Plum Island Animal Disease Center, P.O. Box 844, Greenport, NY 11944.

crosses of such breeds. Similarly, proposed §§ 94.17(m)(3), (4), and (5) provide that Iberian hams, Iberian shoulders, and Iberian pork loins come from the Iberico breed of black pigs. Different breeds of swine differ physiologically, and these differences affect the way viruses present in meat from different breeds respond to processing. Therefore, the proposed regulations apply only to hams, shoulders, and pork loins from the specified swine breeds.

We are also proposing to make certain amendments to the other requirements in current § 94.17. We are proposing to amend paragraphs (a) through (g), and paragraphs (k), (l), and (n) to indicate that the requirements in those paragraphs would also apply to these additional dry cured pork products. Paragraphs (a) through (c) concern the origin and source of the swine from which the pork products were made; paragraph (d) requires certain documents to accompany the swine to the processing establishment; and paragraphs (e) through (g), (k), (l), and (n) pertain to the establishment where the pork products were processed, including operating requirements, recordkeeping and inspection requirements, and trust fund requirements.

We are proposing to amend paragraphs (h) and (j) of current § 94.17 to provide handling procedures and marking requirements for these additional dry-cured pork products. The proposed handling procedures and marking requirements are substantially the same as those that apply to the dry-cured hams covered by current § 94.17. As discussed above, the differences among the specific provisions proposed for each dry-cured pork product are attributable to the unique qualities of flavor and texture achieved through a combination of raw pork products and individual processing techniques (recipes). The distinctive qualities that distinguish Iberian pork shoulders and loins from other shoulders and loins, Iberian hams from Serrano hams, and these hams from other dry-cured hams, are achieved through such combinations. Room temperature, relative humidity, salting, curing time, and other aspects of processing contribute to the products known as Serrano hams, Iberian hams, Iberian pork shoulders, and Iberian pork loins.

Also, we are proposing to add a heading to redesignated § 94.17(i)(1) to clarify that the processing requirements set forth in that paragraph apply to "Italian-type hams." Proposed new paragraph § 94.17(i)(2) sets forth the proposed processing requirements for Serrano hams, and proposed § 94.17(i)(3) sets forth the proposed processing requirements for Iberian hams. As discussed above, these proposed requirements are based on testing by FADDL that found them adequate to destroy the viruses of FMD, rinderpest, ASF, HC, and SVD. A key finding by FADDL is that to ensure destruction of the SVD virus, the total processing time for Serrano and Iberian hams must be extended to 560 days. Therefore, we propose a minimum processing time for Serrano hams of 190 days for countries where SVD does not occur, and 560 days for countries where SVD occurs. Similarly, for Iberian hams we propose a minimum processing time of 365 days for countries where SVD does not occur, and 560 days for countries where SVD occurs.

We are also proposing to revise §§ 94.17(h), (i), (j), and (o) to make their provisions applicable to the hams covered by this proposal, and to simplify their language. These paragraphs currently contain several requirements for Italian-type hams, described below, that we propose to make applicable to Serrano hams and Iberian hams as well, because FADDL testing indicates the requirements effectively control viruses of FMD, rinderpest, ASF, HC, and SVD.

Section 94.17(h), in both its current and revised forms, basically requires that workers who handle fresh pork in the processing establishment must shower and put on a full set of clean clothes, or wait 24 hours, before handling hams, pork shoulders, or pork loins that have progressed in the aging/curing process. This requirement prevents the transmission, via workers or their clothes, of viruses of FMD, rinderpest, ASF, HC, and SVD the workers might carry from fresh pork to hams that have already completed part of the process to destroy these viruses.

Section 94.17(i) currently contains a requirement that Italian-type hams may not come in contact during processing with any meat or animal product except for pork fat treated to at least 76 °C (168.8 °F), which may be placed over the meat during curing. This heat treatment destroys viruses of concern. We propose to make this restriction applicable to Serrano hams and Iberian hams as well, to prevent the possible transmission of viruses from other types of meat or animal products.

Section 94.17(j) currently contains requirements that Italian-type hams must be marked with the identifying number of the slaughtering establishment, the identifying number of the processing establishment, and the date processing began. These markings assist us in ensuring that imported hams came from approved establishments and were processed for the required time periods. We propose to add new paragraphs (j)(2) and (j)(3) with similar requirements for Serrano hams and Iberian hams.

Section 94.17(o) currently contains a requirement that imported Italian-type hams must be accompanied by a certificate documenting that the ham was processed for at least 400 days and that all provisions of the regulations have been met. This requirement enhances enforcement of the regulations and simplifies activities at the port of arrival. We propose to make this certificate requirement applicable to Serrano hams and Iberian hams as well, and to specify that the certificate must accurately record a minimum processing time of 400 days for Italian-type hams, 190 days for Serrano hams (560 days if from a country where SVD exists), and 365 days for Iberian hams (560 days if from a country where SVD exists). These minimum processing times are consistent with the standards in proposed § 94.17(i).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866 and been determined not significant for purposes of Executive Order 12866. Therefore, this proposed rule has not been reviewed by the Office of Management and Budget.

The Animal and Plant Health Inspection Service (APHIS) estimates that if these proposed regulations are adopted, between 5–15 metric tons of dry-cured hams, pork shoulders, and pork loins would be imported into the United States during the first year of importation. Products imported in accordance with the regulations would have an approximate retail value of $352,500–$1,057,500. In Spain, these products sell for approximately $32 per pound. We anticipate the price per pound in the United States would be higher.

Over the next decade, we estimate annual imports would plateau as United States markets for the products are developed. These products are all high-value products, and not likely to be purchased for home consumption. Instead, we anticipate most of these products would be purchased for resale by delicatessens, restaurants, and caterers. Within the next 20 years, APHIS estimates that the retail value of imported dry-cured pork products described in this document would average between $33–$66.1 million (50–100 metric tons) annually. This can be

compared with the dry-cured pork products, all of which are hams, currently being imported into the United States. In 1990, approximately 429 metric tons of these hams were imported. These dry-cured hams retail in the United States for approximately $16 per pound.

Dry-cured pork products exactly like those which would be allowed to be imported into the United States under the proposed regulations are not produced in the United States. Certain dry-cured pork products produced in Virginia do resemble, in appearance, the products we propose to allow to be imported. However, the Virginia products have a significantly higher salt concentration and a significantly different taste.

Genuine Virginia dry-cured hams are produced by four producers in Smithfield, VA. Two of these producers are small entities. Wholesale production statistics and prices are not available due to propriety concerns. However, genuine Virginia dry-cured hams retail for approximately $4 per pound.

Based on these facts, we anticipate that competition between United States-produced dry-cured pork products and the proposed imported dry-cured pork products would be insignificant.

In 1990, the United States produced 9,652,933 metric tons of pork and pork products, valued at about $11.3 billion. Additionally, the United States imported about 232,253 metric tons of pork. Imports accounted for about 2 percent of the pork available in the domestic market during 1990. Figures for 1990 indicate that imports of dry-cured pork products imported under the current regulations were approximately 429 metric tons. This compares with 349,119 metric tons of all pork products imported during 1990, or 0.0012 percent. Potential imports of dry-cured pork products as would be allowed under these proposed regulations would therefore account for less than 1 percent of total annual pork imports.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send copies of your comments to:

(1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and

(2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.17 [Amended]

2. Section 94.17 would be amended as follows:

a. The heading would be revised as set forth below.

b. The introductory text would be amended by adding "dry-cured" before "ham" and by adding ", pork shoulder, or pork loin" after "ham".

c. Paragraphs (a), (b), (c), (d), (e), (f), (g), (k), (l), and (n) would each be amended by adding "dry-cured" before "ham" and by adding ", pork shoulder, or pork loin" after "ham"each place it appears.

d. Paragraphs (f) and (g) would each be amended by adding "dry-cured" before "hams", and by adding ", pork shoulders, or pork loins" after "hams"each place it appears.

e. Paragraph (h) would be revised as set forth below.

f. Paragraph (i) would be redesignated as paragraph (i)(1) and at the beginning of the sentence, before the word "The", the heading "*Italian-type hams.*" would be added; at the end of the paragraph, the clause "; and during all of the procedures described above the ham had no contact with any meat or animal product other than pork fat that was treated to at least 76 °C (168.8 °F) that may have been placed over the ham during curing;" would be removed and a period would be added in its place.

g. In paragraph (i), introductory text and paragraphs (i)(2), (i)(3), (i)(4), and (i)(5) would be added to read as set forth below.

h. Paragraph (j) would be redesignated as paragraph (j)(1), and at the beginning of the paragraph after the words "The ham", the phrase ", if it is Italian-type ham processed in accordance with paragraph (i)(1) of this section," would be added.

i. New paragraphs (j)(2) and (j)(3) would be added to read as set forth below.

j. Paragraph (m) would be redesignated as paragraph (m)(1), and at the beginning of the paragraph after the words "The ham", the phrase ", if it is an Italian-type ham processed in accordance with paragraph (i)(1) of this section," would be added.

k. In paragraph (m), introductory text and paragraphs (m)(2), (m)(3), (m)(4), and (m)(5) would be added to read as set forth below.

l. Paragraph (o) would be revised to read as set forth below. The additions and revisions read as follows:

§ 94.17 Dry-cured pork products from countries where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists.

* * * * *

(h) Workers who handle fresh pork in the processing establishment where the dry-cured ham, pork shoulder, or pork loin was processed are required to shower and put on a full set of clean clothes, or to wait 24 hours after handling fresh pork, before handling hams, pork shoulders, or pork loins that have progressed in the aging/curing process as follows:

(1) In the case of Italian-type hams processed in accordance with paragraph (i)(1) of this section, those that have progressed beyond the final wash stage;

(2) In the case of Serrano hams or Iberian hams or pork shoulders processed in accordance with paragraph (i)(2), (i)(3), or (i)(4) of this section,

those that have progressed beyond salting; and

(3) In the case of Iberian pork loins processed in accordance with paragraph (i)(5) of this section, those that have progressed beyond being placed in a casing.

(i) The dry-cured ham, pork shoulder, or pork loin was processed in accordance with this paragraph. Except for pork fat treated to at least 76 °C (168.8 °F), which may have been placed over the meat during curing, the dry-cured pork product must have had no contact with any other meat or animal product during processing.

(1) * * *

(2) *Serrano hams.* Serrano hams were processed as follows (190-day minimum curing process):

(i) After slaughter, the ham was frozen to −40 °C (−40 °F) and held at a temperature no higher than −18 °C (−0.4 °F) for a minimum of 30 days;

(ii) The ham was thawed in a chamber with relative humidity between 70 and 80 per cent, with room temperature maintained at 12 °C to 13 °C (53.6 °F to 55.4 °F) for the first 24 hours, then at 13 °C to 14 °C (55.4 °F to 57.2 °F) until the internal temperature of the ham reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the blood vessels at the end of the femur were massaged to remove any remaining blood;

(iii) The ham was covered in salt and placed in a chamber maintained at a temperature from 0 °C to 4 °C (32 °F to 39.2 °F), with relative humidity between 75 and 85 percent, for a period no less than 0.65 days per kg and no more than 2 days per kg of the weight of the ham;

(iv) The ham was rinsed with water and/or brushed to remove any remaining surface salt;

(v) The ham was placed in a chamber maintained at a temperature of 0 °C to 6 °C (32 °F to 42.8 °F), with a relative humidity of 70 to 95 percent, for no less than 40 and no more than 60 days;

(vi) The ham was placed for curing in a chamber with a relative humidity of 60 to 80 percent and a temperature gradually raised in 3 phases, as follows:

(A) A temperature of 6 °C to 16 °C (42.8 °F to 60.8 °F), maintained for a minimum of 45 days;

(B) A temperature of 16 °C to 24 °C (60.8 °F to 75.2 °F), maintained for a minimum of 35 days;

(C) A temperature of 24 °C to 34 °C (75.2 °F to 93.2 °F), maintained for a minimum of 30 days;

(vii) Finally, with the relative humidity unchanged at 60 to 80 percent, the temperature was lowered to 12 °C to 20 °C (53.6 °F to 68 °F) and maintained at that level for a minimum of 35 days, until at least 190 days after the start of the curing process. In a country where SVD exists, the ham must be maintained at that level an additional 370 days, until at least 560 days after the start of the curing process.

(3) *Iberian hams.* Iberian hams were processed as follows (365-day minimum curing process):

(i) After slaughter, the ham was frozen to −40 °C (−40 °F) and held at a temperature no higher than −18 °C (−0.4 °F) for at least 30 days;

(ii) The ham was thawed in a chamber with relative humidity between 70 and 80 per cent, with room temperature maintained at 5.5 °C to 6.5 °C (41.9 °F to 43.7 °F) for the first 24 hours, then at 9.5 °C to 10.5 °C (49.1 °F to 50.9 °F) until the internal temperature of the ham reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the blood vessels at the end of the femur were massaged to remove any remaining blood;

(iii) The ham was covered in salt and placed in a chamber maintained at a temperature from 0 °C to 4 °C (32 °F to 39.2 °F), with relative humidity between 70 and 80 percent, and kept in the chamber for a period no less than 0.65 days per kg and no more than 2 days per kg of the weight of the ham;

(iv) The ham was rinsed with water and/or brushed to remove any remaining surface salt;

(v) The ham was placed in a chamber maintained at a temperature of 0 °C to 6 °C (32 °F to 42.8 °F), with relative humidity of 70 to 95 percent, for no less than 40 and no more than 60 days;

(vi) The ham was placed for curing in a chamber with a temperature of 6 °C to 16 °C (42.8 °F to 60.8 °F) and relative humidity of 60 to 80 percent for a minimum of 90 days;

(vii) The temperature was raised to 16 °C to 26 °C (60.8 °F to 78.8 °F) and the relative humidity reduced to 55 to 85 percent, for a minimum of 90 days;

(viii) Finally, with the relative humidity raised to 60 to 90 percent, the temperature was lowered to 12 °C to 22 °C (53.6 °F to 71.6 °F) and maintained at that level for a minimum of 115 days, until at least 365 days after the start of the curing process. In a country where SVD exists, the ham must be maintained at that level an additional 195 days, until at least 560 days after the start of the curing process.

(4) *Iberian pork shoulders.* Iberian pork shoulders were processed as follows (240-day minimum curing process):

(i) After slaughter, the pork shoulder was frozen to −40 °C (−40 °F) and held at a temperature no higher than −18 °C (−0.4 °F) for at least 30 days;

(ii) The pork shoulder was thawed at a room temperature of 12 °C to 13 °C (53.6 °F to 55.4 °F), with the relative humidity between 75 and 85 percent, for approximately 24 hours, until the internal temperature reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the blood vessels in the scapular region were massaged to remove any remaining blood;

(iii) The pork shoulder was covered in salt and placed in a chamber maintained at a temperature of 0 °C to 4 °C (32 °F to 39.2 °F) with the relative humidity between 75 and 95 percent, for a period of no less than 0.65 days per kg and no more than 2 days per kg of the weight of the pork shoulder;

(iv) The pork shoulder was rinsed with water and/or brushed to remove any remaining surface salt;

(v) The pork shoulder was placed in a chamber maintained at a temperature of 0 °C to 6 °C (32 °F to 42.8 °F) and a relative humidity of 70 to 95 percent for not less than 40 days and not more than 60 days;

(vi) The pork shoulder was placed for curing in a chamber at a temperature of 6 °C to 16 °C (42.8 °F to 60.8 °F) and a relative humidity of 60 to 80 percent for a minimum of 90 days;

(vii) The temperature was raised to 16 °C to 26 °C (60.8 °F to 78.8 °F) and the relative humidity was changed to 55 to 85 percent, and those levels were maintained for a minimum of 90 days;

(viii) Finally, the temperature was reduced to 12 °C to 22 °C (53.6 °F to 71.6 °F) and the relative humidity was raised to 60 to 90 percent for a minimum of 45 days, until at least 240 days after the start of the curing process.

(5) *Iberian pork loins.* Iberian pork loins were processed as follows (130-day minimum curing process):

(i) After slaughter, the pork loin was frozen to −40 °C (−40 °F) and held at a temperature no higher than −18 °C (−0.4 °F) for at least 30 days;

(ii) The pork loin was thawed at a room temperature maintained at 11 °C to 12 °C (51.8 °F to 53.6 °F), with the relative humidity between 70 and 80 per cent for the first 24 hours, then between 75 and 85 percent, until the loin's internal temperature reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the external fat, aponeurosis, and tendons were cleaned from the loin;

(iii) The pork loin was covered in a pickle preparation (25–30 grams of salt for each kilogram of pork loin) and placed in a chamber where it was maintained at a relative humidity of 75 to 85 percent and a temperature of 3 °C to 4 °C (37.4 °F to 39.2 °F) for 72 hours;

(iv) The pork loin was removed from the pickle preparation (25–30 grams of salt for each kilogram of pork loin), externally cleaned (brushed or rinsed),

placed in an artificial casing, and fastened shut with a metal clip;

(v) The pork loin was placed for curing in a chamber with a relative humidity of 60 to 90 percent and a temperature gradually raised in 3 phases, as follows:

(A) A temperature of 2 °C to 6 °C (35.6 °F to 42.8 °F), maintained for a minimum of 20 days;

(B) A temperature of 6 °C to 15 °C (42.8 °F to 59.0 °F)), maintained for a minimum of 20 days;

(C) A temperature of 15 °C to 25 °C (59.0 °F to 77.0 °F), maintained for a minimum of 40 days;

(vi) Finally, with the relative humidity unchanged at 60 to 80 percent and the temperature lowered to 0 °C to 5 °C (32.0 °F to 41.0 °F), the pork loin was vacuum-packed and maintained under those conditions for a minimum of 15 days, until at least 130 days after the start of the curing process.

(j)(1) * * *

(2) The dry-cured ham, if it is processed in accordance with paragraphs (i)(2) or (i)(3) of this section, or the dry-cured pork shoulder, if it is processed in accordance with paragraph (i)(4) of this section, bears an ink seal (with the identifying number of the slaughtering establishment) which was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, and an ink seal (with the identifying number of the processing establishment and the date the salting began) which was placed thereon at the processing establishment, immediately prior to salting, under the supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin; bears a tamper-proof plastic tag, tightly fitted around the hock, that states the month and year that the ham or pork shoulder entered the processing establishment; or

(3) The dry-cured pork loin, if it is processed in accordance with paragraph (i)(5) of this section, is packaged with material that bears a seal of the government of the country of origin (with the identifying number of the slaughtering establishment) which was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin and which has remained intact throughout transportation and processing, and bears a tamper-proof plastic tag, tightly fitted at one end, with the date the loin was placed in the pickle preparation under the supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin.

* * * * *

(m) The dry-cured ham, pork shoulder, or pork loin was processed in accordance with one of the following criteria:

(1) * * *

(2) The Serrano ham, processed in accordance with paragraph (i)(2) of this section, and came from any breed of large, white swine, including but not limited to Landrace, Pietrain, Duroc, Jersey, Hampshire, and Yorkshire breeds, and crosses of such breeds;

(3) The Iberian ham, processed in accordance with paragraph (i)(3) of this section, and came from a swine of the Iberico breed of black pigs;

(4) The Iberian pork shoulder, processed in accordance with paragraph (i)(4) of this section, and came from a swine of the Iberico breed of black pigs;

(5) The Iberian pork loin, if processed in accordance with paragraph (i)(5) of this section, and came from a swine of the Iberico breed of black pigs.

* * * * *

(o) The dry-cured ham, pork shoulder, or pork loin is accompanied at the time of importation into the United States by a certificate issued by a person authorized to issue such certificates by the veterinary services of the national government of the country of origin, stating:

(1) That all the provisions of this section have been complied with, including paragraphs (i) and (m) of this section;

(2) The paragraph of this section under which the dry-cured ham, pork shoulder, or pork loin was processed; and stating further that, if the product covered by the certificate:

(i) Is an Italian-type ham processed under paragraph (i)(1) of this section, it was processed for a minimum of 400 days;

(ii) Is a Serrano ham processed under paragraph (i)(2) of this section, it was processed for a minimum of 190 days or, if processed in a country where SVD exists, for a minimum of 560 days;

(iii) Is an Iberian ham processed under paragraph (i)(3) of this section, it was processed for a minimum of 365 days or, if processed in a country where SVD exists, for a minimum of 560 days;

(iv) Is a dry-cured pork shoulder, it was processed in accordance with paragraph (i)(4) of this section for a minimum of 240 days; or

(v) Is a dry-cured pork loin, it was processed in accordance with paragraph (i)(5) of this section for a minimum of 130 days.

Done in Washington, DC, this 7th day of April 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–9029 Filed 4–14–94; 8:45 am]

BILLING CODE 3410–34–P

Animal and Plant Health Inspection Service

9 CFR Part 95

[Docket No. 89–174–2]

Importation of Fetal Bovine Serum

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would remove the prohibition on the importation into the United States of fetal bovine serum from countries in which foot-and-mouth disease or rinderpest exists, and would establish conditions under which fetal bovine serum from those countries can be imported without presenting a significant risk of introducing disease into this country. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 89–174–1 that are received on or before June 27, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–174–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Gray, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 756,

Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1994, we published in the Federal Register (59 FR 9142–9146, Docket No. 89–174–1) a proposal to remove the prohibition on the importation into the United States of fetal bovine serum from countries in which foot-and-mouth disease or rinderpest exists, and to establish conditions under which fetal bovine serum from those countries can be imported without presenting a significant risk of introducing disease into this country.

Comments on the proposed rule were required to be received on or before April 26, 1994. We have received a request from a major distributor of fetal bovine serum to extend the period during which comments will be accepted. In response, we are extending the comment period on Docket No. 89–174–1 for an additional 60 days. This action will allow the requestor and other interested persons additional time to prepare and submit comments.

Authority: 21 U.S.C. 111, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 11th day of April 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–9128 Filed 4–14–94; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL TRADE COMMISSION

16 CFR Part 22

Request for Comments Concerning Guides for the Hosiery Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission) is requesting public comments on its Guides for the Hosiery Industry ("Hosiery Industry Guides"). The Commission is also requesting comments about the overall costs and benefits of the Hosiery Industry Guides and their overall regulatory and economic impact as a part of it systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 14, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Hosiery Industry Guides should be identified as "16 CFR Part 22—Comment."

FOR FURTHER INFORMATION CONTACT: Ann M. Guler, Investigator, Federal Trade Commission, Los Angeles Regional Office, suite 13209, 11000 Wilshire Blvd., Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision.

At this time, the Commission solicits written public comments concerning the Commission's Guides for the Hosiery Industry (16 CFR part 22).

The Hosiery Industry Guides, like the other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission under aapplicable statutory provisions. The Commission promulgates industry guides "when it appears to the commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Hosiery Industry Guides concern deceptive advertising and marketing of all hosiery industry products, including stockings and socks that are marketed to men, women, and children. Specifically, the Hosiery Industry Guides proscribe deception as to the grade, character, construction, origin, denier, size, style, fashion, gauge, twist of yarn, quality, quantity, value, price, serviceability, resistance to snagging or the development of runs, holes or breaks in the fabric, strength, stretch, length, color, finish, manufacture, or distribution of any hosiery product. The Hosiery Industry Guides also delineate the use of the terms "lisle," "irregulars," and "seconds" as they apply to hosiery.

Section 22.3(a) of the Hosiery Industry Guides, relating to the definition of "lisle," sets forth the minimum ply twist in terms of turns per inch. Section 22.3(b) states that the term "long staple cotton fiber" refers to "cotton fiber which is not less than 1⅛" [inch] in length of staple: *Provided, however,* That nothing in this section shall be construed as prohibiting the use of cotton fiber which is not less than 1$^{1}/_{16}$" [inch] in length of staple for the counts of 35 and less above referred to." Under Executive Order 12770 of July 25, 1991 (56 FR 35801, July 19, 1991), and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205b), all federal agencies are required to use the SI metric system of measurement in all procurement, grants and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of business by United States firms. To comply with these provisions, should the Commission elect to retain the Hosiery Industry Guides after conducting this review, the inch measurements cited above will be followed by the metric equivalents in parentheses. Thus, the second sentence of § 22.3(a) would be revised to read: "For purposes of this section the term 'lisle' as descriptive of hosiery, or part thereof, is considered as representing that such hosiery is made of yarn composed to two or more ply of combed long staple cotton fiber, the ply twist of which is not less than the turns per inch (2.54 centimeters) indicated on the following table." The note following the table in § 22.3(a) would be revised as follows: "* * * for each additional ply above 4, 1 turn per inch (2.54 centimeters) may be deducted from the minimum number of turns given for the 4-ply yarn." In § 22.3(b), the lengths of cotton fiber staples would be revised to read: "1⅛ inch (2.86 centimeters)" and "1$^{1}/_{16}$ inch (2.70 centimeters)."

If the Commission elects to retain the Hosiery Industry Guides after conducting this review, it intends to update certain terms to reflect statutory and policy changes that have occurred since the Hosiery Industry Guides were originally promulgated. The term "in commerce" in § 22.0, would be changed to "in or affecting commerce" in conformance with the amended language of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45). In conformance with the same statutory section, all references in §§ 22.2, 22.3, 22.4, 22.5, and 22.6 of the Hosiery Industry Guides to "unfair trade practice" would be changed to "unfair or deceptive act or practice." Finally,

the phrase "capacity and tendency or effect of deceiving" in §§ 22.2, 22.3, and 22.6 would be changed to conform with the language regarding deception that is set forth in Cliffdale Associates, Inc., 103 F.T.C. 110, 164–65 (1984) and subsequent cases.

Accordingly, the Commission solicits public comments on the following questions:

1. Is there a continuing need for the guides?

a. What benefits have the guides provided to purchasers of the products or services affected by the guides?

b. Have the guides imposed costs on purchasers?

2. What changes, if any, should be made to the guides to increase the benefits of the guides to purchasers?

a. How would these changes affect the costs the guides impose on firms subject to their requirements?

3. What significant burdens or costs, including costs of adherence, have the guides imposed on firms subject to their requirements?

a. Have the guides provided benefits to such firms?

4. What changes, if any, should be made to the guides to reduce the burdens or costs imposed on firms subject to their requirements?

a. How would these changes affect the benefits provided by the guides?

5. Do the guides overlap or conflict with other federal, state, or local laws or regulations?

6. Since the guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on the guides?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 22

Advertising, labeling, hosiery.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–9135 Filed 4–14–94; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 236

Request for Comments Concerning Guide for Avoiding Deceptive Use of Word "Mill" in the Textile Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Guide for Avoiding Deceptive Use of Word "Mill" in the Textile Industry ("Use of Word 'Mill' Guide"). The Commission is also requesting comments about the overall costs and benefits of the Use of the Word "Mill" Guide and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 14, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Use of Word "Mill" Guide should be identified as "16 CFR Part 236—Comment."

FOR FURTHER INFORMATION CONTACT: Ann M. Guler, Investigator, Federal Trade Commission, Los Angeles Regional Office, suite 13209, 11000 Wilshire Blvd., Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision.

At this time, the Commission solicits written public comments concerning the Commission's Guide for Avoiding Deceptive Use of Word "Mill" in the Textile Industry (16 CFR part 236).

The Use of the Word "Mill" Guide and the other industry guides issued by the Commission "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission under applicable statutory provisions. The Commission promulgates industry guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Use of Word "Mill" Guide states that the word "mill" should not be used in the corporate, business, or trade name of any person or concern handling textiles, unless the person or concern actually owns and operates or controls the manufacturing facility in which all textile materials sold under that name are produced. The Use of the Word "Mill" Guide includes examples where use of the word "mill" has been found to be deceptive.

Accordingly, the Commission solicits public comments on the following questions:

1. Is there a continuing need for the guide?

a. What benefits has the guide provided to purchasers of the products or services affected by the guide?

b. Has the guide imposed costs on purchasers?

2. What changes, if any, should be made to the guide to increase the benefits of the guide to purchasers?

a. How would these changes affect the costs the guide imposes on firms subject to its requirements?

3. What significant burdens or costs, including costs of adherence, has the guide imposed on firms subject to its requirements?

a. Has the guide provided benefits to such firms?

4. What changes, if any, should be made to the guide to reduce the burdens or costs imposed on firms subject to its requirements?

a. How would these changes affect the benefits provided by the guide?

5. Does the guide overlap or conflict with other federal, state, or local laws or regulations?

6. Since the guide was issued, what effects, if any, have changes in relevant technology or economic conditions had on the guide?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 22

Advertising, Trade name, Textiles, Mill.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–9136 Filed 4–14–94; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 252

Request for Comments Concerning Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces (the "Wig Guides"). The Commission is also requesting comments about the overall costs and benefits of the Wig Guides and

their overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 14, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Wig Guides should be identified as "16 CFR Part 252—Comment."

FOR FURTHER INFORMATION CONTACT: Ann M. Guler, Investigator, Federal Trade Commission, Los Angeles Regional Office, suite 13209, 11000 Wilshire Blvd., Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision.

At this time, the Commission solicits written public comments concerning the Commission's Guides for the Labeling, Advertising, and Sale of Wigs and Other Hairpieces (16 CFR part 252).

The Wig Guides, like the other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission under applicable statutory provisions. The Commission promulgates industry guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Wig Guides concern representations and disclosures in the advertising and labeling of hairpieces for women and men, including wigs, falls, chignons, and toupees. Specifically, the Wig Guides proscribe misrepresentations concerning the composition, quality, durability, construction, weight, length, size, fit, color, set, ability to accept a set or be reset, style, ease of styling, maintenance, service, guarantee, origin, price, or any other feature of a wig or other hairpiece. The Wig Guides also delineate the kinds of disclosures that should be made in advertising and labeling relating to hair composition, foreign origin, and used products. Guidance as to the use of such terms as "hair," "natural hair," "virgin" hair, "handmade," and "custom-made" are also included in the Wig Guides.

If the Commission elects to retain the Wig Guides after conducting this review, it intends to update two sections in conformance with statutory and policy changes that have occurred since the guides were promulgated in 1970. Section 252.4, relating to flammability, would be deleted from the Wig Guides because the U.S. Consumer Product Safety Commission is now responsible for enforcement of the Flammable Fabrics Act (15 U.S.C. 1191). The phrases "capacity and tendency or effect of deceiving" in Section 252.1 and "capacity to deceive" in Section 252.10 would be changed to conform with the language regarding deception that is set forth in Cliffdale Associates, Inc., 103 F.T.C. 110, 164–65 (1984) and subsequent cases.

Accordingly, the Commission solicits public comments on the following questions:

1. Is there a continuing need for the guides?

a. What benefits have the guides provided to purchasers of the products or services affected by the guides?

b. Have the guides imposed costs on purchasers?

2. What changes, if any, should be made to the guides to increase the benefits of the guides to purchasers?

a. How would these changes affect the costs the guides impose on firms subject to their requirements?

3. What significant burdens or costs, including costs of adherence, have the guides imposed on firms subject to their requirements?

a. Have the guides provided benefits to such firms?

4. What changes, if any, should be made to the guides to reduce the burdens or costs imposed on firms subject to their requirements?

a. How would these changes affect the benefits provided by the guides?

5. Do the guides overlap or conflict with other federal, state, or local laws or regulations?

6. Since the guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on the guides?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 252

Advertising, Labeling, Wigs, Hairpieces.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–9134 Filed 4–14–94; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 253

Request for Comments Concerning Guides for the Feather and Down Products Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Guides for the Feather and Down Products Industry. The Commission is also requesting comments about the overall costs and benefits of the guides, and their overall regulatory and economic impact, as a part of its systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 14, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H–159, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Guides for the Feather and Down Products Industry should be identified as "16 CFR part 253—Comment."

FOR FURTHER INFORMATION CONTACT: Alice Au, Attorney, Federal Trade Commission, New York Regional Office, 150 William Street, 13th Floor, New York, NY 10038, (212) 264–1210.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision.

At this time, the Commission solicits written public comments concerning the Commission's Guides for the Feather and Down Products Industry.

These guides, like the other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for

voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission under applicable statutory provisions. The Commission promulgates industry guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Guides for the Feather and Down Products Industry concern acceptable and unacceptable claims for advertising, labeling, and sale of pillows, cushions, comforters, sleeping bags, wearing apparel, and similar products which are wholly or partially filled with feathers or down, and all bulk stocks of processed feathers or down intended for use or used in the manufacturer of such products. The guides address the use of trade names, symbols, and depictions; the disclosure of filling material on labels and in advertisements; the tolerances in filling material; the labeling of products using crushed and damaged feathers; the disclosure of the use of secondhand filling material; the cleanliness of filling material; and the disclosure as to size of feather and down products.

If the Commission elects to retain the guides after conducting this review, it intends to update certain terms to reflect policy changes that have occurred since the guides were revised in 1971. The phase "capacity and tendency or effect of misleading or deceiving" in §§ 253.2, 253.3, and 253.4 would be changed to conform with the language regarding deception that is set forth in Cliffdale Associates, Inc., 103 F.T.C. 110 (1984), and subsequent cases. Further, the guides refer to Federal Standard 148a, "Classification, Identification, and Testing of Feather Filling Material," dated December 10, 1964, which was amended on September 14, 1965 and October 25, 1968. Future reference to Federal Standard 148a will include citation to the two amendments.

Section 253.11 of the guides, relating to "Disclosure as to size," includes an example of a proper representation of size description. Currently, this example is expressed in terms of inches. Under Executive Order 12770 of July 25, 1991, and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, all federal agencies are required to use the SI metric system of measurement in all procurement, grants, and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. To comply with these provisions, should the Commission elect to retain the guides after conducting this review, the example in the guides will be altered to include the metric equivalent in parentheses beside the English measurements. Thus, the measurements in the example would be revised to read: "Finished Size 21" × 27" (53 cm × 68 cm) (Cut Size 2" × 28" (55 cm × 71 cm))". This is a technical amendment to an illustrative example in the guides rather than a substantive amendment to the guides. It is not intended to create any new requirement under the guides to use metric or to use metric in any particular fashion (for example, in hundredths of centimeters).

Accordingly, the Commission solicits public comments on the following questions:

(1) Is there a continuing need for the guides?

(a) What benefits have the guides provided to purchasers of the products or services affected by the guides?

(b) Have the guides imposed costs on purchasers?

(2) What changes, if any, should be made to the guides to increase the benefits of the guides to purchasers?

(a) How would these changes affect the costs the guides impose on firms subject to their requirements?

(3) What significant burdens or costs, including costs of adherence, have the guides imposed on firms subject to their requirements?

(a) Have the guides provided benefits to such firms?

(4) What changes, if any, should be made to the guides to reduce the burden or costs imposed on firms subject to their requirements?

(a) How would these changes affect the benefits provided by the guides?

(5) Do the guides overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on the guides?

(7) Is there a continuing need for § 253.4 "Misuse of the term 'Tan-O-Quil-QM' "?

(8) Are changes needed and appropriate for § 253.6 "Tolerances in filling material"? Explain why there should or should not be changes to the current tolerances.

(9) Are there testing methods that are viable alternatives to the testing methods in Federal Standard 148a, "Classification, Identification, and Testing of Feather Filling Material"? Should the current testing methods be changed?

List of Subjects in 16 CFR 253

Advertising, Labeling, Filling Material, Trade Practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–9137 Filed 4–14–94; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 429

Request for Comments Concerning Rule on Cooling-Off Period for Door-to-Door Sales

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Rule on Cooling-Off Period for Door-to-Door Sales ("the Cooling-Off Rule" or "the Rule"). The Commission is also requesting comments about the overall costs and benefits of the rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. In addition, the Commission is proposing a non-substantive amendment to the definition of "business day" in Note 1(f) of the Cooling-Off Rule. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this proposal.

DATES: Written comments will be accepted until June 14, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H–159, Sixth and Pennsylvania Avenue NW., Washington, DC 20580. Comments about the Cooling-Off Rule should be identified as "16 CFR part 429—Comment."

FOR FURTHER INFORMATION CONTACT: Louise R. Jung, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–2989.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in

identifying rules and guides that warrant modification or rescission.

A. Background

The Rule was promulgated by the Commission on October 26, 1972 (37 FR 22933 (1972)), and amended on November 1, 1973 (38 FR 30105 (1973)), November 19, 1973 (38 FR 31828 (1973)), and November 10, 1988 (53 FR 45455 (1988)). The Rule makes it an unfair or deceptive act or practice for sellers of consumer goods or services with a purchase price of $25.00 or more, who sell away from their places of business, to fail to furnish to the buyer certain information regarding the buyer's right to cancel sales within three business days from the date of the transaction and to give the buyer a full refund of any downpayment upon the buyer's cancellation.

The Rule requires a seller to furnish the buyer with a completed receipt or copy of a contract pertaining to the sale with a summary notice informing the buyer of the right to cancel the transaction. The Rule also requires the seller to furnish the buyer with a completed cancellation form in duplicate, captioned either "Notice of Right to Cancel" or "Notice of Cancellation," one copy of which can be returned to the seller for cancellation.

On November 10, 1988, pursuant to section 18(g)(2) of the Federal Trade Commission Act,[1] the Commission granted exemptions to (1) sellers of arts and crafts at fairs and (2) sellers of automobiles at temporary places of business who have at least one permanent place of business.[2] The Commission found that the record with regard to these transactions indicated an absence of problems (such as high pressure sales tactics or misrepresentation as to the quality, price or characteristics of the product or services offered for sale) associated with sales made away from the seller's place of business.

With the exception of the sales covered by these exemptions, the Rule continues to apply to sales made "at a place other than the place of business of the seller." See Note 1(a) to the Rule. Such temporary places of business can include facilities rented on a temporary and short-term basis, such as hotel rooms, convention centers, fairgrounds and restaurants. In addition, sales occurring at other places such as the buyer's workplace or dormitory lounges are covered by the Rule.

B. Issues For Comment

At this time, the Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Rule?

(a) What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

(b) Has the Rule imposed costs on purchasers?

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on firms subject to its requirements?

(3) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

(a) Has the rule provided benefits to such firms?

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the rule overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

(7) Are sales solicited at a temporary business location, such as a hotel room, fairground, restaurant, convention center or other such place rented on a temporary and short-term basis, associated with any of the following problems?

(a) Deception by the seller in getting the consumer to come to the temporary location;

(b) High pressure sales tactics;

(c) Misrepresentation as to the quality, price or characteristics of the product;

(d) High price for low quality merchandise;

(e) The nuisance created by the visit.

(8) Does the likelihood of such problems occurring during sales solicited at a temporary location differ depending on the following circumstances?

(a) Whether the sales occur at more traditional retail settings such as fairgrounds or convention centers as compared to restaurants or dormitory lounges;

(b) Whether the sales occur at a *bona fide* auction;

(c) Whether the seller has a permanent place of business, either locally or elsewhere; or

(d) The type of goods or services sold, such as vacation time shares or health club memberships that are often the subject of specific state or local cooling-off laws ore regulations.

(9) Should the Rule continue to apply to sales solicited at a temporary business location?

(10) Should the current exemption for arts and crafts sold at fairs and similar places be expanded to include other products, such as garden equipment, fencing materials and other non-crafts?

(11) Should the current exemption for automobiles sold at auctions, tent sales and other temporary places of business (provided the seller has a permanent place of business) be expanded to include other vehicles, such as pickup trucks, vans, trucks and campers?

C. Proposed Amendment of Definition of Business Day

The Cooling-Off Rule requires sellers, who sell away from their places of business, to furnish to the buyer certain information including the buyer's right to cancel the sale within three business days from the date of the transaction. At Note 1(f) of the Cooling-Off Rule, a "business day" is defined as:

> Any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

The Commission proposes that this definition be amended to refer to "any federal holiday," rather than listing the specific business holidays. since the Rule's promulgation, the federal Washington's Birthday holiday has been replaced with the President's Day holiday and a federal holiday observing Martin Luther King, Jr.'s Birthday has been adopted. The proposed amendment of the definition of "business day" to refer to "any federal holiday" would enable the Rule automatically to take into account any changes in federal holidays and help eliminate any confusion in the interpretation of "business day."

List of Subjects in 16 CFR part 429

Door-to-door sales; Trade Practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–9133 Filed 4–14–94; 8:45 am]

BILLING CODE 6750–01–M

[1] 15 U.S.C. 57(a). This section provides that the Commission may on its own or by petition exempt persons from a rule's application if it is not necessary to prevent a practice to which the rule relates. The exemption is effectuated through informal rulemaking consisting of notice and comment.

[2] 53 FR 45455 (1988).

16 CFR Part 444

Regulatory Flexibility Act Review of Trade Regulation Rule Concerning Credit Practices

AGENCY: Federal Trade Commission.

ACTION: Regulatory Review; Request for Comments.

SUMMARY: In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and a published plan for Periodic Review of Commission Rules (46 FR 35,118 (July 7, 1981)), the Federal Trade Commission is soliciting comments and data on whether the Trade Regulation Rule Concerning Credit Practices (16 CFR part 444) (the "Rule") has had a significant impact on a substantial number of small entities, and if it has, whether the Rule should be amended to minimize any significant impact on small entities. The Commission is also requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

DATES: Comments must be received on or before June 14, 1994.

ADDRESSES: Comments and data should be sent to: Secretary, Federal Trade Commission, Washington, DC 20580. Submissions should be marked "Credit Practices Rule Comments."

FOR FURTHER INFORMATION CONTACT: Sandra M. Wilmore, Attorney, Division of Credit Practices, Bureau of Consumer Protection, room S4429, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580. Tel: (202) 326–3224.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act requires the Federal Trade Commission to conduct a periodic review of rules issued by the Commission that have or will have a significant economic impact on a substantial number of small entities.

For the purpose of the Regulatory Flexibility Act review, the term "small entity" is defined under the Small Business Size Standards, codified at 13 CFR part 121 and revised by the Small Business Administration (49 FR 5024 *et seq.*, Feb. 9, 1984). Because the definition of "small entity" differs for the various types of business entities covered by the Rule, persons wishing to comment on the Rule's impact on a particular type of small entity should refer to the Small Business Size Standards.

In addition, the Commission has determined, as a part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission. This periodic review is conducted in accordance with the Commission's plan for periodic review of rules (46 FR 35118 (July 7, 1981)).

The rule was promulgated by the Commission on March 1, 1984 (49 FR 7740) and became effective on March 1, 1985. The Rule applies to lenders and retail installment sellers (creditors) and prohibits them from directly or indirectly taking or receiving from a consumer an obligation that:

(1) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(2) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(3) Constitutes or contains an assignment of wages or other earnings unless:

(i) The assignment by its terms is revokable at the will of the debtor, or

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) Constitutes or contains a non-possessory security interest in household goods[1] other than a purchase money security interest.

The rule requires lenders and retail installment sellers to inform cosigners, prior to the time that the agreement creating the cosigner's liability is executed, of the nature of their liability as cosigners.

The rule prohibits lenders and retail installment sellers, in connection with collecting a debt arising out of an extension of credit to a consumer, from directly or indirectly levying or collecting any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

In promulgating the Rule, the Commission found that:

(1) Consumers suffered substantial economic and non-economic injury from creditors' use of the remedies that the Rule restricts;

(2) Consumers cannot reasonably avoid these remedies themselves or avoid the harsh consequences of the remedies by avoiding default; and

(3) The overall costs to consumers are greater that the countervailing benefits that the use of these remedies provide to consumers or creditors.[2]

The objective of the review initiated by this notice under the Regulatory Flexibility Act is to determine whether any part of the Rule has had a significant impact on a substantial number of small entities and, if so, whether any such impact can be reduced consistent with the operation of the Rule. In addition, the Commission requests comments on a number of other issues relating to the operation of the Rule.

For the purposes of this review, the Commission poses the following questions for public comment:

1. Is there a continuing need for the rule?

a. What benefits has the rule provided to purchasers of the products or services affected by the rule?

b. Has the rule imposed costs on purchasers?

2. What changes, if any, should be made to the rule to increase the benefits of the rule to purchasers?

a. How would these changes affect the costs the rule imposes on firms subject to its requirements?

3. What significant burdens or costs, including the cost of compliance, has the rule imposed on firms subject to its requirements?

a. Has the rule provided benefits to such firms?

4. What changes, if any, should be made to the rule to reduce the burdens or costs imposed on firms subject to its requirements?

a. How would these changes affect the benefits provided by the rule?

[1] "Household goods" are defined at § 444.1(i) of the Rule and include possessions of the consumer and his family that are generally regarded as necessities.

[2] See Credit Practices Rule: Statement of Basis and Purpose and Regulatory Analysis (SBP), 49 FR 7740, 7743–7745 (1984).

5. Does the rule overlap or conflict with other federal, state, or local laws or regulations?

6. Since the rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the rule?

7. What significant burdens or costs, including costs of compliance, has the rule imposed on small firms subject to its requirements?

a. How do these burdens or costs differ from those imposed on larger firms subject to the rule's requirements?

8. To what extent are the burdens or costs that the rule imposes on small firms similar to those that small firms would incur under standard and prudent business practices?

9. What changes, if any, should be made to the rule to reduce the burdens or costs imposed on small firms?

a. How would these changes affect the benefits of the rule?

b. Would such changes adversely affect the competitive position of larger firms?

10. Should the "Notice to Cosigner" set forth at 16 CFR 444.3(c) be rewritten to make it easier to understand? How?

11. In considering the effect the rule has had on the availability and cost of credit:

a. Has the rule caused an increase in the cost of consumer credit or a decline in the availability of consumer credit, in particular credit provided to consumers with low incomes or poor credit histories?

b. What evidence is there that any changes in the cost or availability of credit to consumers are, in fact, attributable to the rule and not to other changes in the market place?

12. In considering the continuing need for the existing rule:

a. Would an alternative rule that required disclosure of contract provisions that might cause injury to consumers, as opposed to restricting the use of such provisions, be effective in protecting consumers?

b. How would such disclosures be made to ensure that the consumer is aware of and understands them?

c. How would the costs and benefits of a disclosure approach compare to the costs and benefits of the current approach?

In responding to these questions, please distinguish to the extent possible between smaller and larger creditors and between new firms and more established firms. In addition, please submit the factual data (e.g., economic and accounting information, statistical analysis, surveys, studies, etc.) upon which comments are based together with the comments.

List of Subjects in 16 CFR Part 444

Federal Trade Commission, Consumer credit contracts, Cosigner disclosures, Trade practices, Truth in Lending.

Authority: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1980).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–9138 Filed 4–14–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 1989]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Notice of proposed rule.

SUMMARY: This notice proposes to amend immigrant visa regulations to make clear that the Department has the authority to determine where an alien's immigrant visa application shall be processed and to revise the text thereof for clarity and consistency of usage.

DATES: Written comments must be received on or before May 16, 1994.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC, 20522–0113.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, (202) 663–1184.

SUPPLEMENTARY INFORMATION: 22 CFR 42.61 is that portion of the Department's immigrant visa regulations which establishes rules for determining at which consular office an alien shall have his or her immigrant visa application processed and adjudicated. Currently, the first sentence of paragraph (a) of § 42.61 specifies that "in ordinary circumstances" an alien's application shall be processed and adjudicated by the consular office having jurisdiction over the alien's place of residence. The second sentence allows for an exception to this general rule in the case of an alien physically present in an area but not having a residence therein, if the alien can establish that he or she will remain in the area long enough to permit the application to be processed to a conclusion. The remainder of 22 CFR 42.61(a) allows for acceptance of immigrant visa applications by other consular offices, either as a matter of discretion or at the direction of the Department.

It is the Department's view that the existing regulatory text implicitly confers upon the Department the authority to make exceptions to the general rules for policy or operational reasons, including reasons of foreign policy, as may be necessary. Recently, however, questions have been raised whether such authority actually can properly be so imputed, given the phrasing of the text. Since these questions have been raised, the Department believes it to be appropriate to amend the text to make this authority explicit. In addition, the Department is taking the occasion to revise the text editorially for purposes of clarity and consistency of usage.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule would not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required under Executive Order 12778 and certified to be in compliance therewith. This rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 42

Aliens, Application, Immigrants, Visas.

Accordingly, it is proposed to amend 22 CFR part 42 as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 would be revised to read as follows:

Authority: 8 U.S.C. 1104.

2. Section 42.61 is amended by revising paragraph (a) to read as follows:

§ 42.61 Place of Application.

(a) *Alien to apply in consular district of residence.* Unless otherwise directed by the Department, an alien applying for an immigrant visa shall make application at the consular office designated by the Department as responsible for processing immigrant visa applications by aliens resident in the area of the alien's place of residence. Also, an alien physically present in an area but having no residence therein may make application at the consular

office designated for the purpose for that area if the alien will be able to remain in the area for the period required to process the application. Finally, a consular office may, as a matter of discretion, or shall, at the direction of the Department, accept an immigrant visa application from an alien who is neither a resident of, nor physically present in, the area designated for that office for such purpose. For the purposes of this section, an alien physically present in the United States shall be considered to be a resident of the area of his or her last residence prior to entry into the United States.

* * * * *

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94–8997 Filed 4–14–94; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–11–91]

RIN 1545–AL63

Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes regulations revising the intercompany transaction system of the consolidated return regulations to more clearly reflect consolidated taxable income. The proposed regulations also revise the regulations under section 267(f), limiting losses and deductions from comparable transactions between members of a controlled group. Amendments to other related regulations are also proposed in this document.

DATES: Comments must be received by July 18, 1994. Because the proposed regulations affect a broad range of transactions, two public hearings will be held. A preliminary hearing to respond to general comments and questions by speakers will be held on May 4, 1994, beginning at 10 a.m., and a second hearing to receive comments will be held on August 8, 1994, beginning at 10 a.m. Requests to speak at the first hearing must be received by April 20, 1994. Outlines of topics to be discussed at the second hearing must be received by July 18, 1994. See the notice of public hearings on proposed rulemaking published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (CO–11–91), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be delivered to: CC:DOM:CORP:T:R (CO–11–91), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The first public hearing will be held in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. The second public hearing will be held in the Internal Revenue Building Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearings, Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7180; concerning the regulations relating to consolidated groups generally, Roy Hirschhorn or David Kessler of the Office of Assistant Chief Counsel (Corporate), (202) 622–7770; concerning stock of members of consolidated groups, Rose Williams of the Office of Assistant Chief Counsel (Corporate), (202) 622–7550; concerning obligations of members of consolidated groups, Victor Penico of the Office of Assistant Chief Counsel (Corporate), (202) 622–7750; concerning insurance issues, Gary Geisler of the Office of Assistant Chief Counsel (Financial Institutions and Products), (202) 622–3970; concerning international issues relating to members of consolidated groups, Philip Tretiak of the Office of Associate Chief Counsel (International), (202) 622–3860; and concerning controlled groups, Martin Scully, Jr. of the Office of Assistant Chief Counsel (Income Tax and Accounting), (202) 622–4960. (These numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collections of information are found in § 1.1502–13 (e)(3), (f)(5)(v), and (j)(5). This information is required by the IRS to comply with section 1502 and the regulations thereunder, and to simplify the operation of the proposed regulations. This information will be used to assure that the amount, location, timing, character, source, and other attributes of intercompany items and corresponding items are properly determined. The respondents are members of consolidated groups.

The estimated total annual reporting burden is 2,500 hours.

The estimated annual reporting burden per respondent is .50 hour.

The estimated number of respondents is 5,000.

The estimated annual frequency of responses is once per year, if necessary.

B. Background

This document proposes amendments to the regulations under section 1502 of the Internal Revenue Code of 1986 (Code) that are applicable to transactions between members of a consolidated group (intercompany transactions). Sections 1.1502–13, 1.1502–13T, 1.1502–14, 1.1502–14T, and 1.1502–31 contain most of the rules of the current intercompany transaction system. Amendments are also proposed to related regulations, including the regulations under section 267(f), which are applicable to transactions between members of a controlled group.

The current consolidated return regulations use a deferred sale approach that treats the members of a group as separate entities for some purposes and as a single entity for other purposes. In general, the *amount, location, character,* and *source* of items from an intercompany transaction are determined as if separate returns were filed (separate entity treatment), but the timing of items is determined more like the timing that would apply if the participants were divisions of a single corporation (single entity treatment).

For a discussion of the issues considered in developing the proposed regulations, see the notice of hearings on the proposed regulations that appears elsewhere in this issue of the **Federal Register**. The topics discussed in the notice of hearings include:

1. Separate and single entity treatment.

2. Location of items within the group (and alternative comprehensive single entity treatment).

3. Mechanical rules.

4. Matching and acceleration rules (including nonrecognition transactions, subgroups, and possible simplifying rules).

5. Stock of members.

6. Obligations of members.

No inference is intended by the proposed regulations as to the operation of the current regulations or other rules.

C. Explanation of Proposed Intercompany Transaction Rules

1. In General

The purpose of the proposed intercompany transaction regulations is to clearly reflect the taxable income (and tax liability) of the group as a whole by preventing intercompany transactions from creating, accelerating, avoiding, or deferring consolidated taxable income (or consolidated tax liability).

The proposed regulations retain the basic approach of the current regulations by accounting for intercompany transactions through a deferred sale system. The principal focus of single entity treatment under the current regulations is on the *timing* of items from intercompany transactions. The proposed regulations expand this focus by redetermining the *character, source,* and other *attributes* of the items on a single entity basis. Only the *amount* and *location* of items remain on a separate entity basis.

The proposed regulations eliminate many inconsistent combinations of single and separate entity treatment under the current regulations that lead to inappropriate results. Nevertheless, the rules of the proposed regulations reflect the basic principles underlying the current regulations. Accordingly, the results of most common intercompany transactions are not affected by the proposed regulations even though the analysis is changed.

The proposed regulations replace the mechanical rules of the current regulations with a matching rule and an acceleration rule. These rules apply uniformly to "period" transactions (e.g., payment of currently deducted interest), sales of property and performance of capitalized services, and transactions involving the stock or obligations of members. Because the proposed regulations generally unify the rules for all intercompany transactions, many of the distinctions drawn by the current regulations between intercompany transactions, deferred intercompany transactions, and transactions involving stock or obligations of members, are eliminated as no longer necessary.

The proposed regulations include numerous examples, but the first few examples under the matching and acceleration rules provide the guidance necessary for most common intercompany transactions. Additional examples illustrate the application of the proposed rules to less common transactions.

The proposed regulations are a method of accounting to the extent they determine the timing of items. An item taken into account under these rules can be deferred, disallowed, or eliminated under other applicable law.

A group's ability to change its manner of applying the final intercompany transaction regulations will be subject to the generally applicable rules for accounting method changes. Whether a change in method will be applied with an adjustment under section 481(a) or applied on a cut-off approach will be determined by the IRS. See also "Proposed effective dates," discussed at F. of this preamble for the application of the final intercompany transaction regulations on a cut-off basis.

2. Definitions: Intercompany Transaction, Intercompany Item, and Corresponding Item

In general, an intercompany transaction is a transaction between corporations that are members of the same consolidated group immediately after the transaction. The proposed regulations provide further guidance largely through examples. S is the member transferring property or providing services, and B is the member receiving the property or services.

Each party to an intercompany transaction can have items of income, gain, deduction, and loss from the transaction (or from property acquired in the transaction). S's items are referred to as intercompany items and B's items are referred to as corresponding items. These items are generally taken into account under the matching and acceleration rules.

For most transactions, S's intercompany items and B's corresponding items are their items from the intercompany transaction (or from property acquired in the intercompany transaction) determined on a separate entity basis. Issues arise under the current regulations regarding the effect of certain costs and expenses on the determination of intercompany items and corresponding items. For example, if S performs services for B, the extent to which S's costs are included in determining its intercompany income may not always be clear. The proposed regulations retain the approach of the current regulations by providing guidance largely through examples.

The proposed regulations also continue the current approach of treating certain amounts as S's intercompany items even though S has not yet recognized or incurred them under its own method of accounting. Thus, in certain situations the rules can accelerate as well as defer intercompany items. S generally is not required, however, to take into account amounts that it will never recognize under its method of accounting merely to match B's corresponding items. Additional adjustments are made to the extent necessary to clearly reflect the group's income, including treating certain basis adjustments under the Code as items required to be taken into account.

The matching rule of the proposed regulations generally focuses on B to redetermine the time S's intercompany items are taken into account. This approach is similar to the approach of the current regulations for deferred intercompany transactions. However, the matching rule applies to a wider range of transactions, and the roles of the parties might vary. For example, a single business arrangement may be composed of related transactions, with one member being S for one transaction and B for another. The proposed regulations require each transaction to be separately analyzed, and provide examples to identify which member is B and which is S in a transaction.

The roles of the parties might also vary over time. For example, if two members engage in an interest rate notional principal contract, the member that is obligated to make the net payment in each period under the contract will vary depending on changes in interest rates. Because the net payment for each period is treated as a separate transaction, a member may be B in one period (as the payor) and S in another period (as the payee).

3. Matching Rule

Under the proposed regulations, the matching rule is the principal rule for redetermining the timing and attributes of S's intercompany items and B's corresponding items on a single entity basis. In general, S's intercompany items and B's corresponding items are taken into account to produce the same effect on consolidated taxable income as if S and B were divisions of a single corporation.

For purposes of treating S and B as divisions under the matching rule, S and B are treated as engaging in their actual transaction and owning any actual property in the transaction, operating separate trades or businesses, and having any special status (e.g., as a

bank or insurance company) that they have under the Code.

In addition to timing, the matching rule conforms the character and other attributes of S's intercompany items and B's corresponding items. For example, S might sell investment property to B, and B might hold the property for sale to customers in the ordinary course of business. S and B redetermine the attributes of their intercompany items and corresponding items to produce the same effect on consolidated taxable income as if they were divisions of a single corporation. Thus, the redetermination of character is based on the activities of both S and B and may require both S's items and B's items to be ordinary or capital. Because the attributes are redetermined by treating S and B as divisions, the matching rule also generally aggregates the holding periods of S and B with respect to property transferred in an intercompany transaction.

For each consolidated return year, the matching rule requires S to take into account its intercompany items to reflect the difference between the corresponding items B takes into account and B's recomputed items (the corresponding items B would have taken into account if S and B were divisions of a single corporation). Comparing B's corresponding items and its recomputed items ordinarily will not be difficult.

For example, if S sells property with a $70 basis to B for $100, and B later resells the property to a nonmember for $90, S's $30 gain is not taken into account until the resale. At that time, S's gain is taken into account to reflect the $30 difference between the $10 loss B takes into account and the recomputed $20 gain B would take into account if B had succeeded to S's $70 basis in a transfer between divisions of a single corporation. The character of S's $30 gain and B's $10 loss (and their holding period for the property) are redetermined by taking into account the activities of both S and B with respect to the property.

Treatment as divisions of a single corporation applies only to S and B as the parties to the intercompany transaction. The activities of other members are generally not taken into account. Moreover, because treatment as divisions is solely for purposes of taking into account items from intercompany transactions, the treatment generally does not affect determinations by S and B with respect to items or holding periods in other transactions.

The matching rule continues the trend of recent amendments to the intercompany transaction system by reducing the reliance on particular events and transactions to take items into account. Compare current § 1.1502–13(l) with current § 1.1502–13 (d) through (f). Because the matching rule focuses on B's items, if S sells land to B at a gain and B transfers the land outside the group in an exchange to which section 1031 applies, S's gain is not taken into account under the matching rule, even though the property is disposed of outside the group, if there is no difference between B's actual and recomputed items resulting from the exchange. Instead, S's gain remains deferred and is taken into account based on B's items with respect to the replacement property.

The current regulations redetermine timing on a single entity basis, but generally determine character on a separate entity basis. This dual approach may result in conflicts because timing and character cannot always be separately analyzed under the Code. The current regulations only partially resolve these conflicts. See, e.g., §§ 1.1502–13(c)(4)(ii) and (d)(3) (the character of S's deferred gain or loss taken into account as a result of B's depreciation is redetermined), and 1.1502–13(m)(1) (S is treated as disposing of property at the same time and in the same manner as B disposes of the property outside the group).

The proposed regulations generally eliminate potential conflicts between timing and character by redetermining both the timing and the attributes of items on a single entity basis. This approach eliminates the need for the special rules under the current regulations. For example, if S sells depreciable property to B at a gain, B depreciates the property for a period, and B then resells it to a nonmember, no special rules are needed to redetermine the recapture income of S or B. Instead, the recapture income is redetermined as if S and B were divisions of a single corporation. This prevents the intercompany transaction from affecting consolidated taxable income, but preserves the location of each member's items. Redetermining attributes on a single entity basis is not expected to affect most intercompany transactions.

Preserving the location of S's items, but redetermining their attributes on a single entity basis, may in certain cases require S's intercompany income or gain to be treated as excluded from gross income (or its intercompany deductions or losses to be treated as noncapital, nondeductible amounts). For example, if S has intercompany interest income from B, but B's corresponding interest deduction is disallowed under section 265, S's intercompany income must be excluded from gross income.

This approach prevents an intercompany transaction from having an effect on consolidated taxable income, but preserves the location of items for stock basis and earnings and profits adjustments under §§ 1.1502–32 and 1.1502–33. However, because of administrability concerns, S's intercompany income or gain generally can be treated as excluded from gross income only if B's corresponding item is a deduction or loss that, in the taxable year the item is taken into account, is permanently disallowed directly under another provision of the Code or regulations.

Because it has the same effect as a deduction or loss that is permanently disallowed, exclusion is also permitted if B has a corresponding loss that is not recognized under section 311. For example, if S has property with a $70 basis and sells it to B for $100, and the property is subsequently distributed to a nonmember when it has a value of $90, B's $10 loss is not recognized under section 311(a). B's distribution results in all of S's $30 gain being taken into account, but $10 of the gain is excluded from gross income. Additional corresponding items that permit S's intercompany income or gain to be excluded from gross income may be identified by the Commissioner in future guidance, to the extent consistent with administrability concerns.

Under the proposed regulations, the special asset basis rules of current § 1.1502–31(a) are not needed. These rules originally were adopted to contrast with the intercompany transaction system applicable to pre-1966 consolidated return years. They are now encompassed by the general approach of the proposed regulations to use the provisions of the Code where possible. Consequently, the special asset basis rules were not included in recently proposed revisions to § 1.1502–31. See CO–30–92 [1992–2 C.B. 627].

4. Acceleration Rule

The acceleration rule takes items into account immediately to the extent that they cannot be taken into account under the matching rule to produce the effect of treating S and B as divisions of a single corporation. The effect cannot be produced to the extent either the matching rule will not fully account for the items from an intercompany transaction in consolidated taxable income, or the intercompany transaction will be reflected by a nonmember.

For example, if S or B becomes a nonmember, any remaining intercompany items and corresponding

items can no longer be matched in the determination of consolidated taxable income. Moreover, S or B would reflect the intercompany transaction as a nonmember. The intercompany items are therefore taken into account immediately before S or B becomes a nonmember.

Similar results would be required if B purchases property from S and transfers it to a partnership in a transaction to which section 721 applies (or to nonmember corporation in a transaction to which section 351 applies), because the partnership reflects the intercompany transaction by succeeding to B's cost basis in the property. If S and B had been divisions of a single corporation, S's transfer to B generally could not have created a cost basis to be reflected by the partnership in the property. The acceleration rule requires S to take its intercompany items into account immediately before the event rendering single entity treatment impossible. (If B had disposed of the property in an exchange with a nonmember to which section 1031 applies, the intercompany items would not be taken into account under the acceleration rule because the nonmember would not succeed to B's cost basis.)

In limited circumstances, the acceleration rule will apply without the occurrence of an event separate from the intercompany transaction. This might occur if S's gain or loss from the sale of property to B exceeds the effect of the intercompany transaction on the basis of the property. For example, if B owns a building that is destroyed by fire and B uses its insurance proceeds to buy a replacement building from S, S's gain or loss will not conform to B's basis in the building because B's basis is determined under section 1033. If the amount of S's gain or loss exceeds the effect of the intercompany sale on the building's basis, S's gain or loss will not be fully taken into account under the matching rule because there will not be a sufficient difference between the corresponding items B takes into account and its recomputed items. Consequently, the acceleration rule applies at the time of the intercompany sale to take the excess amount into account. S's gain or loss is accelerated because it is not possible to treat S and B as divisions of a single corporation, and acceleration is the only administrable alternative.

The acceleration rule has two provisions for determining the attributes of S's intercompany items. For intercompany transactions involving property, the attributes are redetermined under the principles of the matching rule by deeming B to resell the property to a nonmember affiliate (a transaction comparable to S's intercompany transaction). Thus, the attributes of S's intercompany items reflect B's activities with respect to the property. For example, if S was an investor in land sold to B, and B holds the land for sale to customers in the ordinary course of business at the time B becomes a nonmember, S's gain or loss taken into account under the acceleration rule may be ordinary. Because B is deemed to sell to a nonmember affiliate, any rules applicable to related party transactions apply to determine the attributes of S's items. See, e.g., section 1239 (relating to depreciable property).

For intercompany transactions involving services or rentals, or other nonproperty transactions, the attributes of S's accelerated items are determined on a separate entity basis. For example, if S performs services that are capitalized by B, there is no deemed sale by B for purposes of determining the attributes of S's items. Instead, S's accelerated items remain ordinary items from its performance of services. The proposed regulations do not deem a sale to occur because S did not engage in a property transaction and B may never engage in the sale or exchange of property that would require S's items to be recharacterized as items from a property transaction.

Like the current regulations, and consistent with the treatment under the intercompany transaction system of a consolidated group as a single entity, the proposed regulations do not accelerate items if the entire consolidated group is acquired by another consolidated group.

5. Simplifying Rules

a. Inventory

The current regulations generally treat intercompany transactions involving inventory like intercompany transactions involving other property. But see §§ 1.1502–13(f)(1) (iv) and (viii) (a deferred amount attributable to stock in trade or inventory is taken into account as the result of a separate return year or a value write-down), and 1.1502–18 (special inventory adjustment).

The proposed regulations continue to generally treat inventory transactions like other intercompany transactions. However, if S or B uses a dollar-value LIFO method of inventory accounting, the matching rule might be unadministrable because dollar-value LIFO measures aggregate inventory changes in terms of base-year dollars, and does not separately identify the items from particular transactions. For example, B is not able to determine when corresponding items with respect to each separate intercompany transaction are taken into account because of the substitution of inventory units and costs within the dollar-value LIFO method.

Intercompany inventory transactions are typically routine transactions that occur in the normal course of business. Applying the matching and acceleration rules to dollar-value LIFO methods may be burdensome because of the potential for numerous additional computations and the inconsistencies with financial reporting of intercompany transactions. For example, S may compute intercompany inventory income and corresponding elimination for financial reporting purposes using a FIFO cost-flow assumption even though S and B use dollar-value LIFO for Federal income tax purposes.

To simplify the matching computations, the proposed regulations permit S or B to use any reasonable method to take into account their items from intercompany inventory transactions. However, adjustments are required if the cumulative amount of intercompany items not taken into account by S under the method used significantly exceeds the cumulative amount that would not be taken into account by S under methods specifically provided in the proposed regulations. For example, a group may be able to use its current accounting methods or develop other simplified methods. However, the use of a FIFO cost-flow assumption could result in deferral that significantly exceeds the deferral that would be achieved under a LIFO cost-flow assumption. If a method is expected to be reasonable, but in fact produces a significant cumulative excessive deferral in any year, S must take into account an amount for that year which will eliminate the excess and make appropriate adjustments thereafter to reflect the amount taken into account.

The proposed regulations specifically provide an "increment averaging method" and an "increment valuation method." Under the increment averaging method, B determines the portion of its total inventory costs for the current year that are included in a layer of increment under its LIFO inventory method, and S defers a comparable portion of its intercompany inventory items from sales to B for the year. B computes the ratio of current-year costs of its layer of increment over total inventory costs incurred for the year. B's current-year costs are computed in a manner consistent with

its method for valuing LIFO increments (e.g., earliest, latest, or average costs). If B uses a simplified method to allocate section 263A costs to inventory and does not allocate additional section 263A costs to specific items of LIFO inventory, B may compute the portion of its costs included in an increment without including section 263A costs in either the total costs or the costs included in a layer. B must compute its costs separately for each LIFO pool that receives intercompany purchases, and if more than one selling member transfers inventory into that pool in intercompany transactions, each selling member must take into account a comparable portion of its intercompany items.

To the extent S defers its intercompany inventory items under the increment averaging method, S layers the items based on the corresponding layers of B's costs. S takes the deferred items into account under the matching rule as B takes into account its corresponding layers through subsequent decrements.

The increment valuation method is similar to the increment averaging method. Under the increment valuation method, a ratio is determined based on the current-year costs of the layer of increment over the total costs incurred in the appropriate period used to value the increment. The appropriate period is the period of B's year used to determine current-year costs. This ratio is applied to S's intercompany inventory items computed with respect to intercompany inventory sales during the appropriate period. For example, if B determines current-year costs by reference to its earliest costs, and only the inventory costs incurred in B's first inventory turn are included for this purpose, the appropriate period is the period of B's year that includes its first inventory turn.

S determines the amount of its total intercompany inventory items for a year under any reasonable method for allocating its inventory costs to intercompany transactions. If S uses a dollar-value LIFO inventory method and a decrement occurs for the year, S must reasonably take into account the costs of prior layers of increment. For example, S may compute its intercompany inventory income using its most recent costs incurred if S has an increment for the year and S uses the earliest acquisitions cost method to value increments. Similarly, S may use an average of its costs incurred during the year if S uses this method to value increments or if S does not experience a significant increment or decrement for the year.

The current regulations determine whether inventory is disposed of outside the group by reference to B's method of inventory identification (e.g., FIFO, LIFO, or specific identification). Because the current regulations require B to consider the effect of its use of dollar-value LIFO, it is not anticipated that the proposed regulations will result in a significant change. Taxpayers can continue to use their current methods after the final intercompany transactions regulations apply if the current methods are reasonable.

b. Reserve Accounting

Reserve accounting is permitted only for special status members, and it is inappropriate to apply some aspects of reserve accounting on a single entity basis (e.g., where both parties to an intercompany transaction do not have the same special status). To the extent that reserve accounting should apply to intercompany transactions, the necessary adjustments to produce single entity results may be complex.

The proposed regulations provide that a member's addition to, or reduction of, a reserve for bad debts that is maintained under section 585 or 593 is generally taken into account on a separate entity basis. But see "Obligations of members," discussed at C.7. of this preamble (special rules for reserve deductions with respect to intercompany obligations). Similarly, if a member provides insurance to another member in an intercompany transaction, the transaction is taken into account by both members on a separate entity basis.

c. Elections

Section 1.1502–13(c)(3) of the current regulations provides that a group may elect with the consent of the Commissioner not to defer intercompany gain or loss from deferred intercompany transactions with respect to all or any classes of property. See also Rev. Proc. 82–36, 1982–1 C.B. 490 (a checklist and guidelines for requests under § 1.1502–13(c)(3)).

The proposed regulations continue to permit groups to request that items from intercompany transactions (other than transactions with respect to stock or obligations of members), be taken into account on a separate entity basis rather than under the intercompany transaction system. Any election under current § 1.1502–13(c)(3) will remain in effect. As under current law, an election to take items into account on a separate entity basis does not apply for purposes of taking losses into account under section 267(f).

Current § 1.1502–13(f)(3) provides that the IRS may enter into a closing agreement with a group required to divest itself of a member by order of law. The closing agreement generally allows the group to take into account deferred gain or loss as if it had not disposed of the member (but not over more than 10 years). Closing agreements generally will not be entered into where the divestiture is occasioned by an acquisition after August 31, 1966. Consequently, this provision is eliminated under the proposed regulations as deadwood.

Current § 1.1502–13(j) provides that the IRS may enter into a closing agreement providing special treatment for public utilities. The proposed regulations also eliminate this provision as deadwood, because a request for a closing agreement must have been made on or before November 15, 1966.

Any groups currently subject to a closing agreement under a deadwood provision eliminated by the proposed regulations will remain subject to the terms of the closing agreement.

6. Stock of Members

Sections 1.1502–14 and 1.1502–31(b) of the current regulations provide special rules for distributions and other transactions with respect to stock of members. These stock rules combine single and separate entity treatment.

The current regulations eliminate intercompany dividends from the gross income of the distributee. Section 301 distributions (whether or not dividends) first reduce the distributee member's basis in the distributing member's stock to zero, and then create an excess loss account in the stock.

If appreciated property is distributed in a distribution to which section 301 applies, the current regulations provide that the distributing member recognizes gain under section 311 that is deferred and taken into account in the same manner as if it were recognized in a deferred intercompany transaction. The distributee's basis in the property received is generally its fair market value.

No special rules are provided under the current regulations for reorganization transactions and transactions to which section 355 applies.

Liquidating distributions are governed by either section 331 or 332 as to the distributee, and section 336 or 337 as to the distributing member. Under § 1.1502–34, the stock ownership of all members is aggregated to determine whether section 332 applies to the distributee. Under section 337(c), however, the ownership is not aggregated to determine whether section 337 applies to the distributing member.

Gain or loss recognized by the distributing member under section 336 is deferred under the current regulations and taken into account as if it were recognized in an intercompany transaction. If the distributee member would recognize gain or loss from the liquidation under section 331, the distributee's gain or loss is limited under the current regulations, but preserved by determining the distributee's basis in the distributed property by reference to the distributee's basis in the stock surrendered.

Other recent consolidated return regulation projects address aspects of intercompany distributions and other transactions with respect to stock of members. See, e.g., § 1.1502–80(b) (non-applicability of section 304 to transactions between members), proposed § 1.1502–80(c) (deferral of section 165(g)), and proposed § 1.1502–80(d) (replacing current § 1.1502–14(a)(2), and providing for the non-applicability of section 301(c)(3) to transfers between members).

The proposed regulations generally apply the rules of the Code and the matching and acceleration rules to transactions with respect to stock of members. For example, if S sells to B the stock of another member (T) at a gain, S's gain is taken into account under the matching and acceleration rules.

The proposed regulations provide that intercompany distributions are generally not included in the gross income of the distributee member. However, this exclusion applies to a distribution from a subsidiary only to the extent there is a corresponding negative adjustment reflected under § 1.1502–32 in the distributee's basis in the distributing member's stock. By conditioning the exclusion on a negative adjustment, the concerns with dividend stripping transactions illustrated by current § 1.1502–32(k) are minimized. Intercompany distributions are taken into account for all Federal income tax purposes when the members become entitled to them (generally the record date) or, if earlier, when they are taken into account under the Code (e.g., under section 305(c)).

Excluding intercompany dividends from gross income is intended to have the same effect as eliminating them under the current regulations, but it conforms to the terminology generally used under the Code. For example, the holdings in Revenue Ruling 72–230, 1972–1 C.B. 209 (the effect of dividend elimination on the source of dividends paid for purposes of section 861(a)(2)) and Revenue Ruling 79–60, 1979–1 C.B. 211 (the effect of dividend elimination on personal holding company status), and the application of section 1059, are not affected.

The matching and acceleration rules apply to the distributing member's gain under section 311(b) from intercompany distributions of property. The proposed regulations provide that the distributing member's loss from an intercompany distribution of property is also recognized under the principles of section 311(b) and is taken into account under the matching and acceleration rules. In effect, intercompany distributions are equated with intercompany sales.

The recognition of loss from distributions applies only to intercompany distributions. For example, S's loss from distributing property to B is recognized, but S's loss from distributing the property to a nonmember is not recognized. Under the matching rule, a buying member's nonrecognition of loss from the distribution of property to a nonmember may result in prior intercompany gain (or loss) from the property being recharacterized as excluded from gross income (or as a noncapital, nondeductible amount). For example, if S sells property to B at a loss, and B later distributes it to a nonmember at no gain or loss, S's intercompany loss is recharacaterized as a noncapital, nondeductible amount. In effect, a group is treated as a single entity with respect to the nonrecognition of loss under section 311 on distributions to nonmembers.

The proposed regulations provide special rules to minimize the effect on consolidated taxable income of boot in intercompany reorganizations. Boot received by a member as a shareholder in an intercompany reorganization is treated as received in a separate transaction. Thus, consolidated taxable income is generally the same whether the boot is distributed as part of the reorganization, before it, or after it.

The proposed boot rules do not apply to a reorganization if any participant becomes a member or becomes a nonmember as part of the same plan or arrangement. The proposed rules do not reflect any decisions about boot received in other reorganizations such as those involving unrelated corporations or affiliated corporations filing separate returns. The tax results of reorganizations straddling consolidation remain under study because of the significant differences between boot transferred between members of a consolidated group and boot transferred between separate return corporations.

The proposed regulations provide that if a member acquires its own stock in an intercompany transaction, its basis in that stock is treated as eliminated for purposes of taking intercompany items into account with respect to the stock. Thus, if S distributes B stock to B, S's gain or loss from the distribution is taken into account immediately to reflect the elimination of basis. Compare Gen. Coun. Mem. 39,608 (March 5, 1987) (S's gain from the distribution of B stock to B is deferred until, for example, B sold the same shares to a nonmember). On the other hand, if S transfers to B the stock of T, and B subsequently transfers the stock to T in exchange for new T stock in a recapitalization to which section 368(a)(1)(E) applies, S's intercompany gain or loss remains deferred and is taken into account by reference to the replacement stock. See "Successor corporations and property," discussed at C.9. of this preamble.

Under the current regulations, intercompany gain or loss from transferring the stock of a member is taken into account when that member liquidates under section 332. For example, if S sells all of the stock of T to B at a gain, and T later liquidates in an unrelated transaction to which section 332 applies, S's gain is taken into account. If the basis of T's assets conformed to the basis of its stock before S's sale, S's gain from the T stock will be duplicated by gain that the group later recognizes from the former T assets (because B succeeds to T's basis in the assets).

The proposed regulations provide relief from this duplication in limited circumstances. Under the first rule, if section 332 applies to T's liquidation and B transfers substantially all of T's assets to a new member (new T), the transfer to new T is treated as pursuant to the same plan or arrangement as the liquidation and S's gain generally will not be taken into account. Instead, S's gain is taken into account by reference to the stock of new T. New T must be formed and the relief elected by the group within specified time periods. Similar principles apply if B's basis in the T stock is eliminated in a transaction comparable to the section 332 liquidation (e.g., a downstream merger).

Under the second rule, if T's liquidation is deemed to occur under section 338(h)(10) as a result of a qualified stock purchase of T, B is treated, subject to certain limitations, as recognizing any loss or deduction it would recognize (determined after adjusting stock basis under § 1.1502–32) if section 331 applied to the deemed liquidation. In effect, S's income or gain is offset by B's deduction or loss in

determining consolidated taxable income (although S and B must take into account their separate items). Similar principles apply if T transfers all of its assets to a nonmember and completely liquidates in a transaction comparable to a section 338(h)(10) transaction.

The third rule applies if member stock is transferred in an intercompany transaction and subsequently distributed in a second intercompany transaction to which section 355 applies. S's gain or loss might otherwise be taken into account under the proposed regulations because the basis adjustments to the T stock under section 358 may result in an inability to match the T stock basis with S's gain. Relief is provided by permitting the group to elect to treat B's distribution as subject to sections 301 and 311 rather than section 355, so that matching with S's gain remains possible. This prevents S's gain from being taken into account immediately if matching remains possible, but B's gain or loss from its distribution will also be taken into account under the matching and acceleration rules.

7. Obligations of Members

Current § 1.1502–13 provides that the general rules for intercompany transactions apply to the payment of interest and premium on intercompany obligations. Current § 1.1502–14(d) provides for the deferral of a member's gain or loss from the disposition of another member's obligation. Similar rules apply to a member's deduction for the worthlessness of an obligation and the deduction for an addition to a reserve for bad debts with respect to an obligation.

If a member's obligation is transferred to a nonmember (or the holding member becomes a nonmember), the deferred amount is generally taken into account ratably over the remaining term of the obligation. In effect, the deferred amount is reflected in consolidated taxable income under rules similar to the rules that existed under the Code in 1966 for original issue discount or amortizable bond premium. If the obligation remains within the group, the deferred amount is generally not taken into account until the obligation is redeemed. Thus, the gains and losses of the members with respect to the obligation generally offset each other in determining consolidated taxable income.

Section 108(e)(4) adopts a limited single entity approach by treating the acquisition of debt by a person related to the debtor as comparable to the debtor's acquisition of its own debt. The regulations implementing section 108(e)(4) include some circumstances in which the holder of the debt becomes a person related to the debtor.

Under the proposed regulations, the matching and acceleration rules apply to intercompany obligations. An obligation is defined to include securities described in section 475(c)(2)(D) and (E), and comparable securities with respect to commodities. For example, an interest rate notional principal contract between members is an obligation between the counterparties. An obligation is an intercompany obligation during the period its parties are members.

The proposed regulations continue to treat each payment or accrual of interest (and each payment or accrual of premium) on an intercompany debt as a separate intercompany transaction, and the income is matched with the deduction. Similarly, each periodic and nonperiodic payment with respect to an intercompany notional principal contract is a separate intercompany transaction.

Special rules are proposed for two categories of transactions: (1) Transactions in which an intercompany obligation becomes a nonintercompany obligation (or remains an intercompany obligation but gain or loss is realized with respect to it); and (2) transactions in which a nonintercompany obligation becomes an intercompany obligation. In both categories, an obligation is generally deemed to be satisfied and, if it remains outstanding, reissued. There are, however, significant differences as to how the transactions are deemed to occur.

Under the first category, if S holds a note of B with a $100 basis and stated redemption price at maturity, and S sells the note to a nonmember for $75, B is treated as satisfying its obligation to S for $75 immediately before S's sale, and issuing a new note directly to the nonmember for $75 with a $100 stated redemption price at maturity. The proposed regulations match both the timing and the attributes of S's items and B's items resulting from the deemed satisfaction. Similar principles apply if the note is transferred by S to another member in an intercompany transaction, the note is marked to market under section 475, or if S or B becomes a nonmember (i.e., the note is deemed to be satisfied by B and reissued). Similar principles also apply if the obligation is a notional principal contract or other nondebt intercompany obligation.

The effect on consolidated taxable income for transactions in the first category is similar to the effect under current § 1.1502–14(d). In both cases, reflection of the net gain or loss on consolidated taxable income is deferred in a manner consistent with time value of money principles. Under the proposed regulations, however, if S sells B's obligation to a nonmember at a loss, S's loss and B's gain from the deemed satisfaction are taken into account immediately and offset each other, and the discount from the deemed reissuance is taken into account over time by B (as the issuer) rather than by S. This approach more accurately adjusts the stock basis of S and B each year, and is closer to the results under common law principles for debtors and creditors in a parent-subsidiary relationship. The approach of the proposed regulations in many respects treats B's obligation as first existing only after it is sold by S to the nonmember. Thus, if a nonmember buys B's note from S at a discount, the nonmember will hold the note with original issue discount to which section 1272 applies, rather than market discount to which sections 1276 through 1278 apply.

Under the second category, if a nonmember (X) holds B's note with a $100 basis and stated redemption price at maturity, and X sells the note to S for $75, B is treated as satisfying its obligation to S for $75 immediately after S's purchase, and issuing a new note to S for $75 with a $100 stated redemption price at maturity.

The treatment for transactions under the second category is similar in many respects to the treatment of B under section 108(e)(4). Because the focus of section 108(e)(4) is to prevent avoidance of discharge of indebtedness income, however, that section does not adequately address the single entity treatment of consolidated groups. Consequently, the proposed regulations apply to cases beyond the scope of section 108(e)(4), such as to the acquisition of debt at a premium and to all cases in which a corporation holding B's debt becomes a member (whether or not there is an avoidance view, and whether or not the holder is already a related party).

The deemed satisfaction and reissuance under the proposed regulations applies to both the issuer and the holder, and the character of their respective items under the Code is not modified (and therefore may not match). Nevertheless, the amount at which an obligation is satisfied under § 1.108–2 represents a compromise that is incorporated into the proposed regulations. In addition, the proposed regulations adopt the exceptions to section 108(e)(4) for special cases, such as securities dealers.

Because a member's adjustments to a reserve for bad debts under section 585 or 593 reflect its general bad debt experience, rather than the value of any particular intercompany obligation that it holds, the proposed regulations provide special rules. Reserve deductions with respect to intercompany obligations are deferred in a manner similar to the treatment of reserves under current § 1.1502–14(d). This approach prevents the reserve accounting method of one member from affecting the income of another member (or affecting consolidated taxable income) through a bad debt reserve deduction with respect to an intercompany debt.

Section 163(e)(5) provides special rules for original issue discount on an applicable high yield discount obligation (AHYDO). The concerns reflected in the AHYDO rules do not apply to intercompany debt, and the Code provides only a partial recast for the dividend equivalent portion of the disqualified portion of the original issue discount. Consequently, to simplify the applicable rules, the proposed regulations exclude intercompany obligations from the application of section 163(e)(5).

8. Anti-Avoidance Rules

Although the proposed regulations shift the emphasis of the intercompany transaction system toward single entity treatment, tension remains between the single entity and separate entity treatment of consolidated groups. The proposed regulations do not address every interaction with other consolidated return regulations and other rules of law. To ensure that the proposed regulations achieve neutrality in the overall determination of consolidated taxable income, adjustments may be required. For example, if the approach of the proposed regulations in matching the attributes of S's intercompany items and B's corresponding items facilitates "mirror subsidiary" transactions determined by Congress to be inappropriate, adjustments must be made. See H.R. Rep. No. 391, 100th Cong., 1st Sess. 1081–84 (1987).

Adjustments must be made under the proposed regulations if a transaction is engaged in or structured with a principal purpose to avoid treatment as an intercompany transaction, or to avoid the purposes of the proposed regulations. For example, in the case of a "mirror subsidiary" transaction, the adjustments would generally conform to the intent of the mirror legislation to "require the recognition of corporate-level gain whenever an appreciated subsidiary is sold or distributed outside the economic unit of [a consolidated] group." *Id.*

In addition to these adjustments, the Code (e.g., sections 337(d), 446, and 482) and general principles of tax law (e.g., the substance-over-form doctrine, and the tax benefit rule) can apply to require proper measurement of taxable income (and tax liability).

9. Successor Corporations and Property

Under the current regulations, if S's assets are acquired in a transaction to which section 381(a) applies, its deferred gains and losses are inherited by the member that receives the "greatest portion of the assets (measured by fair market value)." Commentators have suggested that this rule can be used to facilitate the breakup of acquired corporations without corporate-level tax, contrary to the intent of the "mirror" subsidiary legislation. Moreover, they have raised questions as to the operation of this rule in many circumstances. For example, the reference to fair market value does not identify whether liabilities are to be taken into account to determine the value on a net basis.

The proposed regulations generally incorporate successor asset and successor person principles. References under the proposed regulations to an asset or to a member include, as the context may require, references to a successor asset or person.

The proposed regulations provide that, if there is more than one successor, the successors take into account the predecessor's intercompany items in a manner that is consistently applied and reasonably carries out the purposes of the proposed regulations and applicable provisions of law. No inference is intended by this rule as to the application of section 381 or other successor principles to attributes other than intercompany items and corresponding items.

The proposed regulations retain the basic approach of the current regulations by not requiring acceleration solely because a group terminates from its acquisition by another consolidated group. Unlike the current regulations, however, the proposed regulations do not require all of the members immediately before the acquisition to become members of the surviving consolidated group. Instead, the proposed regulations accelerate only the items from transactions involving corporations that do not become members of the surviving consolidated group.

D. Explanation of Proposed Section 267(f) Rules

Section 267(a) disallows loss on certain sales or exchanges of property between related parties. Section 267(f) provides for deferral of loss on the sale or exchange of property between members of a controlled group, rather than disallowance of the loss under section 267(a). The section 267(f) rules are generally intended to conform to the intercompany transaction rules applicable to consolidated groups even though the definition of a controlled group is broader than that of a consolidated group.

The legislative history indicates that exceptions to deferral might be provided to properly reflect the amount of net income from a transaction. For example, if an accrual method member of a controlled group takes into account income with respect to the face amount of a note receivable, and later recognizes loss from the sale of that note to another member of the controlled group at a discount, the loss would not be deferred to the extent it does not exceed the income taken into account. See H.R. Rep. No. 861, 98th Cong., 2d Sess. 1032–34 (1984).

The current regulations applicable to controlled groups generally conform to the basic intercompany transaction rules applicable to consolidated groups. See §§ 1.267(f)–1T and 1.267(f)–2T. Modifications are made to reflect the broader application of section 267(f).

For example, although there are no subgroup rules for intercompany transactions between members of a consolidated group, deferral of loss continues under section 267(f) as long as S and B remain in a controlled group relationship with each other. The current regulations also provide that if S sells property to B at a loss, and the property is still owned by B when S ceases to be a member of the same controlled group, S never takes the loss into account. Instead, B's basis in the property is increased by an amount equal to S's unrestored loss.

The proposed regulations retain the basic approach of the current regulations but simplify their operation by more generally incorporating the consolidated return rules.

The proposed regulations eliminate the rule that transforms S's loss into additional basis in the transferred property when S ceases to be a member of the controlled group. Instead, the proposed regulations generally allow S's loss immediately before it ceases to be a member. This conforms to the consolidated return rules, and eliminates the need for special rules. An

anti-avoidance rule is adopted, however, to prevent the purposes of section 267(f) from being circumvented, for example, by using the proposed rule to accelerate S's loss.

E. Other Applicable Rules

1. Methods of Accounting

Under current § 1.1502–17(a), each member is generally permitted to determine its own method of accounting as if separate returns were filed. Thus, the members may have different methods for similar trades or businesses. If, however, B acquires assets from S in a transaction to which section 381 applies, B might be required to use the same method of accounting as S. See, e.g., section 381(c)(4).

The matching rule proposed in § 1.1502–13 relies on the accounting methods of B to determine the timing of S's intercompany items. Because B's accounting methods generally control S's timing, a group might be able to frustrate the principles of single entity treatment under § 1.1502–13 by rearranging its activities to use an accounting method that would not be available if S and B were divisions of a single corporation.

Under the proposed regulations, if B directly or indirectly acquires an activity of S or undertakes S's activity, with the principal purpose to avail the group of an accounting method that would be unavailable without securing the Commissioner's consent if S and B were treated as divisions of a single corporation, B may be required to use S's accounting method for the acquired or undertaken activity or secure consent from the Commissioner for a different method.

2. Special Inventory Adjustment

Current § 1.1502–18 requires a special adjustment relating to intercompany profit from inventory transactions if an affiliated group filing separate returns elects to file consolidated returns. This adjustment has historically been included in the consolidated return regulations. It is intended to prevent the members' income from being reduced when the group switches from separate to consolidated returns.

For example, if S and B are affiliated but file separate returns for Year 1 and S manufactures inventory for $75 that is sold to B for $100, S's $25 intercompany profit is taken into account in Year 1 and B has a $100 cost basis in the inventory. If S recognizes another $25 of intercompany profit in Year 2, and B sells the inventory purchased from S in Year 1, S's additional $25 profit is taken into account in Year 2 and B recovers its cost basis in the inventory purchased in Year 1. If, however, the group shifts to consolidated returns for Year 2, S's additional $25 profit is deferred under § 1.1502–13 but B still recovers its cost basis. Thus, the shift to consolidated returns reduces the group's aggregate income in Year 2. If S and B continue the same intercompany activity year after year, the one-time reduction is effectively a permanent reduction.

To prevent a reduction in taxable income, the current regulations provide for a special inventory adjustment to increase the group's consolidated taxable income for Year 2 by S's $25 intercompany profit from Year 1, to the extent that it is reflected in B's opening inventory for Year 2. The adjustment might ultimately be reversed in later years if, for example, B's ending inventory purchased from S is reduced or the group ceases to file consolidated returns.

Commentators argue that § 1.1502–18 reaches an inappropriate result, and that its effect can be avoided, for example, by causing S to transfer its assets to a lower-tier member in a transaction to which section 351 applies (or otherwise to cease its intercompany sales).

To simplify the intercompany transaction system, the proposed regulations eliminate the special inventory adjustment. Any remaining unrecovered inventory amount under § 1.1502–18(c) (or its equivalent under § 1.1502–18(f)) is recovered under the principles of those rules in the first taxable year ending on or after the date final regulations are filed with the Federal Register. The unrecovered inventory amount can be recovered only to the extent it was previously included in taxable income.

3. Attribute Reduction (Section 108(b))

The proposed regulations provide rules to prevent avoidance of the attribute reduction required under section 108(b). Several issues regarding the application of section 108 to consolidated groups are under study. For example, single entity treatment for consolidated group attribute reduction under section 108(b) is being considered in connection with regulations being developed. The proposed regulations are not intended to affect any other aspects of the application of section 108.

4. Applicability of Section 1031

The current regulations do not provide special rules for intercompany transactions to which section 1031 applies.

Section 1031 treatment for intercompany transactions is inconsistent with the general approach of the proposed regulations. If the members had been divisions of a single corporation, the basis of one property could not be substituted as the basis for another property. Although section 1031(f) limits the planning opportunities from certain basis shifts, the limitations do not adequately address the single entity treatment of consolidated groups under the proposed regulations.

To conform the treatment of like-kind exchanges more closely to the general treatment of intercompany transactions under the proposed regulations, the proposed regulations provide that section 1031 does not apply to intercompany transactions. Any gain or loss of the members will be taken into account under the matching and acceleration rules.

F. Proposed Effective Dates

The proposed intercompany transaction regulations generally apply to intercompany transactions occurring in years beginning on or after the date the final regulations are filed with the Federal Register. Prior intercompany transactions will generally continue to be subject to the prior regulations under section 1502 as in effect with respect to the transaction.

Because an intercompany transaction can occur in part under the current regulations and in part under the proposed regulations, the current regulations (rather than the proposed regulations) will continue to apply to take into account transactions that have already been taken into account in part under the current regulations. This approach prevents duplication or omission of items from a transaction, and treats items consistently.

To prevent manipulation, the final regulations (and not prior law) apply to certain transactions engaged in or structured on or after April 8, 1994. The final regulations apply if the transaction is engaged in or structured with a principal purpose to avoid the final regulations, to duplicate, omit, or eliminate an item in determining taxable income (or tax liability), or to treat items inconsistently. In these cases, appropriate adjustments must be made in years beginning on or after [the date the final regulations are filed with the Federal Register], to prevent the avoidance, duplication, omission, elimination, or inconsistency.

The methods of accounting provided in the final regulations will be required of all groups. If the final regulations are adopted on the proposed "cut-off" basis, no request for permission to make the change, or to make an adjustment under section 481(a), will be necessary.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying in their entirety. Two public hearings on the proposed regulations will be held. See the notice of public hearings on proposed rulemaking published elsewhere in this issue of the **Federal Register.**

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for sections "1.469–1, 1.469–1T, 1.469–2, 1.469–2T, 1.469–3, 1.469–3T, 1.469–5, 1.469–5T and 1.469–11", "1.1502–13", "1.1502–13T", "1.1502–14", and "1.1502–14T" and adding the following:

Authority: 26 U.S.C. 7805 * * * Section 1.108–3 also issued under 26 U.S.C. 108, 267, and 1502. * * * Section 1.267(f)–1 also issued under 26 U.S.C. 267 and 1502. * * * Section 1.460–4 also issued under 26 U.S.C. 460 and 1502. * * * Section 1.469–1, 1.469–1T, 1.469–2, 1.469–2T, 1.469–3, 1.469–3T, 1.469–5, 1.469–5T, and 1.469–11 also issued under 26 U.S.C. 469. * * * Section 1.1502–13 also issued under 26 U.S.C. 108, 337, 446, 1275, 1502 and 1503. * * * Section 1.1502–17 also issued under 26 U.S.C. 446 and 1502. Section 1.1502–18 also issued under 26 U.S.C. 1502. * * * Section 1.1502–26 also issued under 26 U.S.C. 1502. * * * Section 1.1502–33 also issued under 26 U.S.C. 1502. * * *

Par. 2. In the list below, for each location indicated in the left column, remove the language in the middle column from that section, and add the language in the right column.

Affected section	Remove	Add
1.167(a)–(11)(d)(3)(v)(*b*), 1st sentence	Paragraph (c) of.	
1.263A–1T(b)(2)(vi)(B), 2nd sentence	A deferred intercompany transaction	An intercompany transaction.
1.263A–1T(e)(1)(ii), 1st sentence	A deferred intercompany transaction	An intercompany transaction.
1.263A–1T(e)(1)(ii), 4th sentence	1.1502–13(c)(2)	1.1502–13.
1.263A–1T(e)(1)(ii), 4th sentence	Deferred.	
1.263A–1T(e)(1)(ii), 7th sentence	Deferred intercompany transaction	Intercompany transaction.
1.263A–1T(e)(1)(ii), 7th sentence	Defined	As used.
1.263A–1T(e)(1)(iii)(A) Example, 2nd sentence	1.1502–13(c)	1.1502–13.
1.263A–1T(e)(1)(iii)(A) Example, 4th sentence	1.1502–13(c)	1.1502–13.
1.338–4(f)(4) Example (2) (a)	1.1502–13(f)	1.1502–13.
1.341–7(e)(10)	Paragraph (c)(1) of § 1.1502–14	§ 1.1502–13.
1.861–8T(d)(2)(i), concluding text	1.1502–13(c)(2)	1.1502–13.
1.861–8T(d)(2)(i), concluding text	Deferred.	
1.861–8T(d)(2)(i), concluding text	1.1502–13(a)(2)	1.1502–13.
1.861–9T(g)(2)(iv), paragraph heading	Deferred.	
1.861–9T(g)(2)(iv), 1st sentence	Deferred intercompany transactions	Intercompany transactions.
1.1502–3(a)(2)	1.1502–13(a)(1)	1.1502–13(b).
1.1502–4(j) Example (1), 8th sentence	Paragraph (d), (e), or (f) of § 1.1502–13	1.1502–13.
1.1502–4(j) Example (1), 2nd sentence after chart .	Paragraph (d), (e), or (f) of § 1.1502–13	1.1502–13.
1.1502–9(f) Example (6)	1.1502–13(f)	1.1502–13.
1.1502–12(a)	§§ 1.1502–13 and 1.1502–14	§ 1.1502–13.
1.1502–12(g)(2)	A deferred intercompany transaction as defined in § 1.1502–13(a)(2).	An intercompany transaction as defined in § 1.1502–13.
1.1502–22(a)(3)	1.1502–14,	
1.1502–22(a)(5) Example (i)	Paragraph (d), (e), or (f) of § 1.1502–13	§ 1.1502–13.
1.1502–26(b)	Paragraph (a)(1) of § 1.1502–14	§ 1.1502–13.
1.1502–47(e)(4)(iii)	§§ 1.1502–13(f), 1.1502–14, 1.1502–18,	§§ 1.1502–13, 1.1502–18.
1.1502–47(e)(4)(iv) Example 4, 3d sentence	Deferred intercompany transactions (see § 1.1502–13(a)(2)).	Intercompany transactions (see § 1.1502–13).
1.1502–47(e)(4)(iv) Example 4, 4th sentence	1.1502–13(f)(1)(iv)	1.1502–13.
1.1502–47(e)(4)(iv) Example 4, chart header	Deferred intercompany transactions between	Intercompany transactions between.
1.1502–47(e)(4)(iv) Example 4, chart header	1.1502–13(f)(1)(iv)	1.1502–13.
1.1502–47(f)(3)	1.1502–14.	
1.1502–47(r), 2nd sentence	Deferred.	
1.1503–2(d)(4) Example 1 (iii), 4th sentence	Deferred.	
1.1503–2(d)(4) Example 1 (iii), 4th sentence	1.1502–13(a)(2)	1.1502–13.

Par. 3. Section 1.108–3 is added to read as follows:

§ 1.108–3 Intercompany losses and deductions.

(a) *General rule.* This section applies to certain losses and deductions from the sale, exchange, or other transfer of property between corporations that are members of a consolidated group or a controlled group (an intercompany transaction). See section 267(f) (controlled groups) and § 1.1502–13 (consolidated groups) for applicable definitions. For purposes of determining

the attributes to which section 108(b) applies, a loss or deduction not yet taken into account under section 267(f) or § 1.1502–13 (an intercompany loss or deduction) is treated as basis described in section 108(b) that the transferor retains in property. For example, if S and B are corporations filing a consolidated return, and S sells land with a $100 basis to B for $90 and the $10 loss is deferred under section 267(f) and § 1.1502–13, the deferred loss is treated for purposes of section 108(b) as $10 of basis that S has in land (even though S has no remaining interest in the land sold to B) and is subject to reduction under section 108(b)(2)(E). To the extent S's loss is reduced, it can not thereafter be taken into account under section 267(f) or § 1.1502–13. Similar principles apply, with appropriate adjustments, if S and B are members of a controlled group and S's loss is deferred only under section 267(f).

(b) *Effective date.* This section applies with respect to discharges of indebtedness occurring on or after [the date that is 60 days after final regulations are filed with the Federal Register.

§ 1.167(a)–11 [Amended]

Par. 4. Section 1.167(a)–11(d)(3)(v)(*e*) is amended by removing the second sentence of *Example (3).*

Par. 5. Section 1.267(f)–1 is revised to read as follows:

§ 1.267(f)–1 Controlled groups.

(a) *In general*—(1) *Purpose.* This section provides rules under section 267(f) to defer losses and deductions from certain transactions between members of a controlled group (intercompany sales). The purpose of the deferral is to prevent tax avoidance from allowing the loss or deduction of the selling member (S) without the corresponding inclusion of the buying member (B).

(2) *Application of consolidated return principles.* Under this section, S's loss or deduction from an intercompany sale is taken into account under the timing principles of § 1.1502–13 (intercompany transactions between members of a consolidated group), treating the intercompany sale as an intercompany transaction. For this purpose:

(i) The matching and acceleration rules of § 1.1502–13(c) and (d), the definitions and operating rules of § 1.1502–13(b) and (j), and the simplifying rules of § 1.1502–13(e)(1) apply with the adjustments in paragraphs (b) and (c) of this section to reflect that this section—

(A) Applies on a controlled group basis rather than consolidated group basis; and

(B) Generally affects only the *timing* of a loss or deduction, and not its *attributes* (e.g., its *source* and *character*) or the holding period of property.

(ii) The special rules under § 1.1502–13(f) (stock of members) and (g) (obligations of members) apply under this section only to the extent that the transaction is also an intercompany transaction to which § 1.1502–13 applies.

(iii) Any election under § 1.1502–13 to take items into account on a separate entity basis does not apply under this section. See § 1.1502–13(e)(3).

(3) *Other law.* The rules of this section apply in addition to other applicable law. For example, to the extent a loss or deduction deferred under this section is from a transaction that is also an intercompany transaction under § 1.1502–13(b)(1), the loss or deduction is also subject to recharacterization under § 1.1502–13. See also sections 269 (acquisitions to evade or avoid income tax) and 482 (allocations among commonly controlled taxpayers). Any loss or deduction taken into account under this section can be deferred, disallowed, or eliminated under other applicable law. See, e.g., section 1091 (loss eliminated on wash sale).

(4) *Construction.* The rules of this section must be applied in a consistent manner that reasonably carries out their purposes, taking into account all of the facts and circumstances, the underlying economic arrangement, and applicable Federal income tax accounting principles. For example, the rules must not be applied to accelerate or duplicate S's losses or deductions.

(b) *Definitions and operating rules.* The definitions in § 1.1502–13(b) and the operating rules of § 1.1502–13(j) apply under this section with appropriate adjustments, including the following:

(1) *Intercompany sale.* An intercompany sale is a sale, exchange, or other transfer of property between members of a controlled group, if it would be an intercompany transaction under the principles of § 1.1502–13, determined by treating the references to a consolidated group as references to a controlled group and by disregarding whether any of the members join in filing consolidated returns.

(2) *S's losses or deductions.* Unless the intercompany sale is also an intercompany transaction to which § 1.1502–13 applies, S's losses or deductions subject to this section are determined on a separate entity basis. For example, the principles of § 1.1502–13(b)(2)(i)(C) (treating certain amounts not yet recognized as items to be taken into account) do not apply. A loss or deduction is from an intercompany sale whether it is directly or indirectly from the intercompany sale.

(3) *Controlled group; member.* For purposes of this section, a controlled group is defined in section 267(f). Thus, a controlled group includes a FSC (as defined in section 922) and excluded members under section 1563(b)(2), but does not include a DISC (as defined in section 992). Because corporations may be controlled group members without joining in the filing of consolidated returns or being owned through a common parent, corporations remain members of a controlled group as long as they remain in a controlled group relationship with each other. For example, corporations become nonmembers with respect to each other when they cease to be in a controlled group relationship with each other, rather than by having a separate return year (described in § 1.1502–13(j)(4)). Further, the principles of § 1.1502–13(j)(3) (former common parent treated as continuation of group) apply to any corporation if, immediately before it becomes a nonmember, it is both the selling member and the owner of property with respect to which a loss or deduction is deferred (whether or not it becomes a member of a different controlled group filing consolidated or separate returns).

(4) *Consolidated taxable income.* References to consolidated taxable income (and consolidated tax liability) include references to the combined taxable income of the members (and their combined tax liability). For corporations filing separate returns, it ordinarily will not be necessary to actually combine their taxable incomes (and tax liabilities) because the taxable income (and tax liability) of one corporation does not affect the taxable income (or tax liability) of another corporation.

(c) *Matching and acceleration principles of § 1.1502–13*—(1) *General rule.* Under this section, S's losses and deductions are deferred until they are taken into account under the timing principles of the matching and acceleration rules of § 1.1502–13 (c) and (d), with appropriate adjustments. For example, if S sells depreciable property to B at a loss, S's loss is deferred and taken into account under the principles of the matching rule of § 1.1502–13(c) to reflect the difference between B's depreciation taken into account with respect to the property and the depreciation that B would take into account if S and B were divisions of a

single corporation; if S and B subsequently cease to be in a controlled group relationship with each other, S's remaining loss is taken into account under the principles of the acceleration rule of § 1.1502–13(d). The matching and acceleration rules are not applied under this section to affect the attributes of an item, or cause it to be taken into account before it is taken into account under the member's method of accounting on a separate entity basis. Similarly, the matching and acceleration rules are not applied under this section to affect the timing or attributes of B's items.

(2) *Adjustments to the timing principles of § 1.1502–13 (c) and (d).* For purposes of this section, the adjustments to § 1.1502–13 (c) and (d) include the following:

(i) *Different taxable years.* If S and B have different taxable years, the taxable years that include a December 31 are treated as the same taxable years. If S or B has a short taxable year that does not include a December 31, the short year is treated as part of the succeeding taxable year that does include a December 31.

(ii) *Transfer to a section 267(b) related person.* To the extent S's loss or deduction is taken into account under this section as a result of B's transfer to a nonmember that is a person related to any member under section 267(b), the loss or deduction is taken into account but allowed only to the extent of any income or gain taken into account as a result of the transfer. The balance not allowed is treated as a loss referred to in section 267(d) if it is from a sale or exchange by B (rather than from a distribution).

(iii) *Circularity of references.* References to deferral or elimination under the Internal Revenue Code or regulations do not include references to section 267(f) or this section. See, e.g., § 1.1502–13(a)(3) (applicability of other law).

(d) *Intercompany sales of inventory involving foreign persons*—(1) *General rule.* Section 267(a)(1) and this section do not apply to an intercompany sale of property that is inventory (within the meaning of section 1221(1)) in the hands of both S and B, if—

(i) The intercompany sale is in the ordinary course of S's trade or business; and

(ii) S or B is a foreign corporation, any income or loss realized on the intercompany sale by S or B is not income or loss that is recognized as effectively connected with the conduct of a trade or business within the United States within the meaning of section 864 (unless the income is exempt from taxation pursuant to a treaty obligation of the United States).

(2) *Intercompany sales involving related partnerships.* For purposes of paragraph (d)(1) of this section, a partnership and a foreign corporation described in section 267(b)(10) are treated as members, provided the foreign corporation is described in paragraph (d)(1)(ii) of this section.

(3) *Intercompany sales in ordinary course.* For purposes of this paragraph (d), whether an intercompany sale is in the ordinary course of business is determined under all the facts and circumstances.

(e) *Treatment of a creditor with respect to a loan in nonfunctional currency.* Sections 267(a)(1) and this section do not apply to an exchange loss realized with respect to a loan of nonfunctional currency if—

(1) The loss is realized by a member with respect to nonfunctional currency loaned to another member;

(2) The loan is described in § 1.988–1(a)(2)(i);

(3) The loan is not in a hyperinflationary currency as defined in § 1.988–1(f); and

(4) The transaction does not have as a significant purpose the avoidance of Federal income tax.

(f) *Receivables.* If S has income or gain from a receivable acquired as a result of selling goods or services to a nonmember, and S sells the receivable at fair market value to B, any loss or deduction of S from its sale to B is not deferred under this section to the extent it does not exceed S's income or gain from the sale to the nonmember.

(g) *Earnings and profits.* A loss or deduction deferred under this section is not reflected in S's earnings and profits before it is taken into account under this section. See, e.g., §§ 1.312–6(a), 1.312–7, and 1.1502–33(c)(2).

(h) *Anti-avoidance rule.* If a transaction is engaged in or structured with a principal purpose to avoid the application of this section, or to affect the timing of losses or deductions (or tax liability) under this section, adjustments must be made to carry out the purposes of this section.

(i) [Reserved]

(j) *Examples.* For purposes of the examples in this paragraph (j), unless otherwise stated, corporation P owns 75% of the only class of stock of subsidiaries S and B, X is a person unrelated to any member of the P controlled group, the taxable year of all persons is the calendar year, all persons use the accrual method of accounting, tax liabilities are disregarded, the facts set forth the only activity, and no member has a special status. If a member acts as both a selling member and a buying member (e.g., with respect to different aspects of a single transaction, or with respect to related transactions), the member is referred as to M (rather than as S or B). This section is illustrated by the following examples.

Example 1. Matching and acceleration rules. (a) *Facts.* S holds land for investment with a basis of $130. On January 1 of Year 1, S sells the land to B for $100. On a separate entity basis, S's loss is long-term capital loss. B holds the land for sale to customers in the ordinary course of business. On July 1 of Year 3, B sells the land to X for $110.

(b) *Matching rule.* Under paragraph (b)(1) of this section, S's sale of land to B is an intercompany sale. Under paragraph (c)(1) of this section, S's $30 loss is taken into account under the timing principles of the matching rule of § 1.1502–13(c) to reflect the difference for the year between B's corresponding items taken into account and B's recomputed corresponding items (the corresponding items that B would take into account for the year if S and B were divisions of a single corporation). If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $130 basis in the land and would have a $20 loss from the sale to X. Consequently, S takes no loss into account in Years 1 and 2, and takes the entire $30 loss into account in Year 3 to reflect the $30 difference in that year between the $10 gain B takes into account and its $20 recomputed loss. The attributes of S's intercompany items and B's corresponding items are determined on a separate entity basis. Thus, S's $30 loss is long-term capital loss and B's $10 gain is ordinary income.

(c) *Acceleration resulting from sale of B stock.* The facts are the same as in paragraph (a) of this *Example 1*, except that on July 1 of Year 3 P sells all of its B stock to X (rather than B's selling the land to X). Under paragraph (c)(1) of this section, S's $30 loss is taken into account under the timing principles of the acceleration rule of § 1.1502–13(d) immediately before the effect of treating S and B as divisions of a single corporation cannot be produced. Because the effect cannot be produced once B becomes a nonmember, S takes its $30 loss into account in Year 3 immediately before B becomes a nonmember. S's loss is long-term capital loss.

(d) *Subgroup principles applicable to sale of S and B stock.* The facts are the same as in paragraph (a) of this *Example 1*, except that on July 1 of Year 3 P sells all of its S and B stock to X (rather than B's selling the land to X). Under paragraph (b)(3) of this section, S and B are considered to remain members of a controlled group as long as they remain in a controlled group relationship with each other (whether or not in the original controlled group). P's sale of their stock does not affect the controlled group relationship of S and B with each other. Thus, S's loss is not taken into account as a result of P's sale of the stock. Instead, S's loss is taken into account based on subsequent events (e.g., B's sale of the land to a nonmember).

Example 2. Distribution of loss property. (a) *Facts.* S holds land with a basis of $130 and value of $100. On January 1 of Year 1, S distributes the land to P in a transaction to which section 311 applies. On July 1 of Year 3, P sells the land to X for $110.

(b) *No loss taken into account.* Under paragraph (b)(2) of this section, because P and S are not members of a consolidated group, § 1.1502–13(f)(2)(iii) does not apply to cause S to recognize a $30 loss under the principles of section 311(b). Thus, S has no loss to be taken into account under this section. (If P and S were members of a consolidated group, § 1.1502–13(f)(2)(iii) would apply to S's loss in addition to the rules of this section, and the loss would be taken into account in Year 3 as a result of P's sale to X.)

Example 3. Loss not yet taken into account under separate entity accounting method. (a) *Facts.* S holds land with a basis of $130. On January 1 of Year 1, S sells the land to B at a $30 loss but does not take into account the loss under its separate entity method of accounting until Year 4. On July 1 of Year 3, B sells the land to X for $110.

(b) *Timing.* Under paragraph (b)(2) of this section, the determination S's loss is made on a separate entity basis. Under paragraph (c)(1) of this section, S's loss is not taken into account before it is taken into account under S's separate entity method of accounting. Thus, although B takes its corresponding gain into account in Year 3, S has no loss to take into account until Year 4. Once S's loss is taken into account in Year 4, it is not deferred under this section because B's corresponding gain has already been taken into account. (If S and B were members of a consolidated group, S would be treated under § 1.1502–13(b)(2)(i)(C) as taking the loss into account in Year 3.)

Example 4. Consolidated groups. (a) *Facts.* P owns all of the stock of S and B, and the P group is a consolidated group. S holds land for investment with a basis of $130. On January 1 of Year 1, S sells the land to B for $100. B holds the land for sale to customers in the ordinary course of business. On July 1 of Year 3, P sells 25% of B's stock to X. As a result of P's sale, B becomes a nonmember of the P consolidated group but S and B remain in a controlled group relationship with each other for purposes of section 267(f). Assume that if S and B were divisions of a single corporation, the items of S and B from the land would be ordinary by reason of B's activities.

(b) *Timing and attributes.* Under paragraph (a)(3) of this section, S's sale to B is subject to both § 1.1502–13 and this section. Under § 1.1502–13, S's loss is recharacterized as an ordinary loss by reason of B's activities. Under paragraph (b)(3) of this section, because S and B remain in a controlled group relationship with each other, the loss is not taken into account under the acceleration rule of § 1.1502–13(d) as modified by paragraph (c) of this section. See § 1.1502–13(a)(3). Nevertheless, S's loss is recharacterized by § 1.1502–13 as an ordinary loss, and the character of the loss is not further redetermined under this section. Thus, the loss continues to be deferred under this section, and will be taken into account as ordinary loss based on subsequent events (e.g., B's sale of the land to a nonmember).

(c) *Resale to controlled group member.* The facts are the same as in paragraph (a) of this *Example 4*, except that P owns 75% of X's stock, and B resells the land to X (rather than P's selling any B stock). The results for S's loss are the same as in paragraph (b) of this *Example 4*. Under paragraph (b) of this section, X is also in a controlled group relationship, and B's sale to X is a second intercompany sale. Thus, S's loss continues to be deferred and is taken into account under this section as ordinary loss based on subsequent events (e.g., X's sale of the land to a nonmember).

Example 5. Intercompany sale followed by installment sale. (a) *Facts.* S holds land for investment with a basis of $130x. On January 1 of Year 1, S sells the land to B for $100x. B holds the land for investment. On July 1 of Year 3, B sells the land to X in exchange for X's $110x note. The note bears a market rate of interest in excess of the applicable Federal rate, and provides for principal payments of $55x in Year 4 and $55x in Year 5. Section 453A applies to X's note.

(b) *Timing and attributes.* Under paragraph (c) of this section, S's $30x loss is taken into account under the timing principles of the matching rule of § 1.1502–13(c) to reflect the difference in each year between B's gain taken into account and its recomputed loss. Under section 453, B takes into account $5x of gain in Year 4 and in Year 5. Therefore, S takes $20x of its loss into account in Year 3 to reflect the $20x difference in that year between B's $0 loss taken into account and its $20x recomputed loss. In addition, S takes $5x of its loss into account in Year 4 and in Year 5 to reflect the $5x difference in each year between B's $5x gain taken into account and its $0 recomputed gain. Although S takes into account a loss and B takes into account a gain, the attributes of B's $10x gain are determined on a separate entity basis, and therefore the interest charge under section 453A(c) applies to B's $10x gain on the installment sale beginning in Year 3.

Example 6. Section 721 transfer to a section 267(b) nonmember. (a) *Facts.* S owns land with a basis of $130. On January 1 of Year 1, S sells the land to B for $100. On July 1 of Year 3, B transfers the land to a partnership in exchange for a 40% interest in capital and profits in a transaction to which section 721 applies. P also owns a 25% interest in the capital and profits of the partnership.

(b) *Timing.* Under paragraph (c)(2)(ii) of this section, S's $30 loss is taken into account in Year 3 but disallowed because the partnership is a nonmember that is a related person under section 267(b). In addition, any subsequent gain recognized by the partnership with respect to the property is limited under section 267(d). (The results would be the same if the P group were a consolidated group, and S's sale to B were also subject to § 1.1502–13.)

Example 7. Receivables. (a) *Controlled group.* S owns goods with a $60 basis. In Year 1, S sells the goods to X for X's $100 note. The note bears a market rate of interest in excess of the applicable Federal rate, and provides for payment of principal in Year 5. S takes into account $40 of income in Year 1 under its method of accounting. In Year 2, the fair market value of X's note falls to $90 due to an increase in prevailing market interest rates, and S sells the note to B for its $90 fair market value.

(b) *Loss not deferred.* Under paragraph (f) of this section, S takes its $10 loss into account in Year 2. (If the sale were not at fair market value, paragraph (f) of this section would not apply and none of S's $10 loss would be taken into account in Year 2.)

(c) *Consolidated group.* Assume instead that P owns all of the stock of S and B, and the P group is a consolidated group. In Year 1, S sells to X goods having a basis of $90 for X's $100 note (bearing a market rate of interest in excess of the applicable Federal rate, and providing for payment of principal in Year 5), and S takes into account $10 of income in Year 1. In Year 2, S sells the receivable to B for its $85 fair market value. In Year 3, P sells 25% of B's stock to X. Although paragraph (f) of this section provides that $10 of S's loss (i.e., the extent to which S's $15 loss does not exceed its $10 of income) is not deferred under this section, S's entire $15 loss is subject to § 1.1502–13 and none of the loss is taken into account in Year 2 under the matching rule of § 1.1502–13(c). See paragraph (a)(3) of this section (continued deferral under § 1.1502–13). P's sale of B stock results in B becoming a nonmember of the P consolidated group in Year 3. Thus, S's $15 loss is taken into account in Year 3 under the acceleration rule of § 1.1502–13(d). Nevertheless, B remains in a controlled group relationship with S and paragraph (f) of this section permits only $10 of S's loss to be taken into account in Year 3. See § 1.1502–13(a)(3) (continued deferral under section 267). The remaining $5 of S's loss continues to be deferred under this section and taken into account under this section based on subsequent events (e.g., B's collection of the note or P's sale of the remaining B stock to a nonmember).

Example 8. Selling member ceases to be a member. (a) *Facts.* P owns all of the stock of S and B, and the P group is a consolidated group. S has several historic assets, including land with a basis of $130 and value of $100. The land is not essential to the operation of S's business. On January 1 of Year 1, S sells the land to B for $100. On July 1 of Year 3, P transfers all of S's stock to newly formed X in exchange for a 20% interest in X stock as part of a transaction to which section 351 applies. Although X holds many other assets, a principal purpose for P's transfer is to accelerate taking S's $30 loss into account. P has no plan or intention to dispose of the X stock.

(b) *Timing.* Under paragraph (c) of this section, S's $30 loss ordinarily is taken into account immediately before P's transfer of the S stock, under the timing principles of the acceleration rule of § 1.1502–13(d). Although taking S's loss into account results in a $30 negative stock basis adjustment under § 1.1502–32, because P has no plan or intention to dispose of its X stock, the negative adjustment will not immediately affect taxable income. P's transfer accelerates a loss that otherwise would be deferred, and an adjustment under paragraph (h) of this

section is required. Thus, S's loss is never taken into account, and S's stock basis and earnings and profits are reduced by $30 under §§ 1.1502–32 and 1.1502–33 immediately before P's transfer of the S stock.

(c) *Nonhistoric assets.* Assume instead that, with a principal purpose to accelerate taking loss into account, P forms M with a $100 contribution on January 1 of Year 1 and S sells the land to M for $100. On December 1 of Year 1, M sells the land to B for $90. On July 1 of Year 3, while B still owns the land, P sells all of M's stock to X and M becomes a nonmember. Under paragraph (c) of this section, M's $10 loss ordinarily is taken into account under the timing principles of the acceleration rule of § 1.1502–13(d) immediately before M becomes a nonmember. (S's $30 loss is not taken into account under the timing principles of § 1.1502–13(c) or § 1.1502–13(d) as a result of M becoming a nonmember, but is taken into account based on subsequent events such as B's sale of the land to a nonmember or P's sale of the stock of S or B to a nonmember.) The land is not an historic asset of M and, although taking M's loss into account reduces P's basis in the M stock under § 1.1502–32, the negative adjustment only eliminates the $10 duplicate stock loss. Under paragraph (h) of this section, M's loss is never taken into account. M's stock basis, and the earnings and profits of M and P, are reduced by $10 under §§ 1.1502–32 and 1.1502–33 immediately before P's sale of the M stock.

(k) *Cross-reference.* For additional rules applicable to the disposition or deconsolidation of the stock of members of consolidated groups, see §§ 1.337(d)–1, 1.337(d)–2, and 1.1502–20.

(l) *Effective dates*—(1) *In general.* This section applies with respect to transactions occurring in S's years beginning on or after [the date the final regulations are filed with the Federal Register]. If both this section and prior law apply to a transaction, or neither applies, with the result that items are duplicated, omitted, or eliminated in determining taxable income (or tax liability), or items are treated inconsistently, prior law (and not this section) applies to the transaction.

(2) *Avoidance transactions.* This paragraph (l)(2) applies if a transaction is engaged in or structured on or after April 8, 1994, with a principal purpose to avoid the rules of this section applicable to transactions occurring in years beginning on or after [the date the final regulations are filed with the Federal Register], to duplicate, omit, or eliminate an item in determining taxable income (or tax liability), or to treat items inconsistently. If this paragraph (l)(2) applies, appropriate adjustments must be made in years beginning on or after [the date the final regulations are filed with the Federal Register], to prevent the avoidance, duplication, omission, elimination, or inconsistency.

(3) *Prior law.* For transactions occuring in S's years beginning before [the date the final regulations are filed with the Federal Register] see the applicable regulations issued under sections 267 and 1502. See, e.g., §§ 1.267(f)–1, 1.267(f)–1T, 1.267(f)–2T, 1.267(f)–3, 1.1502–13, 1.1502–13T, 1.1502–14, 1.1502–14T, and 1.1502–31 (as contained in the 26 CFR part 1 edition revised as of April 1, 1994).

§§ 1.267(f)–1T, 1.267(f)–2T, and 1.267(f)–3 [Removed]

Par. 6. Sections 1.267(f)–1T, 1.267(f)–2T, and 1.267(f)–3 are removed.

Par. 7. Section 1.460–0 is amended in the table of contents by revising the section heading for § 1.460–4, and adding entries for that section to read as follows:

§ 1.460–0 Outline of regulations under section 460.

* * * * *

§ 1.460–4 Methods of accounting for long-term contracts.

(a) through (i) [Reserved]

(j) Consolidated groups and controlled groups.

(1) Intercompany transactions.

(i) In general.

(ii) Definitions and nomenclature.

(2) Example.

(3) Effective date.

(i) In general.

(ii) Prior law.

* * * * *

Par. 8. Section 1.460–4 is amended by revising the section heading, adding and reserving paragraphs (a) through (i), and adding paragraph (j) to read as follows:

§ 1.460–4 Methods of accounting for long-term contracts.

(a) through (i) [Reserved]

(j) *Consolidated groups and controlled groups—(1) Intercompany transactions*—(i) *In general.* Section 1.1502–13 does not apply to the income, gain, deduction, or loss from an intercompany transaction between members of a consolidated group, and section 267(f) does not apply to these items from an intercompany sale between members of a controlled group, to the extent—

(A) The transaction or sale directly or indirectly benefits, or is intended to benefit, another member's long-term contract with a nonmember;

(B) The selling member is required under section 460 to determine any part of its gross income from the transaction or sale under the percentage-of-completion method (PCM); and

(C) The member with the long-term contract is required under section 460 to determine any part of its gross income from the long-term contract under the PCM.

(ii) *Definitions and nomenclature.* The definitions and nomenclature under § 1.1502–13 and § 1.267(f)–1 apply for purposes of this paragraph (j).

(2) *Example.* The following example illustrates the principles of paragraph (j)(1) of this section.

Example. Corporations P, S, and B file consolidated returns on a calendar-year basis. In 1996, B enters into a long-term contract with X, a nonmember, to manufacture 5 airplanes for $500 million, with delivery scheduled for 1999. Section 460 requires B to determine the gross income from its contract with X under the PCM. S enters into a contract with B to manufacture for $50 million the engines that B will install on X's airplanes. Section 460 requires S to determine the gross income from its contract with B under the PCM. S estimates that it will incur $40 million of total contract costs during 1997 and 1998 to manufacture the engines. S incurs $10 million of contract costs in 1997 and $30 million in 1998. Under paragraph (j) of this section, S determines its gross income from the long-term contract under the PCM rather than under section 267(f) or § 1.1502–13. Thus, S includes $12.5 million of gross receipts and $10 million of contract costs in gross income in 1997 and includes $37.5 million of gross receipts and $30 million of contract costs in gross income in 1998.

(3) *Effective date*—(i) *In general.* This paragraph (j) applies with respect to transactions and sales occurring in years beginning on or after [the date the final regulations are filed with the Federal Register].

(ii) *Prior law.* For transactions and sales occurring in years beginning before [the date final regulations are filed with the Federal Register], see the applicable regulations issued under sections 267(f) and 1502, including §§ 1.267(f)–1T, 1.267(f)–2T, and 1.1502–13(n) (as contained in the 26 CFR part 1 edition revised as of April 1, 1994).

Par. 9. Section 1.469–0 is amended in the table of contents by revising entries for paragraphs (a) through (d)(1), (g)(5) through (h)(3), and (h)(5) through (k) under § 1.469–1 and revising entries for paragraphs (c)(8), (h)(1), (h)(2), and (h)(6) under § 1.469–1T to read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–1 General rules.

(a) through (c)(7) [Reserved]

(c)(8) Consolidated groups.

(c)(9) through (d)(1) [Reserved]

* * * * *

(g)(5) [Reserved]

(h)(1) In general.

(h)(2) Definitions.

(h)(3) [Reserved]
* * * * *
(h)(5) [Reserved]
(h)(6) Intercompany transactions.
(i) In general.
(ii) Example.
(iii) Effective dates.
(h)(7) through (k) [Reserved]

§ 1.469–1T General rules (temporary).
* * * * *
(c)(8) [Reserved]
* * * * *
(h)(1) [Reserved]
(h)(2) [Reserved]
* * * * *
(h)(6) [Reserved]
* * * * *

Par. 10. Section 1.469–1 is amended by revising paragraphs (a) through (d)(1), (g)(5) through (h)(3), and (h)(5) through (k) to read as follows:

§ 1.469–1 General rules.

(a) through (c)(7) [Reserved]

(c)(8) *Consolidated groups.* Rules relating to the application of section 469 to consolidated groups are contained in paragraph (h) of this section.

(c)(9) through (d)(1) [Reserved]
* * * * *
(g)(5) [Reserved]

(h)(1) *In general.* This paragraph (h) provides rules for applying section 469 in computing a consolidated group's consolidated taxable income and consolidated tax liability (and the separate taxable income and tax liability of each member).

(2) *Definitions.* The definitions and nomenclature in the regulations under section 1502 apply for purposes of this paragraph (h). See, e.g., §§ 1.1502–1 (definitions of group, consolidated group, member, subsidiary, and consolidated return year), 1.1502–2 (consolidated tax liability), 1.1502–11 (consolidated taxable income), 1.1502–12 (separate taxable income), 1.1502–13 (intercompany transactions), 1.1502–21 (consolidated net operating loss), and 1.1502–22 (consolidated net capital gain or loss).

(3) [Reserved]
* * * * *
(5) [Reserved]

(6) *Intercompany transactions*—(i) *In general.* Section 1.1502–13 applies to determine the treatment under section 469 of intercompany items and corresponding items from intercompany transactions between members of a consolidated group. For example, the matching rule of § 1.1502–13(c) treats the selling member (S) and the buying member (B) as divisions of a single corporation for purposes of determining whether S's intercompany items and B's corresponding items are from a passive activity. Thus, for purposes of applying § 1.469–2(c)(2)(iii) and § 1.469–2T(d)(5)(ii) to property sold by S to B in an intercompany transaction—

(A) S and B are treated as divisions of a single corporation for determining the uses of the property during the 12-month period preceding its disposition to a nonmember, and generally have an aggregate holding period for the property; and

(B) Section 1.469–2(c)(2)(iv) does not apply.

(ii) *Example.* The following example illustrates the application of this paragraph (h)(6).

Example. (i) P, a closely held corporation, is the common parent of the P consolidated group. P owns all of the stock of S and B. X is a person unrelated to any member of the P group. S owns and operates equipment that is not used in a passive activity. On January 1 of Year 1, S sells the equipment to B at a gain. B uses the equipment in a passive activity and does not dispose of the equipment before it has been fully depreciated. Assume that if S and B were divisions of a single corporation, S's gain would be passive income attributable to a passive activity.

(ii) Under the matching rule of § 1.1502–13(c), S's gain taken into account as a result of B's depreciation is treated as gain from a passive activity even though S used the equipment in a nonpassive activity.

(iii) The facts are the same as in paragraph (a) of this *Example*, except that B sells the equipment to X on December 1 of Year 3 at a further gain. To the extent of B's depreciation before the sale, the results are the same as in paragraph (ii) of this *Example*. S's remaining gain taken into account as a result of B's sale is treated as attributable to a passive activity.

(iv) The facts are the same as in paragraph (iii) of this *Example*, except that B recognizes a loss on the sale to X. As in paragraph (iii) of this *Example*, S's gain taken into account as a result of B's sale is treated as attributable to a passive activity.

(iii) *Effective dates.* This paragraph (h)(6) applies with respect to transactions occurring in years beginning on or after [the date the final regulations are filed with the Federal Register]. For transactions occurring in years beginning before [the date the final regulations are filed with the Federal Register], see § 1.469–1T(h)(6) (as contained in the 26 CFR part 1 edition revised as of April 1, 1994).

(h)(7) through (k) [Reserved]

§ 1.469–1T [Amended]

Par. 11. Section 1.469–1T is amended by removing and reserving paragraphs (c)(8), (h)(1), (h)(2), and (h)(6).

Par. 12. Section 1.1502–13 is revised to read as follows:

§ 1.1502–13 Intercompany transactions.

(a) *In general*—(1) *Purpose.* This section provides rules for taking into account the items of income, gain, deduction, and loss of members from intercompany transactions. The purpose of this section is to provide rules to clearly reflect the taxable income (and tax liability) of the group as a whole by preventing intercompany transactions from creating, accelerating, avoiding, or deferring consolidated taxable income (or consolidated tax liability).

(2) *Separate entity and single entity treatment.* Under this section, the selling member (S) and the buying member (B) are treated as separate entities for some purposes but as divisions of a single corporation for other purposes. The *amount* and *location* of S's intercompany items and B's corresponding items are determined on a separate entity basis (separate entity treatment). For example, S determines its gain or loss from a sale of property to B on a separate entity basis, and B has a cost basis in the property. The *timing, character, source,* and other *attributes* of the intercompany items and corresponding items, although initially determined on a separate entity basis, are redetermined under this section to produce the effect of transactions between divisions of a single corporation (single entity treatment). For example, if S sells land to B at a gain and B resells the land to a nonmember, S does not take its gain into account until the resale.

(3) *Other law.* The rules of this section apply in addition to other applicable law, such as sections 269 (acquisitions to evade or avoid income tax), 482 (allocations among commonly controlled taxpayers), and 7701(f) (use of related persons). The timing rules of this section are a method of accounting that overrides otherwise applicable accounting methods. For example, if S sells property to B in exchange for B's note, the rules of this section apply instead of the installment sale rules of section 453. However, an item taken into account under this section can be deferred, disallowed, or eliminated under other applicable law such as section 267 (losses from transactions between related persons).

(4) *Construction.* The rules of this section must be applied in a consistent manner that reasonably carries out their purposes, taking into account all of the facts and circumstances, the underlying economic arrangement, and applicable Federal income tax accounting principles. For example, the rules of this section must not be applied to take S's intercompany items into account more than once.

(5) *Overview*—(i) *In general.* The principal rules of this section that implement single entity treatment are the matching rule and the acceleration rule of paragraphs (c) and (d) of this section. Under the matching rule of paragraph (c) of this section, S and B are generally treated as divisions of a single corporation for purposes of taking into account their items from intercompany transactions. The acceleration rule of paragraph (d) of this section provides additional rules for taking the items into account if the effect of treating S and B as divisions cannot be achieved (e.g., if S or B becomes a nonmember). Paragraph (b) of this section provides definitions, including the definitions of intercompany transaction, intercompany item, and corresponding item. Paragraph (e) of this section provides simplifying rules for certain transactions. Paragraphs (f) and (g) of this section provide additional rules for stock and obligations of members. Paragraphs (h) and (j) of this section provide anti-avoidance rules and miscellaneous operating rules.

(ii) *Table of examples.* Set forth below is a table of the examples contained in this section.

Matching rule. (§ 1.1502–13(c)(4)(ii))
- Example 1. Intercompany sale of land followed by resale; intercompany sale followed by section 1031 exchange with nonmember; intercompany sale followed by section 351 transfer to nonmember.
- Example 2. Dealer activities.
- Example 3. Intercompany section 351 transfer.
- Example 4. Depreciable property.
- Example 5. Intercompany sale followed by installment sale.
- Example 6. Intercompany sale of installment obligation.
- Example 7. Performance of services.
- Example 8. Rental of property.
- Example 9. Back-to-back intercompany sales.
- Example 10. Intercompany sale of a partnership interest.
- Example 11. Net operating losses subject to section 382 or the SRLY rules.
- Example 12. Special inventory accounting election.
- Example 13. Section 475.
- Example 14. Section 1092.
- Example 15. Manufacturer rebates.
- Example 16. Cancellation of debt and attribute reduction under section 108(b).
- Example 17. Source of items from a section 863 sale.
- Example 18. Section 1248.

Acceleration rule. (§ 1.1502–13(d)(3))
- Example 1. Becoming a nonmember—timing.
- Example 2. Becoming a nonmember—attributes.
- Example 3. Back-to-back intercompany transactions.
- Example 4. Selling member's disposition of proceeds.
- Example 5. Section 481.

Simplifying rules—inventory. (§ 1.1502–13(e)(1)(v))
- Example 1. Increment averaging method.
- Example 2. Increment valuation method.
- Example 3. Other reasonable inventory methods.

Stock of members. (§ 1.1502–13(f)(6))
- Example 1. Dividend exclusion and property distribution.
- Example 2. Excess loss accounts.
- Example 3. Intercompany reorganization.
- Example 4. Stock redemptions and distributions.
- Example 5. Intercompany stock sale followed by section 332 liquidation.

Obligations of members. (§ 1.1502–13(g)(6))
- Example 1. Interest and premium on intercompany debt.
- Example 2. Intercompany debt becomes nonintercompany debt.
- Example 3. Bad debt deduction or loss with respect to intercompany debt.
- Example 4. Nonintercompany debt becomes intercompany debt.
- Example 5. Notional principal contracts.

Anti-avoidance rules. (§ 1.1502–13(h)(2))
- Example 1. Sale of a partnership interest.
- Example 2. Sale to a related party.
- Example 3. Sale and leaseback.
- Example 4. Transitory status as an intercompany obligation.

Miscellaneous operating rules. (§ 1.1502–13(j)(6))
- Example 1. Intercompany sale followed by section 351 transfer to member.
- Example 2. Intercompany sale of member stock followed by recapitalization.
- Example 3. Successor group.
- Example 4. Liquidation—80% distributee.
- Example 5. Liquidation—no 80% distributee.

(b) *Definitions.* For purposes of this section—

(1) *Intercompany transactions*—(i) *In general.* An intercompany transaction is a transaction between corporations that are members of the same consolidated group immediately after the transaction. S is the member transferring property or providing services, and B is the member receiving the property or services. Intercompany transactions include—

(A) S's sale of property (or other transfer, such as an exchange or contribution) to B, whether or not gain or loss is recognized;

(B) S's performance of services for B, and B's payment or accrual of its expenditure for S's performance;

(C) S's licensing of technology, rental of property, or loan of money to B, and B's payment or accrual of its expenditure; and

(D) S's distribution to B with respect to S stock.

(ii) *Time of transaction.* If a transaction occurs in part while S and B are members and in part while they are not members, the transaction is treated as occurring when performance by either S or B takes place, or when payment for performance would be taken into account under the rules of this section if it were an intercompany transaction, whichever is earliest. Appropriate adjustments must be made in such cases by, for example, dividing the transaction into two separate transactions reflecting the extent to which S or B has performed.

(iii) *Separate transactions.* Each transaction is analyzed separately. For example, if S simultaneously sells two properties to B, one at a gain and the other at a loss, each property is sold in a separate transaction. Similarly, each payment or accrual of interest with respect to a loan is a separate transaction. If two members exchange property, each member is S with respect to the property it transfers and B with respect to the property it receives.

(2) *Intercompany items and corresponding items*—(i) *Intercompany items*—(A) *In general.* S's income, gain, deduction, and loss from an intercompany transaction are its intercompany items. For example, S's gain from the sale of property to B is intercompany gain and, if the sale results in both ordinary income and capital gain (or other attribute disparities), each is treated as a separate intercompany item. An item is an intercompany item whether it is directly or indirectly from an intercompany transaction.

(B) *Related costs or expenses.* S's costs or expenses related to an intercompany transaction are included in determining its intercompany items. For example, if S sells inventory to B, S's direct and indirect costs properly includible under section 263A are included in determining its intercompany income. Similarly, in addition to other related costs, deductions for employee wages are included in determining S's income from performing services for B, and depreciation deductions are included in determining S's income from renting property to B.

(C) *Amounts not yet recognized or incurred.* S's items from intercompany transactions are taken into account under this section even if S has not yet taken them into account under its separate entity method of accounting. For example, if S is a cash method taxpayer, S's intercompany income is taken into account under this section even if the cash is not yet received.

(ii) *Corresponding items*—(A) *In general.* B's income, gain, deduction, and loss from an intercompany transaction, or from property acquired in an intercompany transaction, are its corresponding items. For example, if B pays rent to S, B's deduction for the rent

is a corresponding deduction. If B buys property from S and resells it to a nonmember, B's gain or loss from the resale is a corresponding gain or loss; alternatively, if B recovers the cost of the property through depreciation, B's depreciation deductions are corresponding deductions. An item is a corresponding item whether it is directly or indirectly from an intercompany transaction (or from property acquired in an intercompany transaction).

(B) *Disallowed or eliminated amounts.* B's corresponding items include amounts that are permanently disallowed or permanently eliminated, whether directly or indirectly. For example, corresponding items include amounts disallowed under section 265 (expenses relating to tax-exempt income), amounts offset under section 171(e) (amortizable bond premium offset), and amounts not recognized under section 311 (nonrecognition of loss on distributions) or 332 (nonrecognition on liquidating distributions). (See paragraph (c)(3)(iv) of this section, under which certain of these amounts may cause S's intercompany income or gain to be treated as excluded from gross income.)

(iii) *Effect of basis adjustments.* This paragraph (b)(2)(iii) provides additional rules for intercompany items and corresponding items.

(A) *Deemed intercompany items.* An adjustment reflected in basis (or to an amount equivalent to basis, such as a loss carryover or an excess loss account) that is a substitute for an intercompany item is treated as an intercompany item. For example, a reduction in S's basis in property that preserves S's income for a later period and relates to B's corresponding deduction is treated as intercompany income of S. However, if the adjustment is made pursuant to a nonrecognition provision of the Code or regulations unrelated to S's method of accounting, the adjustment is not treated as an intercompany item.

(B) *Deemed corresponding items.* An adjustment reflected in basis (or in an amount equivalent to basis, such as a loss carryover or an excess loss account) that is a substitute for a corresponding item is treated as a corresponding item for purposes of taking S's intercompany items into account. However, an adjustment is not treated as a corresponding item to the extent that the adjustment reflects a comparable amount not recognized by S, or to the extent that the only effect of the adjustment is to preserve B's items for a later period (rather than, for example, affecting the overall amount of items taken into account or to be taken into account).

(C) *Amounts deemed not to be items.* A deduction or loss is not treated as an intercompany item or corresponding item to the extent it does not reduce basis (or have an equivalent effect, such as decreasing a loss carryover or increasing an excess loss account). For example, if B has percentage depletion in excess of basis under section 613 or 613A with respect to mineral property purchased from S, the depletion in excess of basis is not treated as a corresponding item for purposes of this section. Similar principles apply to income or gain that does not increase basis (or have an equivalent effect).

(3) *Treatment as a separate entity.* Treatment as a separate entity means treatment without application of the rules of this section, but with the application of the other consolidated return regulations. For example, if S sells the stock of another member to B, S's gain or loss on a separate entity basis is determined with the application of § 1.1502–80(b) (nonapplicability of section 304), but without redetermination under paragraph (c) or (d) of this section.

(4) *Attributes.* The attributes of an intercompany item or corresponding item are all of the item's characteristics necessary to determine its effect on taxable income (and tax liability) except *amount, location,* and *timing.* For example, attributes include character, source, treatment as excluded from gross income or as a noncapital, nondeductible amount, and treatment as built-in gain or loss under section 382(h) or 384. A member's holding period in property, or the fact that property is included in the inventory of a member, is not an attribute of an item, but these factors do affect the determination of the attributes of items from the property.

(c) *Matching rule.* S's intercompany items and B's corresponding items are taken into account for each consolidated return year under the following rules:

(1) *Attributes and holding periods*—(i) *General rule.* The attributes of S's intercompany items and B's corresponding items are redetermined to produce the same effect on consolidated taxable income (and consolidated tax liability) as if S and B were divisions of a single corporation, and the intercompany transaction were a transaction between divisions. Thus, the activities of both S and B affect the attributes of both intercompany items and corresponding items. For example, if S holds property for sale to unrelated customers in the ordinary course of its trade or business and sells the property to B, S's intercompany items and B's corresponding items may be ordinary items solely by reason of S's activities. Similar principles apply if S performs services, rents property, or engages in any other intercompany transaction.

(ii) *Holding periods.* The holding period of property transferred in an intercompany transaction is the aggregate of the holding periods of S and B. However, if the basis of the property is determined by reference to the basis of other property, the property's holding period is determined by reference to the holding period of the other property. For example, the holding period of stock distributed in an intercompany distribution to which section 355 applies is determined by reference to the holding period of the distributing member's stock.

(2) *Timing*—(i) *B's items.* B takes its corresponding items into account under its accounting method. However, the redetermination of the attributes of a corresponding item may affect its timing. For example, if B's resale of property acquired from S is treated as a dealer disposition solely by reason of S's activities, section 453(b) prevents any corresponding income of B from being taken into account under the installment method.

(ii) *S's items.* S takes its intercompany items into account to reflect the difference for the year between B's corresponding items taken into account and B's recomputed corresponding items (the corresponding items that B would take into account for the year if S and B were divisions of a single corporation). For example, if S sells property with a $70 basis to B for $100, and B later resells the property to a nonmember for $90, B's corresponding item taken into account is its $10 loss, B's recomputed corresponding item is a $20 recomputed gain, and the $30 difference is the amount of S's intercompany gain that is taken into account for the year of the resale. Although B does not actually take the recomputed corresponding items into account, they are computed as if they were taken into account (based on reasonable and consistently applied assumptions, including any provision of the Internal Revenue Code (Code) or regulations that would affect their timing or attributes).

(3) *Operating rules for single entity adjustments.* For purposes of this paragraph (c)—

(i) *Divisions of a single corporation.* As divisions of a single corporation, S and B are treated as engaging in their actual transaction and owning any actual property in the transaction (rather than treating the transaction as not

occurring). For example, S's sale of property to B for cash is not disregarded, but is treated as an exchange of property for cash between divisions (and B therefore ordinarily does not have a cost basis). Similarly, if S transfers property to B in exchange for B's stock, S is treated as owning the stock it receives in the exchange. Although treated as divisions, S and B nevertheless are treated as:

(A) Operating separate trades or businesses. See, e.g., § 1.446–1(d) (accounting methods for a taxpayer engaged in more than one business).

(B) Having any special status that they have under the Internal Revenue Code. For example, a bank defined in section 581, a domestic building and loan association defined in section 7701(a)(19), and an insurance company to which section 801 or 831 applies are treated as divisions having separate special status. On the other hand, the fact that a member holds property for sale to customers in the ordinary course of its trade or business is not a special status.

(ii) *Multiple intercompany items or corresponding items*—(A) *Multiple triggers.* If more than one corresponding item can cause an intercompany item to be taken into account under this paragraph (c), the intercompany item is taken into account in connection with the corresponding item most consistent with the treatment of members as divisions of a single corporation. For example, if S sells a truck to B, its intercompany gain from the sale is not taken into account by reference to B's depreciation if the depreciation is capitalized under section 263 as part of B's cost for a building; instead, S's gain relating to the capitalized depreciation is taken into account when the building is sold or as it is depreciated. If B purchases appreciated land from S and transfers the land to a lower-tier member in exchange for stock, thereby duplicating the basis of the land in the basis of the stock, items with respect to both the stock and the land can cause S's intercompany gain to be taken into account; if the lower-tier member becomes a nonmember as a result of the sale of its stock, the attributes of S's intercompany gain are determined with respect to the land rather than the stock.

(B) *Aggregation of transactions.* If a member's intercompany item or corresponding item affects the accounting for more than one intercompany transaction, appropriate adjustments are made to treat all of the intercompany transactions as transactions between divisions of a single corporation. For example, if land is transferred in successive intercompany transactions, all of the participating members are treated as divisions of a single corporation for purposes of determining the timing and attributes of each of the items from the land. Similar principles apply with respect to intercompany transactions that are part of the same plan or arrangement. For example, if S sells separate properties to different members as part of the same plan or arrangement, all of the participating members are treated as divisions of a single corporation for purposes of determining the timing and attributes of the intercompany items and corresponding items from each of the properties.

(iii) *Conflict of attributes or allocation*—(A) *In general.* If it is not possible to determine the attributes of an item, or the allocation of attributes between S and B, by treating S and B as divisions of a single corporation, the determination or allocation is made as follows—

(*1*) The attributes of B's corresponding items on a separate entity basis control the attributes of offsetting intercompany items of S (e.g., B's interest expense controls S's interest income); and

(*2*) If the corresponding items and intercompany items do not offset (e.g., both S and B have gain from the same property), their attributes are determined on a separate entity basis to the extent not inconsistent with the purposes of this section.

(B) *Special status.* To the extent an item's attributes determined under this section are permitted or not permitted to a member under the Internal Revenue Code or regulations by reason of the member's special status, the attributes required under the Internal Revenue Code or regulations apply to that member (but not the other member). For example, if S is a bank to which section 582(c) applies, and sells debt securities at a gain to B, a nonbank, the character of S's intercompany gain is ordinary as required under section 582(c), but the character of B's corresponding items as capital or ordinary is determined under paragraph (c)(1) of this section without the application of section 582(c). For other special status issues, see, e.g., sections 595(b) (foreclosure on property securing loans), 818(b) (life insurance company treatment of capital gains and losses), 1032 (nonrecognition with respect to an issuer's stock) and 1503(c) (limitation on absorption of certain losses).

(iv) *Limitation on treatment of intercompany income or gain as excluded from gross income*—(A) *In general.* Redetermining the attributes of intercompany items and corresponding items under this paragraph (c) may result in S's intercompany items being treated as excluded from gross income or as noncapital, nondeductible amounts. For example, S's intercompany loss from the sale of property to B is treated as a noncapital, nondeductible amount if B distributes the property to a nonmember shareholder at no further gain or loss (because of the nonrecognition of loss under section 311(a)). See also §§ 1.1502–32 and 1.1502–33 (adjustments to S's stock basis and earnings and profits to reflect amounts so treated).

(B) *Limitation.* S's intercompany income or gain may be treated under this paragraph (c) as excluded from gross income only to the extent one of the following applies:

(*1*) *Disallowed amounts.* B's corresponding item is a deduction or loss that, in the taxable year the item is taken into account under this section, is permanently disallowed directly under another provision of the Internal Revenue Code or regulations. An amount is not permanently disallowed for this purpose if, for example—

(*i*) The disallowance or elimination is not permanent because an equivalent amount might be taken into account by B, such as under section 280B (demolition costs recoverable as capitalized amounts), or by another taxpayer, such as under section 267(d) (disallowed loss under section 267(a) may result in nonrecognition of gain for a related person);

(*ii*) The amount is realized but not recognized under section 332;

(*iii*) The amount is a deemed item under paragraph (b)(2)(iii) of this section; or

(*iv*) The amount is a loss that is part of a carryforward that expires in a later year.

(*2*) *Section 311.* The corresponding item is a loss that is realized, but not recognized under section 311(a).

(*3*) *Other amounts.* The corresponding item is otherwise limited, eliminated, offset, or has no effect on the computation of taxable income under any provision identified by the Commissioner.

(*4*) *Examples*—(i) *In general.* For purposes of the examples in this section, unless otherwise stated, P is the common parent of the P consolidated group, P owns all of the only class of stock of subsidiaries S and B, X is a person unrelated to any member of the P group, the taxable year of all persons is the calendar year, all persons use the accrual method of accounting, tax liabilities are disregarded, the facts set forth the only corporate activity, and no member has any special status. If a

member acts as both a selling member and a buying member (e.g., with respect to different aspects of a single transaction, or with respect to related transactions), the member is referred to as M (rather than as S or B).

(ii) *Matching rule.* The matching rule of this paragraph (c) is illustrated by the following examples.

Example 1. Intercompany sale of land followed by resale; intercompany sale followed by section 1031 exchange with nonmember; intercompany sale followed by section 351 transfer to nonmember. (a) *Facts.* S holds land for investment with a basis of $70. On January 1 of Year 1, S sells the land to B for $100. B also holds the land for investment. On July 1 of Year 3, B sells the land to X for $110.

(b) *Definitions.* Under paragraph (b)(1) of this section, S's sale of the land to B is an intercompany transaction, S is the selling member, and B is the buying member. Under paragraph (b)(2) of this section, S's $30 gain from the sale to B is its intercompany gain, and B's $10 gain from the sale to X is its corresponding gain.

(c) *Timing.* Under the matching rule of paragraph (c) of this section, S takes its intercompany items into account to reflect the difference for the year between B's corresponding items taken into account and B's recomputed corresponding items (the corresponding items that B would take into account for the year if S and B were divisions of a single corporation). If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $70 basis in the land and would have a $40 gain from the sale to X instead of a $10 gain. Consequently, S takes no gain into account in Years 1 and 2, and takes the entire $30 gain into account in Year 3 to reflect the $30 difference in that year between the $10 gain B takes into account and its $40 recomputed gain (B's recomputed corresponding item). Under §§ 1.1502–32 and 1.1502–33, P's basis in its S stock and the earnings and profits of S and P do not reflect S's $30 gain until the gain is taken into account in Year 3. (Under paragraph (b)(2)(i)(C) of this section, the results would be the same if S sold the land to B in an installment sale to which section 453 would otherwise apply, because S must take its intercompany gain into account under this section.)

(d) *Attributes.* Under the matching rule, S's $30 intercompany gain and B's $10 corresponding gain are taken into account to produce the same effect on consolidated taxable income (and consolidated tax liability) as if S and B were divisions of a single corporation. In addition, the holding periods of S and B for the land are aggregated. Thus, both are long-term capital gain.

(e) *Intercompany loss and resale gain.* The facts are the same as in paragraph (a) of this *Example 1*, except that S's basis in the land is $130 (rather than $70). The timing and attributes of S's intercompany loss and B's corresponding gain are determined in the manner provided in paragraphs (c) and (d) of this *Example 1*. If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $130 basis in the land and would have a $20 loss from the sale to X instead of a $10 gain. Thus, S takes its entire $30 loss into account in Year 3 to reflect the $30 difference between B's $10 gain taken into account and its $20 recomputed loss. (The results are the same under section 267(f).) S's $30 loss is long-term capital loss, and B's $10 gain remains long-term capital gain.

(f) *Intercompany gain and resale loss.* The facts are the same as in paragraph (a) of this *Example 1*, except that B sells the land to X for $90 (rather than $110). The timing and attributes of S's intercompany gain and B's corresponding loss are determined in the manner provided in paragraphs (c) and (d) of this *Example 1*. If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $70 basis in the land and would have a $20 gain from the sale to X instead of a $10 loss. Thus, S takes its entire $30 gain into account in Year 3 to reflect the $30 difference between B's $10 loss taken into account and its $20 recomputed gain. S's $30 gain is long-term capital gain, and B's $10 loss is long-term capital loss.

(g) *Intercompany sale followed by section 1031 exchange with nonmember.* The facts are the same as in paragraph (a) of this *Example 1*, except that, instead of selling the land to X, B exchanges the land for land owned by X in a transaction to which section 1031 applies. There is no difference in Year 3 between B's corresponding items taken into account and its recomputed items. Thus, none of S's intercompany gain is taken into account under the matching rule as a result of the section 1031 exchange. Instead, B's gain is preserved in the land received from X and, under the successor asset rule of paragraph (j)(1)(i) of this section, S's intercompany gain is taken into account by reference to the replacement property. (If B takes gain into account as a result of boot received in the exchange, S's intercompany gain would be taken into account under the matching rule to the extent the boot causes a difference between B's gain taken into account and its recomputed gain.)

(h) *Intercompany sale followed by section 351 transfer to nonmember.* The facts are the same as in paragraph (a) of this *Example 1*, except that, instead of selling the land to X, B transfers the land to X in a transaction to which section 351 applies and X remains a nonmember. There is no difference in Year 3 between B's corresponding items taken into account and its recomputed items. Thus, none of S's intercompany gain is taken into account under the matching rule as a result of the section 351 transfer. However, S's entire gain is taken into account in Year 3 under the acceleration rule of paragraph (d) of this section (because X reflects B's $100 cost basis in the land under section 362).

Example 2. Dealer activities. (a) *Facts.* S holds land for investment with a basis of $70. On January 1 of Year 1, S sells the land to B for $100. B develops the land as residential real estate, and sells developed lots to customers during Year 3 for an aggregate amount of $110.

(b) *Attributes.* S and B are treated under the matching rule as divisions of a single corporation for purposes of determining the attributes of B's corresponding items and S's intercompany items. Thus, although S held the land for investment, whether the land is property described in section 1221(1) is based on the activities of both S and B. If the land is described in section 1221(1), both S's gain and B's gain are ordinary income.

Example 3. Intercompany section 351 transfer. (a) *Facts.* S holds land with a $70 basis for sale to customers in the ordinary course of business. On January 1 of Year 1, S transfers the land to B in exchange for B stock and $10 cash in a transaction to which section 351 applies. See § 1.1502–34 (aggregate stock ownership rules). S has a $10 gain under section 351(b), and its basis in the B stock is $70 under section 358. Under section 362, B's basis in the land is $80. B holds the land for investment. On July 1 of Year 3, B sells the land to X for $100. Assume that if S and B were divisions of a single corporation, B's gain from the sale would be ordinary income by reason of S's activities.

(b) *Timing and attributes.* Under paragraph (c)(3)(i) of this section, S is treated as transferring the land for B's stock even though, as divisions, S could not own stock of B. S takes its $10 gain into account in Year 3 to reflect the $10 difference between B's $20 gain taken into account and its $30 recomputed gain. Both S's $10 gain and B's $20 gain are ordinary income.

(c) *Partial disposition.* The facts are the same as in paragraph (a) of this *Example 3*, except B sells only a one-half, undivided interest in the land to X for $50. The timing and attributes are determined in the manner provided in paragraph (b) of this *Example 3*, except that S takes only $5 of its gain into account in Year 3 to reflect the $5 difference between B's $10 gain taken into account and its $15 recomputed gain.

(d) *No boot.* The facts are the same as in paragraph (a) of this *Example 3*, except that there is no boot in the section 351 transaction. Under paragraph (b)(1) of this section, S's transfer to B is an intercompany transaction. Under paragraph (b)(2) of this section, S has no intercompany items, but B's $30 gain from its sale of the land to X is a corresponding item because the land was acquired in an intercompany transaction. B's $30 gain is ordinary income.

Example 4. Depreciable property. (a) *Facts.* During Year 1, S buys 10-year recovery property for $80 and depreciates it under the straight-line method with the half- year convention. On July 1 of Year 6, S sells the property to B for $100. Under section 168(i)(7), B is treated as S for purposes of section 168 to the extent that B's $100 basis does not exceed S's adjusted basis at the time of the sale. B's additional basis is treated as new 10-year recovery property subject to the half-year convention, for which B elects the straight-line method of recovery.

(b) *Depreciation in Year 6 and intercompany gain.* S takes into account $4 of depreciation for Year 6, and S has a $40 basis at the time of the sale to B ($80 minus $36 of prior years' depreciation and $4 of Year 6 depreciation). Thus, S has a $60 intercompany gain from its sale to B. For

Year 6, B has the remaining $4 of depreciation with respect to $40 of its basis (the portion of its $100 basis not exceeding S's adjusted basis). In addition, B has another $3 of depreciation with respect to the $60 of its additional basis that exceeds S's adjusted basis (under the half-year convention). For purposes of treating S and B as divisions of a single corporation under the matching rule, the $8 of recomputed depreciation for Year 6 is also allocated $4 to S and $4 to B.

(c) *Timing.* S's $60 gain is taken into account to reflect the difference for each consolidated return year between B's depreciation taken into account with respect to the property and its recomputed depreciation. For Year 6, B takes $7 of depreciation into account. If the intercompany transaction had been a transfer between divisions of a single corporation, B would have succeeded to S's adjusted basis in the property and taken into account only its $4 allocable share of the property's $8 of depreciation for Year 6. Thus, S takes $3 of gain into account in Year 6. In each subsequent year that B operates the property and takes into account $14 of depreciation ($8 with respect to $40 of basis, and $6 with respect to $60 of basis), S takes into account $6 of gain to reflect the $6 difference between B's $14 of depreciation taken into account and its recomputed $8 of depreciation (the depreciation that B would take into account if the intercompany sale were a transfer between divisions).

(d) *Attributes.* S's gain taken into account as a result of B's depreciation is ordinary income.

(e) *Resale of property.* The facts are the same as in paragraph (a) of this *Example 4*, except that B sells the property to X at the beginning of Year 10 for an amount equal to its $44 adjusted basis (applying the half-year convention). To the extent of B's $56 of depreciation before the sale ($32 with respect to the $40 of basis corresponding to S's adjusted basis, and $24 with respect to the $60 of additional basis), the timing and attributes of S's gain are determined in the manner provided in paragraphs (c) and (d) of this *Example 4*, and S takes into account $24 of gain in Years 6 through 10 as ordinary income. The $36 balance of S's gain is taken into account in Year 10 as a result of B's sale to X, to reflect the $36 difference between B's $0 gain taken into account and its $36 recomputed gain ($44 sale proceeds minus the $8 basis B would have if the intercompany sale were a transfer between divisions of a single corporation). The attributes of the remaining $36 of S's gain are determined by treating S and B as divisions of a single corporation. Thus, the entire $36 of gain is recapture income under section 1245.

Example 5. Intercompany sale followed by installment sale. (a) *Facts.* S holds land for investment with a basis of $70x. On January 1 of Year 1, S sells the land to B for $100x. B also holds the land for investment. On July 1 of Year 3, B sells the land to X in exchange for X's $110x note. The note bears a market rate of interest in excess of the applicable Federal rate, and provides for principal payments of $55x in Year 4 and $55x in Year 5. The interest charge under section 453A(c) applies to X's note.

(b) *Timing and attributes.* S takes its $30x gain into account in each consolidated return year to reflect the difference between B's gain taken into account for the year and its recomputed gain. Under section 453, B takes into account $5x of gain in Year 4 and $5x of gain in Year 5. Thus, S takes into account $15x of gain in Year 4 and $15x of gain in Year 5. This reflects the $15x difference in Year 4 and in Year 5 between B's $5x gain taken into account and its $20x recomputed gain. Both S's $30x gain and B's $10x gain are subject to the section 453A(c) interest charge beginning in Year 3.

(c) *Election out under section 453(d).* If, under the facts in paragraph (a) of this *Example 5*, the P group wishes to elect not to apply section 453 with respect to S's gain, an election under section 453(d) must be made for Year 3 with respect to B's gain. This election will cause B's $10x gain to be taken into account in Year 3. Under the matching rule, this in turn will result in S's $30 gain being taken into account in Year 3. (An election by the P group solely with respect to S's gain has no effect because the gain from S's sale to B is taken into account under the matching rule, and therefore must reflect the difference between B's gain taken into account and its recomputed gain.)

(d) *Resale loss, but overall gain.* The facts are the same as in paragraph (a) of this *Example 5*, except that B sells the land to X in exchange for X's $90x note (rather than $110x note). B's $10x loss is taken into account in Year 3 and is not subject to installment reporting under section 453 (only gain may be reported on the installment method). There is an aggregate $30x difference between B's $10x loss taken into account and its $20x recomputed gain. Under paragraph (c)(2)(ii) of this section, however, B's $20x recomputed gain is treated as taken into account in Years 4 and 5 under the installment method. Thus, S takes $10x of gain into account in Year 3 to reflect the $10x difference between B's $10x loss taken into account and its $0 recomputed gain for Year 3. (None of B's $20 recomputed gain is treated as taken into account in Year 3 under the installment method). S takes $10x of gain into account in each of Years 4 and 5 to reflect the difference in those years between B's $0 gain taken into account and B's $10x recomputed gain under the installment method. Only the $20x of S's gain taken into account in Years 4 and 5 is subject to the interest charge under section 453A(c) beginning in Year 3. (If the P group elects under section 453(d) for Year 3 to not apply section 453 with respect to S's gain, the election will be given effect under paragraph (c)(2)(ii) of this section.)

(e) *Intercompany loss, installment gain.* The facts are the same as in paragraph (a) of this *Example 5*, except that S has a $130x (rather than $70x) basis in the land. S takes $20x of its loss into account in Year 3 to reflect the $20x difference between B's $0 loss taken into account (under section 453) and its $20x recomputed loss. Of the $10x remaining balance of S's loss, $5x is taken into account in each of Years 4 and 5 to reflect the $5x difference between B's $5x gain taken into account and its $0 recomputed gain. (The results are the same under section 267(f).) S's $20x loss taken into account in Year 3 is treated like the $20x recomputed loss B would have taken into account if S and B were divisions of a single corporation, and S's remaining $5x loss in each of Years 4 and 5 offsets B's gain taken into account. Because B's $5x of gain in each of Years 4 and 5, and S's $5x of loss in each of Years 4 and 5, are taken into account at the same time and offset in determining consolidated taxable income, the gain is not subject to the interest charge under section 453A(c) for Years 4 and 5. (If B had sold the land to X for more than $130x, B's gain in excess of S's $30x loss would be subject to the interest charge under section 453A(c).)

(f) *Recapture income.* The facts are the same as in paragraph (a) of this *Example 5*, except that S bought depreciable property for $100x and its depreciation deductions reduced the property's basis to $70x before Year 1, S sells the depreciable property (rather than land) to B for $100x on January 1 of Year 1, and S's $30x of gain is recapture income on a separate entity basis under section 1245. S's gain is treated as recapture income that is ineligible under section 453(i) for installment reporting. Thus, S takes $30x ordinary income into account in Year 3. B takes its $10 gain into account in Years 4 and 5, and the gain is subject to the interest charge under section 453A(c). (If S has bought the depreciable property for $110x and its recomputed basis under section 1245 had been $110x (rather than $100x), B's $10x gain and S's $30x gain would both be recapture income ineligible under section 453(i) for installment reporting.)

Example 6. Intercompany sale of installment obligation. (a) *Facts.* S holds land for investment with a basis of $70x. On January 1 of Year 1, S sells the land to X in exchange for X's $100x note, and S reports its gain on the installment method under section 453. X's note bears interest at a market rate of interest in excess of the applicable Federal rate, and provides for principal payments of $50x in Year 5 and $50x in Year 6. Section 453A applies to X's note. On July 1 of Year 3, S sells X's note to B for $100x, and under section 453B(a) S is considered to recognize the $30x gain from its prior sale of the land to X.

(b) *Timing and attributes.* S's sale of X's note to B is an intercompany transaction, and S's $30x gain is intercompany gain. S takes $15x of the gain into account in each of Years 5 and 6 to reflect the $15x difference in each year between B's $0 gain taken into account and its $15x recomputed gain. S's gain continues to be treated as its gain from the sale to X, and the deferred tax liability remains subject to the interest charge under section 453A(c).

(c) *Worthlessness.* The facts are the same as in paragraph (a) of this *Example 6*, except that X's note becomes worthless on December 1 of Year 3 and B has a $100x short-term capital loss under section 165(g) on a separate entity basis. Under the matching rule, B's loss is a long-term capital loss because B's holding period for X's note is aggregated with S's holding period. In addition, S takes its $30x gain into account in Year 3 to reflect the $30x difference between B's $100x loss taken into account

and its $70x recomputed loss. S's gain is long-term capital gain.

(d) *Pledge.* The facts are the same as in paragraph (a) of this *Example 6*, except that, on December 1 of Year 3, B borrows $100x from an unrelated bank and secures the indebtedness with X's note. X's note remains subject to section 453A(d) following the sale to B. Under section 453A(d), B's $100x of proceeds from the secured indebtedness is treated as an amount received on December 1 of Year 3 by B on X's note. Thus, S takes its entire $30x gain into account in Year 3.

Example 7. Performance of services. (a) *Facts.* S is a driller of water wells. B operates a ranch in a remote location, and B's taxable income from the ranch is not subject to section 447. B's ranch requires water to maintain its cattle. During Year 1, S drills an artesian well on B's ranch in exchange for $100 from B, and S incurs $80 of expenses (e.g., for employees and equipment). B capitalizes its $100 cost for the well under section 263, and takes into account $10 of cost recovery deductions in each of Years 2 through 11. Under its separate entity method of accounting, S would take its income and expenses into account in Year 1.

(b) *Definitions.* Under paragraph (b)(1) of this section, the service transaction is an intercompany transaction, S is the selling member, and B is the buying member. S has $100 of income and $80 of related expenses. Under paragraph (b)(2)(i)(B) of this section, S's income and expense are both included in determining its intercompany income of $20.

(c) Timing and attributes. S's $20 of income is taken into account under the matching rule to reflect the $20 difference between B's items to be taken into account (based on its $100 cost basis in the well) and B's recomputed items (based on the $80 basis B would have if S and B were divisions of a single corporation and B's basis were determined by reference to S's $80 of expenses). In Year 1, S takes into account $80 of its income and the $80 of expenses. In each of Years 2 though 11, S takes $2 of its remaining $20 of income into account to reflect the annual $2 difference between B's $10 of cost recovery deductions taken into account and its $8 of recomputed cost recovery deductions. S's intercompany income and related expenses, and B's cost recovery deductions, are ordinary items.

(d) *Sale of capitalized services.* The facts are the same as in paragraph (a) of this *Example 7*, except that B sells the ranch before Year 11 and recognizes gain attributable to the well. To the extent of the offsetting $80 income and expense and S's income taken into account as a result of B's cost recovery deductions, the timing and attributes are determined in the manner provided in paragraph (c) of this *Example 7*. The remainder of S's $20 of income is treated like the recomputed gain B would have taken into account if S and B were divisions of a single corporation (recapture income or section 1231 gain, even though it is from S's performance of services).

Example 8. Rental of property. B operates a ranch that requires grazing land for its cattle. S owns undeveloped land adjoining B's ranch. On January 1 of Year 1, S leases grazing rights to B for Year 1. B's $100 rent expense is deductible for Year 1 under its separate entity accounting method. Under paragraph (b)(1) of this section, the rental transaction is an intercompany transaction, S is the selling member, and B is the buying member. S takes its $100 of income into account in Year 1 to reflect the $100 difference between B's rental deduction taken into account and its $0 recomputed rent deduction. S's income and B's deduction are ordinary items.

Example 9. Back-to-back intercompany sales. (a) *Facts.* S holds land for investment with a basis of $70. On January 1 of Year 1, S sells the land to M for $90. M also holds the land for investment. On July 1 of Year 3, M sells the land for $100 to B, and B holds the land for sale to customers in the ordinary course of business. During Year 5, B sells all of the land to customers for $105.

(b) *Timing.* Under paragraph (b)(1) of this section, S's sale of the land to M and M's sale of the land to B are both intercompany transactions. S is the selling member and M is the buying member in the first intercompany transaction, and M is the selling member and B is the buying member in the second intercompany transaction. Under paragraph (c)(3)(ii)(B) of this section, S, M and B are treated as divisions of a single corporation for purposes of determining the timing of their items from the intercompany transactions. See also paragraph (j)(1)(ii) of this section (B is treated as a successor to M for purposes of taking S's intercompany gain into account). Thus, S's $20 gain and M's $10 gain are both taken into account in Year 5 to reflect the difference between B's $5 gain taken into account with respect to the land and its $35 recomputed gain (i.e., the gain that B would have taken into account if the intercompany sales had been transfers between divisions of a single corporation, and B succeeded to S's $70 basis).

(c) *Attributes.* Under paragraphs (c)(3)(ii)(B) of this section, the attributes of the intercompany items and corresponding items of S, M, and B are also determined by treating S, M, and B as divisions of a single corporation. For example, S and M must take B's activities into account in determining the character of their gains.

Example 10. Intercompany sale of a partnership interest. (a) *Facts.* S owns a 20% interest in the capital and profits of a general partnership. The partnership holds land for investment with an equal basis and value, and operates depreciable assets which have value in excess of basis. S's basis in its partnership interest equals its share of the adjusted basis of the partnership's land and depreciable assets. The partnership has an election under section 754 in effect. On January 1 of Year 1, S sells its partnership interest to B at a gain. During Years 1 through 10, the partnership depreciates the operating assets, and B's depreciation deductions from the partnership reflect the increase in the basis of the depreciable assets under section 743(b).

(b) *Timing and attributes.* S's gain is taken into account during Years 1 though 10 to reflect the difference in each year between B's depreciation deductions from the partnership taken into account and B's recomputed depreciation deductions from the partnership. S's gain taken into account is ordinary income. (The acceleration rule of paragraph (d) of this section does not apply to S's gain as a result of the section 743(b) adjustment, because the adjustment is solely with respect to B and therefore no nonmember reflects any part of the intercompany transaction.)

(c) *Partnership sale of assets.* The facts are the same as in paragraph (a) of this *Example 10*, and the partnership sells some of its depreciable assets to X at a gain on December 31 of Year 4. In addition to the intercompany gain taken into account as a result of the partnership's depreciation, S takes intercompany gain into account in Year 4 to reflect the difference between B's partnership items taken into account from the sale (which reflect the basis increase under section 743(b)) and B's recomputed partnership items. S's additional gain is treated like the recomputed gain B would have taken into account if S and B were divisions of a single corporation (recapture income or section 1231 gain).

(d) *B's sale of partnership interest.* The facts are the same as in paragraph (a) of this *Example 10*, and on December 31 of Year 4, B sells its partnership interest to X at no gain or loss. In addition to the intercompany gain taken into account as a result of the partnership's depreciation, the remaining balance of S's intercompany gain is taken into account in Year 4 to reflect the difference between B's $0 gain taken into account from the sale of the partnership interest and its recomputed gain. Whether any of S's remaining balance is treated as ordinary income depends on the application of section 751 at the time of B's sale.

(e) *No section 754 election.* The facts are the same as in paragraph (a) of this *Example 10*, except that the partnership does not have a section 754 election in effect, and B recognizes a capital loss from its sale of the partnership interest to X on December 31 of Year 4 (B initially had a cost basis in the partnership interest equal to its value, but the partnership's built-in income and gain increased B's basis in excess of the value). Because there is no difference between B's depreciation deductions from the partnership taken into account and its recomputed depreciation deductions, S does not take any of its gain into account during Years 1 through 4 as a result of B's partnership's items. Instead, S's entire intercompany gain is taken into account in Year 4 to reflect the difference between B's loss taken into account from the sale to X and its recomputed gain or loss.

Example 11. Net operating losses subject to section 382 or the SRLY rules. (a) *Facts.* On January 1 of Year 1, P buys all of S's stock. S has net operating loss carryovers from prior years. P's acquisition results in an ownership change under section 382 with respect to S's loss carryovers, and S has a net unrealized built-in gain (within the meaning of section 382(h)(3)). S owns nondepreciable property with a $70 basis and $100 value. On July 1 of Year 3, S sells the property to B for $100, and its $30 gain is recognized built-in gain (within the meaning of section 382(h)(2)) on a separate entity basis. On December 1 of Year 5, B sells the property to X for $90.

(b) *Timing and attributes.* S's $30 gain is taken into account in Year 5 to reflect the $30 difference between B's $10 loss taken into account and its recomputed $20 gain. Treating S and B as divisions of a single corporation for purposes of determining the attributes of B's loss and S's gain, the single corporation has losses subject to limitation under section 382, and this limitation may be increased under section 382(h) if the single corporation has recognized built-in gain with respect to those losses from either of its divisions. Of S's $30 of gain, $20 is treated as recognized built-in gain, and the remaining $10 that is offset by B's loss is treated as not being recognized built-in gain. Thus, $10 of S's gain does not increase the section 382 limitation applicable to S's losses.

(c) *B's recognized built-in gain.* The facts are the same as in paragraph (a) of this *Example 11,* except that the property declines in value after S becomes a member of the P group, S sells the property to B for its $70 basis, and B sells the property to X for $90 during Year 5. Treating S and B as divisions of a single corporation, S's sale to B does not cause the property to cease to be built-in gain property. Thus, B's $20 gain from its sale to X is recognized built-in gain that increases the section 382 limitation applicable to S's losses.

(d) *Depreciable property.* The facts are the same as in paragraph (a) of this *Example 11,* except that S's property is depreciable property, and S's $30 gain is taken into account as a result of B's depreciation of the property. Treating S and B as divisions of a single corporation, both B's depreciation and S's gain taken into account as a result of B's depreciation are treated as not being recognized built-in amounts. Thus, S's gain taken into account as a result of the depreciation does not increase the section 382 limitation applicable to S's losses.

(e) *SRLY limitation.* The facts are the same as in paragraph (a) of this *Example 11,* except that S's net operating loss carryovers are subject to the separate return limitation year (SRLY) rules. See § 1.1502–21(c). Although the matching rule redetermines the timing and attributes of items, the amount and location of items are not redetermined. Because S's SRLY limitation is determined solely by its contribution to consolidated taxable income (as determined under § 1.1502–21(c)), S's SRLY limitation in Year 5 includes its entire $30 gain taken into account.

Example 12. Special inventory accounting election. (a) *Facts.* S operates a farming business (within the meaning of section 263A(e)(4)) of growing and selling grapes to customers, including B. S is not required to use an inventory method, and uses the cash method of accounting. See sections 446 to 448 and 471, and § 1.1502–17. On a separate entity basis, S does not capitalize its employee costs for the production of grapes pursuant to an election under section 263A(d)(3). B uses grapes purchased from S to produce wine for sale to customers. B uses the accrual method of accounting, and includes the cost of S's grapes in inventory under its inventory method. During Year 1, S sells grapes to B, incurring employee production costs. During Year 2, B converts the grapes into wine. In December of Year 3, based on its inventory method, B sells the wine produced with S's grapes and recognizes ordinary income.

(b) *Related costs and expenses.* Under paragraph (b)(2)(i)(B) of this section, S costs related to its sale of grapes to B are included in the determination of its intercompany items. Because the timing of S's costs may differ from the timing of S's income, it is necessary to determine whether S's costs are to be accounted for separate from, rather than combined with, S's income from B in determining its intercompany income or loss deferred until Year 3. The determination depends on whether S's election under section 263A(d)(3) would continue to permit deduction of the costs if S were engaged in a separate farming business as part of a single corporation that includes B. See, e.g., sections 447 and 448. If the costs are separately accounted for, they are taken into account in Year 1 rather than deferred until Year 3.

Example 13. Section 475. (a) *Facts.* S, a dealer in securities within the meaning of section 475(c), purchases a security for $100. The security is held for sale to customers and is not identified under section 475(b) as within an exception to marking to market, and S recognizes $30 of net mark-to-market decreases before Year 1. On July 1 of Year 1, S sells the security to B for $100. B is not a dealer and holds the security for investment. On December 31 of Year 1, the fair market value of the security is $100. On July 1 of Year 2, B sells the security to X for $110.

(b) *Treatment as a single corporation.* Under section 475, a dealer in securities can treat a security as within an exception to marking to market under section 475(b) only if it identifies the security on the day of its acquisition. S's intercompany gain is taken into account by treating section 475 as applying to S and B as a single corporation that is a dealer with respect to securities as a result of S's activities. Thus, B's recomputed items are determined by B's continuing to treat the security as not within an exception to marking to market. However, under section 475(d)(3), it is possible for the character of S's intercompany items to differ from the character of B's corresponding items.

(c) *Timing and attributes.* S has a $30 gain when it disposes of the security by selling it to B. This gain is intercompany gain that is taken into account in Year 1 to reflect the $30 difference between B's $0 gain taken into account and its recomputed $30 gain that would be taken into account as a result of marking to market under section 475. Under section 475(d)(3), S's gain is ordinary income. B has a $10 gain as a result of its sale to X, and this gain is taken into account in Year 2. Under section 475(d)(3), B's gain is capital gain.

(d) *Nondealer to dealer.* The facts are the same as in paragraph (a) of this *Example 13,* except that S is not a dealer and holds the security for investment with a $70 basis, B is a dealer to which section 475 applies and, immediately after acquiring the security from S for $100, B holds the security for sale to customers in the ordinary course of its trade or business. Treating S and B as divisions of a single corporation, the security is treated as properly identified as held for investment under section 475(b)(1) until it is sold to B. Under section 475(b)(3), the security thereafter ceases to be described in section 475(b)(1) because B holds the security for sale to customers, and the mark-to-market requirement applies only to changes in the value of the security after B's acquisition. None of S's gain is taken into account in Year 1 as a result of B's marking the security to market in Year 1. B's mark-to-market gain taken into account and its recomputed mark-to-market gain are both determined based on changes from the $100 value of the security at the time of B's acquisition. There is no difference between B's $0 mark-to-market gain taken into account in Year 1 and its $0 recomputed mark-to-market gain. In Year 2, B has a $10 gain when it disposes of the security by selling it to X, but would have had a $40 gain if S and B were divisions of a single corporation. Thus, S takes its $30 gain into account in Year 2 under the matching rule. Under section 475(d)(3), S's gain is capital gain even though B's subsequent gain or loss from marking to market or disposing of the security is ordinary gain or loss. (If B had held the security for investment, and had so identified the security under section 475(b)(1), the security would continue to be excepted from marking to market.)

Example 14. Section 1092. (a) *Facts.* On July 1 of Year 1, S enters into offsetting long and short positions with respect to actively traded personal property. The positions are not section 1256 contracts, and they are the only positions taken into account for purposes of applying section 1092. On August 1 of Year 1, S sells the long position to B at an $11 loss, and there is $11 of unrealized gain in the offsetting short position. On December 1 of Year 1, B sells the long position to X at no gain or loss. On December 31 of Year 1, there is still $11 of unrealized gain in the short position. On February 1 of Year 2, S closes the short position at an $11 gain.

(b) *Timing and attributes.* S's $11 loss is taken into account in Year 1 under the matching rule to reflect the difference between B's corresponding items taken into account and B's recomputed items. Under paragraph (a)(3) of this section, however, an item taken into account under this section can be deferred, disallowed, or eliminated under other applicable law. Under section 1092, S's loss continues to be deferred until Year 2 notwithstanding this section. (The results are the same under section 267(f).)

Example 15. Manufacturer rebates. (a) *Facts.* B is a manufacturer that sells its products to independent dealers for resale. S is a credit company that offers financing, including financing to customers of the dealers. S also purchases the product from dealers for lease to customers of the dealers. During Year 1, B initiates a program of rebates to the dealers' customers. Under B's program, S buys a $100 product from a dealer and leases it to another. S pays $90 to the dealer for the product, and assigns to the dealer its $10 rebate from B. Under their separate entity accounting methods, B

deducts the $10 rebate in Year 1 and S takes a $90 basis in the product.

(b) *Timing and attributes.* Under paragraph (b)(1) of this section, the rebate transaction is an intercompany transaction. S's $90 basis in the product reflects a $10 adjustment for the rebate from B. Under paragraph (b)(2)(iii)(A) of this section, S is treated as having $10 of intercompany income that is to be taken into account under this section. S's income is taken into account in Year 1 to reflect the $10 difference between B's $10 deduction taken into account and its $0 recomputed deduction. S's $10 of income and B's $10 deduction are ordinary items. Because the rebate is treated as income to S, S's basis in the product is $100 rather than $90. S's additional $10 of basis in the product is recovered based on subsequent events (e.g., S's cost recovery deductions or its sale of the product).

Example 16. Cancellation of debt and attribute reduction under section 108(b). (a) *Facts.* S holds land for investment with a basis of $0. On January 1 of Year 1, S sells the land to B for $100. B also holds the land for investment. During Year 3, due to the declining value of B's assets, B's nonmember creditors discharge $60 of B's indebtedness. Because of insolvency, B's $60 discharge is excluded from B's gross income under section 108(a). B's elimination of $60 of basis in the land under sections 108(b) and 1017 preserves $60 of other attributes.

(b) *Matching rule.* Under paragraph (b)(2)(iii)(B) of this section, B's $60 basis reduction under section 108(b) is an adjustment that is a substitute for a corresponding item and is therefore treated as a corresponding item for purposes of taking S's intercompany gain into account. Although the basis reduction in effect preserves $60 of B's discharge of indebtedness income, the reduction also preserves other attributes that subsequently may be taken into account and therefore affects the overall amount of items to be taken into account. Thus, S takes $60 of its gain into account as a result of the basis reduction. The $60 gain is treated as ordinary income because the basis reduction has the effect of offsetting ordinary income from the discharge of indebtedness.

(c) *Purchase price adjustment.* Assume instead that S sells the land to B in exchange for B's $100 purchase money note, B remains solvent, and S subsequently agrees to discharge $60 of the note as a purchase price adjustment to which section 108(e)(5) applies. A purchase price adjustment is not equivalent to a deduction or loss that offsets discharge of indebtedness income. Instead, under applicable principles of tax law, $60 of S's gain and $60 of B's basis in the land are eliminated and never taken into account.

Example 17. Source of items from a section 863 sale. (a) *Facts.* S manufactures inventory in the United States that it sells to distributors for resale to customers. B is a distributor with a foreign branch in country Y that purchases and resells the inventory outside the United States. During Year 1, S manufactures inventory, sells it to B's country Y branch at an arm's length price, and has $75 of income. There is no independent factory or production price for the sale. Also during Year 1, B's country Y branch resells the inventory to X, an unrelated foreign person, with title passing abroad. B recognizes $25 of income. S's United States manufacturing assets have a value of $900, and B's country Y branch assets have a value of $100.

(b) *Timing.* S's $75 of intercompany income is taken into account in Year 1 to reflect the difference between B's $25 of corresponding income taken into account and its $100 of recomputed income.

(c) *Attributes.* The attributes of S's intercompany income and B's corresponding income are determined as if S and B were divisions of a single corporation. Thus, section 863 applies to S's intercompany sale as if S and B were divisions of a corporation manufacturing in the United States and selling in country Y. Two steps are required to source S's $75 of income and B's $25 of income. First, the $100 of combined income must be divided into foreign and U.S. source income portions. Of the combined income, $50 is sourced based on the aggregate asset values of S and B, with $45 of the $50 treated as United States source income ($50 multiplied by $900/$1,000) and $5 treated as foreign source income ($50 multiplied by $100/$1,000). The remaining $50 of combined income is treated as foreign source income, based on the passage of title to X outside the United States. See § 1.863–3T(b), *Example 2.* Thus, $55 of the $100 of combined income is treated as foreign source income and $45 is treated as United States source income. Second, consistent with the treatment of S and B as divisions of a single corporation, the foreign and United States source income is allocated between S and B based on their intercompany income and corresponding income. Because S earned $75 and B earned $25, $41.25 of the $55 of foreign source income is allocated to S ($55 multiplied by 75/100), and $13.75 is allocated to B ($55 multiplied by 25/100). Similarly, $33.75 of the $45 of United States source income is allocated to S ($45 multiplied by 75/100), and $11.25 is allocated to B ($45 multiplied by 25/100).

Example 18. Section 1248. (a) *Facts.* On January 1 of Year 1, S forms FT, a wholly owned foreign subsidiary, with a $10 contribution. During Years 1 through 3, FT has earnings and profits of $40. None of the earnings and profits is taxed as subpart F income under section 951, and FT distributes no dividends to S during this period. On January 1 of Year 4, S sells its FT stock to B for $50. While B owns FT, FT has a deficit in earnings and profits of $10. On July 1 of Year 6, B sells its FT stock for $70 to X, an unrelated foreign corporation.

(b) *Timing.* S's $40 of intercompany gain is taken into account in Year 6 to reflect the difference between B's $20 of gain taken into account and its $60 recomputed gain.

(c) *Attributes.* Section 1248 applies to determine the attributes of S's intercompany gain and B's corresponding gain as if S and B were divisions of a single corporation. The portions of S's gain and B's gain characterized as dividends under section 1248 is determined on the basis of FT's $30 of earnings and profits at the time of B's sale to X. Treating S and B as divisions of a single corporation, this $30 amount is allocated between S and B based on their respective gains. Because S has a $40 gain and B has a $20 gain, S is allocated $20 of the $30 section 1248 amount ($30 multiplied by $40/$60), and B is allocated the remaining $10 of the section 1248 amount ($30 multiplied by $20/$60). S's $20 of gain in excess of its $20 section 1248 amount, and B's $10 of gain in excess of its $10 section 1248 amount, are each treated as gain from the sale or exchange of a capital asset. Thus, $20 of S's intercompany gain is treated as a dividend and the remaining $20 is treated as capital gain, and $10 of B's corresponding gain is treated as a dividend and the remaining $10 is treated as capital gain.

(d) *No deficit in earnings and profits.* The facts are the same as in paragraph (a) of this *Example 18*, except that FT has no earnings and profits or deficit in earnings and profits while B owns FT, and B sells the FT stock to X for $40. Because S has gain from its sale of the FT stock to B, and B has loss from its sale of the FT stock to X, none of FT's $40 section 1248 amount is allocated to B. Moreover, because FT's $40 section 1248 amount exceeds the $30 net gain of S and B (the sum of S's $40 gain and B's $10 loss), the section 1248 amount allocated to S is limited to $30. See section 1248(a). Thus, $30 of S's intercompany gain is treated as a dividend. The remaining $10 of S's gain and all of B's $10 loss are treated as a capital gain and loss.

(d) *Acceleration rule.* S's intercompany items and B's corresponding items are taken into account under this paragraph (d) to the extent they cannot be taken into account to produce the effect of treating S and B as divisions of a single corporation. For this purpose, the following rules apply:

(1) *S's items*—(i) *Timing.* S takes its intercompany items into account to the extent they cannot be taken into account to produce the effect of treating S and B as divisions of a single corporation. The items are taken into account immediately before it first becomes impossible to achieve this effect. For this purpose, the effect cannot be achieved—

(A) To the extent an intercompany item or corresponding item will not be taken into account in determining the group's consolidated taxable income (or consolidated tax liability) under the matching rule of paragraph (c) of this section (e.g., if S or B becomes a nonmember); or

(B) To the extent a nonmember reflects, directly or indirectly, any aspect of the intercompany transaction (e.g., if B's cost basis in property purchased from S is reflected by a nonmember under section 362 following a section 351 transaction).

(ii) *Attributes.* The attributes of S's intercompany items taken into account under this paragraph (d)(1) are determined as follows:

(A) If the item is from a sale, exchange, or distribution of property, its

attributes are determined under the principles of the matching rule of paragraph (c) of this section as if B resold the property to a nonmember affiliate at the time the item is taken into account, for a cash payment equal to B's adjusted basis in the property.

(B) If the item is from an intercompany transaction other than a sale, exchange, or distribution of property (e.g., income from S's services capitalized by B), its attributes are determined on a separate entity basis.

(2) *B's items*—(i) *Timing.* If paragraph (d)(1) of this section applies to S, B nevertheless continues to take its corresponding items into account under its accounting method. However, the redetermination of the attributes of a corresponding item under this paragraph (d)(2) may affect its timing.

(ii) *Attributes.* The attributes of B's corresponding items continue to be redetermined under the principles of the matching rule of paragraph (c) of this section, with the following adjustments:

(A) If S and B continue to join with each other in the filing of consolidated returns, the attributes of B's corresponding items (and any applicable holding periods) are determined by continuing to treat S and B as divisions of a single corporation.

(B) Once S and B no longer join with each other in the filing of consolidated returns, the attributes of B's corresponding items are determined as if the S division (but not the B division) were transferred by the single corporation to an unrelated person. Thus, S's activities (and any applicable holding period) before the intercompany transaction continue to affect the attributes of the corresponding items (and any applicable holding period).

(3) *Examples.* The acceleration rule of this paragraph (d) is illustrated by the following examples.

Example 1. Becoming a nonmember—timing. (a) *Facts.* S owns land with a basis of $70. On January 1 of Year 1, S sells the land to B for $100. On July 1 of Year 3, P sells 60% of S's stock to X for $60 and, as a result, S becomes a nonmember.

(b) *Matching rule.* Under the matching rule of paragraph (c) of this section, none of S's $30 gain is taken into account in Years 1 through 3 because there is no difference between B's $0 gain or loss taken into account and its recomputed gain or loss.

(c) *Acceleration of S's intercompany items.* Under the acceleration rule of paragraph (d) of this section, S's $30 gain is taken into account in computing consolidated taxable income (and consolidated tax liability) immediately before the effect of treating S and B as divisions of a single corporation cannot be produced. Because the effect cannot be produced once S becomes a nonmember, S takes its $30 gain into account in Year 3 immediately before becoming a nonmember. S's gain is reflected under § 1.1502–32 in P's basis in the S stock immediately before P's sale of the stock. Under § 1.1502–32, P's gain is reduced (or loss is increased) by $18 (60% of $30). See also §§ 1.1502–33 and 1.1502–76(b). (The results would be the same if S sold the land to B in an installment sale to which section 453 would otherwise apply, because S must take its intercompany gain into account under this section.)

(d) *B's corresponding items.* Notwithstanding the acceleration of S's gain, B continues to take its corresponding items into account under its accounting method. Thus, B's items from the land are taken into account based on subsequent events (e.g., its sale of the land).

(e) *Sale of B's stock.* The facts are the same as in paragraph (a) of this *Example 1*, except that P sells 60% of B's stock (rather than S stock) to X for $60 and, as a result, B becomes a nonmember. Because the effect of treating S and B as divisions of a single corporation cannot be produced once B becomes a nonmember, S takes its $30 gain into account under the acceleration rule immediately before B becomes a nonmember. (The results would be the same if S sold the land to B in an installment sale to which section 453 would otherwise apply, because S must take its intercompany gain into account under this section.)

(f) *Discontinue filing consolidated returns.* The facts are the same as in paragraph (a) of this *Example 1*, except that the P group receives permission under § 1.1502–75(c) to discontinue filing consolidated returns beginning in Year 3. Under the acceleration rule, S takes its $30 gain into account on December 31 of Year 2.

(g) *No subgroups.* The facts are the same as in paragraph (a) of this *Example 1*, except that P simultaneously sells all of the stock of both S and B to X (rather than 60% of S's stock), and S and B become members of the X consolidated group. Because the effect of treating S and B as divisions of a single corporation in the P group cannot be produced once S and B become nonmembers, S takes its $30 gain into account under the acceleration rule immediately before S and B become nonmembers. (Paragraph (j)(2) of this section does not apply to treat the X consolidated group as succeeding to the P group because the X group acquired only the stock of S and B.) However, so long as S and B continue to join with each other in the filing of consolidated returns, B continues to treat S and B as divisions of a single corporation for purposes of taking its corresponding items from the land into account.

Example 2. Becoming a nonmember—attributes. (a) *Facts.* S holds land for investment with a basis of $70. On January 1 of Year 1, S sells the land to B for $100. B holds the land for sale to customers in the ordinary course of business, and expends substantial resources over a two-year period subdividing, developing, and marketing the land. On July 1 of Year 3, before B has sold any of the land, P sells 60% of S's stock to X for $60 and, as a result, S becomes a nonmember.

(b) *Attributes.* Under the acceleration rule, the attributes of S's gain are redetermined under the principles of the matching rule as if B resold the land to a nonmember affiliate for a cash payment equal to B's adjusted basis in the land. (The deemed resale is solely for purposes of determining attributes, and therefore does not apply for purposes of determining timing.) Thus, whether S's gain is capital gain or ordinary income depends on the activities of both S and B. Because S and B no longer join with each other in the filing of consolidated returns, the attributes of B's corresponding items (e.g., from its subsequent sale of the land) are redetermined under the principles of the matching rule of paragraph (c) of this section as if the S division (but not the B division) were transferred by the single corporation to an unrelated person at the time of P's sale of the S stock. Thus, B continues to take into account the activities of S with respect to the land before the intercompany transaction.

(c) *Depreciable property.* The facts are the same as in paragraph (a) of this *Example 2*, except that the property sold by S to B is depreciable property. Section 1239 applies to treat all of S's gain as ordinary income because it is taken into account as a result of B's deemed resale of the property to a nonmember affiliate (a related person within the meaning of section 1239(b)). (The results would be the same if P sells 60% of B's stock (rather than S's stock) to X.)

Example 3. Back-to-back intercompany transactions. (a) *Facts.* During Year 1, S performs services for M in exchange for $10 from M. M capitalizes the $10 cost of S's services under section 263 as part of M's cost to acquire real property from X. S incurs $8 of employee expenses that would be taken into account in Year 1 under its separate entity method of accounting. M holds the real property for investment and, on July 1 of Year 5, M sells it to B at a gain. B also holds the real property for investment. On December 1 of Year 8, while B still owns the real property, P sells all of M's stock to X and M becomes a nonmember.

(b) *M's items.* M takes its gain into account immediately before it becomes a nonmember. The acceleration rule redetermines the attributes of M's gain under the principles of the matching rule as if B resold the real property to a nonmember affiliate for a cash payment equal to B's adjusted basis in real property, and S, M, and B were divisions of a single corporation. Thus, M's gain is capital gain.

(c) *S's items.* Under paragraph (b)(2) of this section, S includes the $8 of expenses in determining its intercompany income. In Year 1, S takes into account $8 of its income and the $8 of expenses. Under paragraph (c)(3)(ii)(B) of this section, appropriate adjustments must be made to treat both S's performance of services for M and M's sale to B as occurring between divisions of a single corporation. Thus, S's remaining $2 of intercompany income is not taken into account as a result of M becoming a nonmember, but instead will be taken into account based on subsequent events (e.g., under the matching rule based on B's sale of the real property to a nonmember, or under the acceleration rule based on P's sale of the

stock of S or B to a nonmember). See the successor person rules of paragraph (j)(1)(ii) of this section (B is treated as a successor to M for purposes of taking S's intercompany income into account).

(d) *Sale of S's stock.* The facts are the same as in paragraph (a) of this *Example 3*, except that P sells all of S's stock (rather than M's stock) and S becomes a nonmember on July 1 of Year 5. S's remaining $2 of intercompany income is taken into account immediately before S becomes a nonmember. Because S's intercompany income is not from an intercompany sale, exchange, or distribution of property, the attributes of the intercompany income are determined on a separate entity basis. Thus, S's $2 of intercompany income is ordinary income. M does not take any of its intercompany gain into account as a result of S becoming a nonmember.

(e) *Intercompany income followed by intercompany loss.* The facts are the same as in paragraph (a) of this *Example 3*, except that M sells the real property to B at a $1 loss (rather than a gain). M takes its $1 loss into account under the acceleration rule immediately before M becomes a nonmember. But see § 1.267(f)–1. Under paragraph (c)(3)(ii)(B) of this section, P's sale of M stock also results in S taking into account $1 of intercompany income as capital gain to offset M's $1 of corresponding capital loss. The remaining $1 of S's intercompany income is taken into account based on subsequent events.

Example 4. Selling member's disposition of proceeds. (a) *Facts.* S owns land with a basis of $70. On January 1 of Year 1, S sells the land to B in exchange for B's $110 note. The note bears a market rate of interest in excess of the applicable Federal rate, and provides for principal payments of $55 in Year 4 and $55 in Year 5. On July 1 of Year 3, S sells B's note to X for $110.

(b) *Timing.* S's intercompany gain is taken into account under this section, and not under the rules of section 453. Consequently, S's sale of B's note does not result in its intercompany gain being taken into account (e.g., under section 453B). The sale does not prevent S's intercompany items and B's corresponding items from being taken into account in determining the group's consolidated taxable income under the matching rule, and X does not reflect any aspect of the intercompany transaction (X has its own cost basis in the note). S will take the intercompany gain into account under the matching rule or acceleration rule based on subsequent events (e.g., B's sale of the land). See also paragraph (g) of this section for additional rules applicable to B's note as an intercompany obligation.

Example 5. Section 481. (a) *Facts.* S operates several trades or businesses, including a manufacturing business. S receives permission to change its method of accounting for valuing inventory for its manufacturing business. S increases the basis of its ending inventory by $100, and the related $100 positive section 481(a) adjustment is to be taken into account ratably over six taxable years, beginning in Year 1. During Year 3, S sells all of the assets used in its manufacturing business to B at a gain. Immediately after the transfer, B adopts and uses the same inventory valuation method as S. On a separate entity basis, S's sale results in an acceleration of the balance of the section 481(a) adjustment to Year 3.

(b) *Timing and attributes.* Under paragraph (b)(2)(i) of this section, the balance of S's section 481(a) adjustment accelerated to Year 3 is intercompany income. However, S's $100 basis increase before the intercompany transaction eliminates the related difference between B's corresponding items taken into account and its recomputed items in subsequent periods. Because the accelerated section 481(a) adjustment will not be taken into account in determining the group's consolidated taxable income (and consolidated tax liability) under the matching rule, the balance of S's section 481 adjustment is taken into account under the acceleration rule as ordinary income at the time of the intercompany transaction. (If S's sale had not resulted in accelerating S's section 481(a) adjustment on a separate entity basis, S would have no intercompany income to be taken into account under this section.)

(e) *Simplifying rules*—(1) *Dollar-value LIFO inventory methods*—(i) *In general.* This paragraph (e)(1) applies if either S or B uses a dollar-value LIFO inventory method to account for intercompany transactions. Rather than applying the matching rule of paragraph (c) of this section separately to each intercompany inventory transaction, this paragraph (e)(1) provides methods to apply an aggregate approach that is based on dollar-value LIFO inventory accounting. Any method selected under this paragraph (e)(1) must be applied consistently.

(ii) *B uses dollar-value LIFO*—(A) *In general.* If B uses a dollar-value LIFO inventory method to account for its intercompany inventory purchases, and includes all of its inventory costs incurred for a year in its cost of goods sold for the year, S takes into account all of its intercompany inventory items for the year. If B does not include all of its inventory costs incurred for the year in its cost of goods sold for the year, S does not take into account a percentage of its net intercompany inventory income or loss. The percentage not taken into account is determined under either the increment averaging method or the increment valuation method. Separate computations are made for each pool of B that receives intercompany purchases from S.

(B) *Increment averaging method.* The percentage not taken into account equals B's current-year costs of its layer of increment, divided by B's total inventory costs incurred for the year under its LIFO inventory method. S's amount not taken into account is layered based on B's LIFO inventory layers. If B includes more than its inventory costs incurred during any subsequent year in its cost of goods sold (a decrement), S takes into account the intercompany inventory income or loss layers in the same manner and proportion as B takes into account its inventory decrements.

(C) *Increment valuation method.* The percentage not taken into account equals B's current-year costs of its layer of increment, divided by B's total inventory costs incurred in the appropriate period under its LIFO inventory method. The principles of paragraph (e)(1)(ii)(B) of this section otherwise apply. The appropriate period is the period of B's year used to determine its current-year costs.

(iii) *S uses dollar-value LIFO.* If S uses a dollar-value LIFO inventory method to account for its intercompany inventory sales, S can use any reasonable method of allocating its LIFO inventory costs to intercompany transactions. LIFO inventory costs include costs of prior layers if a decrement occurs. For example, a reasonable allocation of most recent costs incurred during the consolidated return year can be used to compute S's net intercompany inventory income or loss for the year if S has an inventory increment and uses the earliest acquisitions costs method, but S must apportion costs from the most recent appropriate layers of increment if an inventory decrement occurs for the year.

(iv) *Other reasonable methods.* S or B can use a method not specifically provided in this paragraph (e)(1) that is expected to reasonably take into account intercompany items and corresponding items from intercompany inventory transactions. However, if the method used results, for any year, in a cumulative amount of intercompany inventory items not taken into account by S that significantly exceeds the cumulative amount that would not be taken into account under paragraph (e)(1) (ii) or (iii) of this section, S must take into account for that year the amount necessary to eliminate the excess. The method is thereafter applied with appropriate adjustments to reflect the amount taken into account.

(v) *Examples.* The inventory rules of this paragraph (e)(1) are illustrated by the following examples.

Example 1. Increment averaging method. (a) *Facts.* Both S and B use a double-extension, dollar-value LIFO inventory method, and both value inventory increments using the earliest acquisitions cost valuation method. During Year 2, S sells 25 units of product Q to B on January 15 at $10/unit, and another 25 units on September 15 at $12/unit. S's earliest cost of product Q is $7.50/unit and S's most recent cost of product Q is $8.00/unit. B's total inventory costs

incurred during Year 2 are $3,333. The S and B inventory computations for Year 2 and prior years are as follows:

(i)(A) *S's Year 2 computations:*

Item	(1) ending quantity	(2) base-year cost/ unit	(1)x(2) total	(3) current-year cost/ unit	(1)x(3) total
Q	50	$5	$250	$7.50	$375
Y	150	2	300	3.00	450
xl	xl	xl	$550	xl	$825

Year 1—Ending inventory at base-year cost=$500.
Year 2—Price index = $825/$550=1.5.

(B) S's $7.50 current-year cost/unit of product Q is based on its earliest acquisitions cost of 50 units.

	Base-year cost	Price index	LIFO cost
Base layer ..	$450	1.000	$450
Year 1 layer	50	1.200	60
Year 2 layer	50	1.500	75
			585

(ii)(A) *B's Year 2 computations:*

Item	(1) Ending quantity	(2) Base-year cost/ unit	(1)x(2) total	(3) Current-year cost/ unit	(1)x(3) total
Q	50	$8	$400	$11	$550
Z	50	10	500	13	650
			$900		$1,200

Year 1—Ending inventory at base-year cost=$650
Year 2—Price index=$1,200/$900=1.333.

(B) B's $11 current-year cost/unit of product Q is based on its earliest acquisitions cost (25 units purchased from S at $10/unit, and 25 units from X at $12/unit).

	Base-year cost	Price index	LIFO cost
Base layer ..	$400	1.000	$400
Year 1 layer	250	1.100	275
Year 2 layer	250	1.333	333
			1,008

(b) *Intercompany inventory income.* Under paragraph (e)(1)(iii) of this section, S must use a reasonable method of allocating its LIFO inventory costs to intercompany transactions. Because S has an inventory increment for Year 2 and uses the earliest acquisitions cost method, a reasonable method of determining its intercompany cost of goods sold for product Q is to use its most recent costs. Thus, its intercompany cost of goods sold is $400 ($8.00 most recent cost, multiplied by 50 units sold to B), and its intercompany income is $150 ($550 sale proceeds from B minus $400 cost).

(c) *Timing.* (i) Under the increment averaging method of paragraph (e)(1)(ii)(B) of this section, $15 of S's $150 of intercompany inventory income is not taken into account in Year 2, computed as follows:

$$\frac{\text{B's Year 2 current-year costs of increment}}{\text{B's total inventory costs for Year 2}} = \frac{\$333}{\$3{,}333} = 10\%$$

$$10\% \times \text{S's } \$150 \text{ intercompany income} = \$15$$

(ii) Thus, $135 of S's intercompany inventory income is taken into account in Year 2 ($150 of total intercompany inventory income minus $15 not taken into account).

(d) *S incurs a decrement.* The facts are the same as in paragraph (a) of this *Example 1*, except that S's Year 2 ending inventory at base-year cost is $475, and therefore S incurs a $25 decrement (50% of the Year 1 layer in terms of base-year cost) in its inventory for Year 2. Under paragraph (e)(1)(iii) of this section, S must reasonably allocate the LIFO cost of the decrement (50% of $60, or $30) to the cost of goods sold to B to determine S's intercompany income.

(e) *B incurs a decrement.* The facts are the same as in paragraph (a) of this *Example 1*, except that B incurs a decrement in Year 2 of $50 in base-year costs. S must take into account the entire $150 of Year 2 intercompany inventory income because all 50 units of product Q are deemed sold by B in Year 2.

Example 2. Increment valuation method. (a) *Facts.* Both S and B use a dollar-value LIFO inventory method. Under B's LIFO method, layers of increment are valued with respect to earliest costs. For Year 2, B has a layer of increment in its pool that receives intercompany purchases from S. To compute its increment valuation index, B values its year-end inventory mix using costs incurred from January through March. B values its increment at $250. B's costs incurred from January through March and from April through December are $750 and $3,300, respectively. For the period from January through March and from April through December, S's intercompany inventory income is $100 and $500, respectively.

(b) *Timing.* (i) Under the increment valuation method of paragraph (e)(1)(ii)(C) of this section, $33 of S's $600 of intercompany inventory income is not taken into account in Year 2, computed as follows:

$$\frac{\text{B's Year 2 current-year costs of increment}}{\text{B's total inventory costs from January through March of Year 2}} = \frac{\$250}{\$750} = 33\%$$

33% × S's $100 intercompany income for the period from January through March = $33

(ii) Thus, $567 of S's intercompany inventory income is taken into account in Year 2 ($600 of total intercompany inventory income minus $33 not taken into account).

(c) *B incurs a subsequent decrement.* Assume that, in Year 3, B experiences a decrement in its pool that receives intercompany purchases from S. B's decrement equals 20% of the base-year costs for its Year 2 layer, or $50 in terms of LIFO value (20% of $250). S's intercompany inventory income from its Year 3 sales is $400. Because B includes all of its inventory costs incurred for Year 3 in its cost of goods sold for the year, S takes into account its entire $400 of intercompany income from its Year 3 sales. In addition, S takes into account $6.60 of its Year 2 layer of intercompany inventory income not already taken into account (20% of $33).

Example 3. Other reasonable inventory methods. (a) *Facts.* Both S and B use a dollar-value LIFO inventory method for their inventory transactions. During Year 1, S sells inventory to B and to X. Under paragraph (e)(1)(iv) of the section, to compute its intercompany inventory income and the amount of this income not taken into account, S computes its intercompany inventory income using the transfer price of the inventory items less a FIFO cost for the goods, takes into account these items based on a FIFO cost flow assumption for B's corresponding items, and the LIFO methods used by S and B are ignored for these computations. These computations are comparable to the methods used by S and B for financial reporting purposes, and the book methods and results are used for tax purposes. S adjusts the amount of intercompany inventory items not taken into account as required by section 263A.

(b) *Reasonable method.* The method used by S is a reasonable method under paragraph (e)(1)(iv) of this section if the cumulative amount of intercompany inventory items not taken into account by S is not significantly greater than the cumulative amount that would not be taken into account under the methods specifically described in paragraph (e)(1) of this section. If, for any year, the method results in a cumulative amount of intercompany inventory items not taken into account by S that significantly exceeds the cumulative amount that would not be taken into account under the methods specifically provided, S must take into account for that year the amount necessary to eliminate the excess. The method is thereafter applied with appropriate adjustments to reflect the amount taken into account (e.g., to prevent the amount from being taken into account more than once).

(2) *Reserve accounting*—(i) *Bad debts.* Except as provided in paragraph (g)(5) of this section (deferral of items from an intercompany obligation), a member's addition to, or reduction of, a reserve for bad debts that is maintained under section 585 or 593 is taken into account on a separate entity basis. For example, if S makes a loan to a nonmember and subsequently sells the loan to B, any deduction for an addition to a bad debt reserve under section 585 and any recapture income (or reduced deductions) are taken into account on a separate entity basis rather than as intercompany items or corresponding items taken into account under this section. Any gain or loss of S from its sale of the loan to B is taken into account under this section, however, to the extent it is not attributable to recapture of the reserve.

(ii) *Insurance companies*—(A) *Direct insurance.* If a member provides insurance to another member in an intercompany transaction, the transaction is taken into account by both members on a separate entity basis. For example, if one member provides life insurance coverage for another member with respect to its employees, the premiums, reserve increases and decreases, and death benefit payments are determined and taken into account by both members on a separate entity basis rather than taken into account under this section as intercompany items and corresponding items.

(B) *Reinsurance*—(1) *In general.* Paragraph (e)(2)(ii)(A) of this section does not apply to a reinsurance transaction that is an intercompany transaction. For example, if a member assumes all or a portion of the risk on an insurance contract written by another member, the amounts transferred as reinsurance premiums, expense allowances, benefit reimbursements, reimbursed policyholder dividends, experience rating adjustments, and other similar items are taken into account under the matching rule of paragraph (c) of this section.

(2) *Reserves determined on a separate entity basis.* For purposes of determining the amount of a member's increase or decrease in reserves, the amount of any reserve item listed in section 807(c) or 832(b)(5) resulting from a reinsurance transaction that is an intercompany transaction is determined on a separate entity basis. But see section 845, under which the Commissioner may allocate between or among the members any items, recharacterize any such items, or make any other adjustments necessary to clearly reflect the separate taxable income of a member.

(3) *De minimis or ordinary course intercompany transactions*—(i) *General rule.* The common parent may request consent to take items from intercompany transactions into account on a separate entity basis, other than intercompany transactions with respect to stock or obligations of members. Consent may be granted for all items, or for items from a class or classes of transactions. The consent has no effect unless granted in writing by the Internal Revenue Service. Unless revoked with the written consent of the Internal Revenue Service, the separate entity treatment applies to all applicable intercompany transactions in the consolidated return year for which consent is granted and in all subsequent consolidated return years. Consent under this paragraph (e)(3) will not apply for purposes of deferring losses and deductions under section 267(f).

(ii) *Time and manner for requesting consent.* The request for consent described in paragraph (e)(3)(i) of this section must be made in the form of a ruling request. The request must be signed by the common parent, include any information required by the Internal Revenue Service, and be filed on or before the due date of the consolidated return (not including extensions of time) for the first consolidated return year to which the consent is to apply. The Internal Revenue Service may impose terms and conditions for granting consent. A copy of the consent must be attached to the consolidated returns (or amended returns) as required by the terms of the consent.

(f) *Stock of members*—(1) *In general.* In addition to the general rules of this section, the rules of this paragraph (f) apply to stock of members.

(2) *Intercompany distributions to which section 301 applies*—(i) *In general.* This paragraph (f)(2) provides rules for intercompany transactions to which section 301 applies (intercompany distributions). For purposes of determining whether a distribution is an intercompany distribution, it is treated as occurring under the principles of the entitlement rule of paragraph (f)(2)(iv) of this section. A distribution is not an intercompany distribution to the extent it is deducted by the distributing member. See, e.g., section 1382(c)(1).

(ii) *Distributee member.* An intercompany distribution is not included in the gross income of the distributee member. However, this exclusion applies to a distribution from a subsidiary only to the extent there is a corresponding negative adjustment reflected under § 1.1502–32 in the distributee member's basis in the distributing member's stock. See §§ 1.1502–26(b) (applicability of the dividends received deduction to distributions not excluded from gross income) and 1.1502–80(d) (non-applicability of section 301(c)(3)).

(iii) *Distributing member.* The principles of section 311(b) apply to the distributing member's loss, as well as gain, from an intercompany distribution of property. Thus, the distributing member's loss is taken into account, for example, under the matching rule of paragraph (c) of this section if the property is subsequently sold to a nonmember. However, section 311(a) continues to apply to distributions to nonmembers (e.g., the distributing member's loss is not recognized).

(iv) *Entitlement rule.* For all Federal income tax purposes, an intercompany distribution is treated as taken into account when the shareholding member becomes entitled to it (generally on the record date) or, if earlier, when it is taken into account under the Internal Revenue Code (e.g., under section 305(c)). For example, if the distributee member becomes entitled to a cash distribution before it is made, the distribution is treated as made when the distributee member becomes entitled to it. Appropriate adjustments must be made (e.g., to determine the earnings and profits of the distributing corporation) if nonmembers own stock of the distributing corporation at the time the distribution is treated as occurring. If it is later established, based on all of the facts and circumstances, that the distribution will not be made (or will be made only in part), the initial taking into account of the distribution is reversed as of the date the distribution was taken into account.

(3) *Boot in an intercompany reorganization*—(i) *Application.* This paragraph (f)(3) provides additional rules for an intercompany transaction in which money or other property (nonqualifying property) is received that results in the application of section 356. For example, the distribution of stock of a lower-tier member to a higher tier member in an intercompany transaction to which section 355 would otherwise apply but for the receipt of nonqualifying property, is an intercompany reorganization to which this paragraph (f)(3) applies. For this purpose, a transaction is not an intercompany reorganization if a party to the transaction becomes a member or nonmember as part of the same plan or arrangement. For example, if S merges into a nonmember in a transaction described in section 368(a)(1)(A), this paragraph (f)(3) does not apply (under paragraph (j)(1) of this section, the nonmember is a successor to S).

(ii) *General rule.* Nonqualifying property received as part of an intercompany reorganization is treated as received by the shareholder in a separate transaction rather than as part of the intercompany reorganization. See, e.g., sections 302 and 311 (rather than sections 356 and 361). The nonqualifying property is treated as taken into account immediately after the intercompany reorganization if it is received in a transaction to which section 354 would otherwise apply but for the fact that nonqualifying property is received. It is treated as taken into account immediately before the intercompany reorganization if it is received in a transaction to which section 355 would otherwise apply but for the fact that nonqualifying property is received. The treatment under this paragraph (f)(3)(ii) applies for all Federal income tax purposes.

(4) *Acquisition by issuer of its own stock.* If a member acquires its own stock in an intercompany transaction, the member's basis in that stock is treated as eliminated, and the elimination is taken into account for purposes of applying the rules of this section. For example, S's intercompany items from the stock of B are taken into account under this section if B acquires the stock in an intercompany transaction (unless, for example, B acquires the stock in exchange for successor property within the meaning of paragraph (j)(1) of this section in a nonrecognition transaction).

(5) *Relief for certain liquidations and distributions*—(i) *Scope.* S's intercompany items from an intercompany transfer to B of the stock of another member (T) are taken into account under this section in certain circumstances even though the T stock is never held by a nonmember after the intercompany transaction. For example, if S sells all of T's stock to B at a gain, and T subsequently liquidates into B in a separate transaction to which section 332 applies, S's gain is taken into account under this section. If the rules of this paragraph (f)(5) are elected, certain transactions that are (in whole or in part) nonrecognition transactions will not result in S's items being taken into account. This paragraph (f)(5) applies only if, throughout the period beginning as of S's transfer and ending as of the completion of the nonrecognition transaction, no T stock is owned by a nonmember and T does not become a nonmember.

(ii) *Section 332*—(A) *In general.* If section 332 applies to T's liquidation into B, and B transfers T's assets to a new member (new T) in a transaction not otherwise pursuant to the same plan or arrangement as the liquidation, the transfer is nevertheless treated for all Federal income tax purposes as pursuant to the same plan or arrangement as the liquidation. For example, if T liquidates into B, but B forms new T by transferring substantially all of T's former assets to new T, S's intercompany gain or loss generally is not taken into account solely as a result of the liquidation if the liquidation and transfer would qualify as a reorganization described in section 368(a). (Under paragraph (j)(1) of this section, B's stock in new T would be a successor asset to B's stock in T, and S's gain would be taken into account based on the new T stock.)

(B) *Time limitation and adjustments.* The transfer of an asset to new T not otherwise pursuant to the same plan or arrangement as the liquidation is treated under this paragraph (f)(5)(ii) as pursuant to the same plan or arrangement only if B transfers it to new T on or before the timely filing (including extensions of time) of the group's return for the year of T's liquidation. Appropriate adjustments are made for any assets not transferred to new T as part of the same plan or arrangement. See, e.g., paragraph (f)(3) of this section (if B retains an asset in the reorganization, the asset is treated as acquired by new T but distributed to B immediately after the reorganization).

(C) *Downstream merger, etc.* The principles of this paragraph (f)(5)(ii) apply, with appropriate adjustments, if B's basis in the T stock is eliminated in a transaction comparable to the section 332 liquidation described in paragraph (f)(5)(ii)(A) of this section. For example, if S and B are subsidiaries, and S sells all of T's stock to B at a gain followed by B's merger into T in a separate transaction described in section 368(a), S's gain is not taken into account solely as a result of the merger if the group forms new B with substantially all of B's former assets (including all of the stock of T). The merger is not treated as a comparable transaction if, for example, any B stock is owned by nonmembers immediately before the merger, or any new B stock is owned by nonmembers immediately after the merger.

(iii) *Section 338(h)(10)*—(A) *In general.* This paragraph (f)(5)(iii) applies

to a deemed liquidation of T under section 332 as the result of an election under section 338(h)(10). This paragraph (f)(5)(iii) does not apply if T has made substantial noncash distributions during the 12-month period ending on the date of the qualified stock purchase, or if paragraph (f)(5)(ii) of this section is applied to the deemed liquidation. B is treated with respect to each share of its T stock as recognizing as a corresponding item any loss or deduction it would recognize (determined after adjusting stock basis under § 1.1502–32) if section 331 applied to the deemed liquidation. For all other Federal income tax purposes, the deemed liquidation remains subject to section 332.

(B) *Noncash distribution.* For purposes of this paragraph (f)(5)(iii), a noncash distribution is a distribution of anything other than cash or a cash item, any marketable stock or security, or any debt of the distributor or distributee member.

(C) *Limitation on amount of loss.* The amount of B's loss or deduction under this paragraph (f)(5)(iii) is limited as follows—

(*1*) The amount taken into account with respect to each T share cannot exceed the net amount of intercompany income or gain with respect to the share from all intercompany transactions before T's deemed liquidation that is taken into account as a result of the deemed liquidation; and

(*2*) The aggregate amount taken into account under this paragraph (f)(5)(iii) from T's deemed liquidation cannot exceed the net amount of deduction or loss (if any) that would be taken into account from the deemed liquidation if section 331 applied with respect to all T shares.

(D) *Asset sale, etc.* The principles of this paragraph (f)(5)(iii) apply, with appropriate adjustments, if T transfers all of its assets to a nonmember and completely liquidates in a transaction comparable to the section 338(h)(10) transaction described in paragraph (f)(5)(iii)(A) of this section. For example, if S sells all of T's stock to B at a gain followed by T's merger into a nonmember in exchange for a cash payment to B in a transaction treated for Federal income tax purposes as T's sale of its assets to the nonmember and complete liquidation, the merger is ordinarily treated as a comparable transaction. The merger is not treated as a comparable transaction if, for example, T makes substantial noncash distributions during the 12-month period ending on the date of the merger.

(iv) *Section 355.* If, instead of T liquidating into B, B distributes the T stock in an intercompany transaction to which section 355 applies (including an intercompany transaction to which 355 applies because of the application of paragraph (f)(3) of this section), the redetermination of the basis of the T stock under section 358 could cause S's gain or loss to be taken into account under this section. This paragraph (f)(5)(iv) applies to treat B's distribution as subject to section 301 and 311 (as modified by this paragraph (f)), rather than section 355. The election will avoid S's gain or loss being taken into account immediately if matching remains possible, but B's gain or loss from the distribution will also be taken into account under this section.

(v) *Election.* An election to apply this paragraph (f)(5) is made in a separate statement entitled "[Insert Name and Employer Identification Number of Common Parent] HEREBY ELECTS THE APPLICATION OF § 1.1502–13(f)(5)." The election must include a description of S's intercompany transaction and T's liquidation (or other transaction). It must specify which application of § 1.1502–13(f)(5) applies and how it alters the otherwise applicable results under this section (including, for example, the amount of S's intercompany items and the amount deferred or offset as a result of this § 1.1502–13(f)(5)). A separate election must be made for each application of this paragraph (f)(5). The election must be signed by the common parent and filed with the group's income tax return for the year of T's liquidation (or other transaction). The Commissioner may impose reasonable terms and conditions to the application of this paragraph (f)(5) that are consistent with the purposes of this section.

(6) *Examples.* The application of this section to intercompany transactions with respect to stock of members is illustrated by the following examples.

Example 1. Dividend exclusion and property distribution. (a) *Facts.* S owns land with a $70 basis and $100 value. On January 1 of Year 1, P's basis in S's stock is $100. During Year 1, S declares and makes a dividend distribution of the land to P. Under section 311(b), S has a $30 gain. Under section 301(d), P's basis in the land is $100. On July 1 of Year 3, P sells the land to X for $110.

(b) *Dividend elimination and stock basis adjustments.* Under paragraph (b)(1) of this section, S's distribution to P is an intercompany distribution. Under paragraph (f)(2)(ii) of this section, P's $100 of dividend income is not included in gross income. Under § 1.1502–32, P's basis in S's stock is reduced from $100 to $0 in Year 1.

(c) *Matching rule and stock basis adjustments.* Under the matching rule of paragraph (c) of this section (treating P as the buying member and S as the selling member), S takes its $30 gain into account in Year 3 to reflect the $30 difference between P's $10 gain taken into account and its $40 recomputed gain. Under § 1.1502–32, P's basis in S's stock is increased from $0 to $30 in Year 3.

(d) *Loss property.* The facts are the same as in paragraph (a) of this *Example 1*, except that S has a $130 (rather than $70) basis in the land. Under paragraph (f)(2)(iii) of this section, the principles of section 311(b) apply to S's loss from the intercompany distribution. Thus, S has a $30 loss that is taken into account under the matching rule in Year 3 to reflect the $30 difference between P's $10 gain taken into account and its $20 recomputed loss. (The results are the same under section 267(f).) Under § 1.1502–32, P's basis in S's stock is reduced from $100 to $0 in Year 1, and from $0 to a $30 excess loss account in Year 3. (If P had distributed the land to its shareholders, rather than selling the land to X, P would take its $10 gain under section 311(b) into account, and S would take its $30 loss into account under the matching rule with $10 offsetting P's gain and $20 recharacterized as a noncapital, nondeductible amount.)

(e) *Entitlement rule.* The facts are the same as in paragraph (a) of this *Example 1*, except that, after P becomes entitled to the distribution but before the distribution is made, S issues additional stock to the public and becomes a nonmember. Under paragraph (f)(2)(i) of this section, the determination of whether a distribution is an intercompany distribution is made under the entitlement rule of paragraph (f)(2)(iv) of this section. Treating S's distribution as made when P becomes entitled to it results in the distribution being an intercompany distribution. Under paragraph (f)(2)(ii) of this section, the distribution is not included in P's gross income. S's $30 gain from the distribution is intercompany gain that is taken into account under the acceleration rule of paragraph (d) of this section immediately before S becomes a nonmember. Thus, there is a net $70 decrease in P's basis in its S stock under § 1.1502–32 ($100 decrease for the distribution and a $30 increase for S's $30 gain). See also § 1.1502–20(b) (additional stock basis reductions applicable to certain deconsolidations). Under paragraph (a)(4) of this section, P does not take the distribution into account again under separate return rules when received, and P is not entitled to a dividends received deduction.

Example 2. Excess loss accounts. (a) *Facts.* S owns all of T's only class of stock with a $10 basis and $100 value. S has substantial earnings and profits, and T has $10 of earnings and profits (all of which are from pre-affiliation years). On January 1 of Year 1, S declares and distributes a dividend of all of the T stock to P. Under section 311(b), S has a $90 gain. Under section 301(d), P's basis in the T stock is $100. During Year 3, T borrows $90 and declares and makes a $90 distribution to P to which section 301 applies, and P's basis in the T stock is reduced under § 1.1502–32 from $100 to $10. During Year 6, T has $5 of earnings that increase P's basis in the T stock under

§ 1.1502–32 from $10 to $15. On December 1 of Year 9, T issues additional stock to X and, as a result, T becomes a nonmember.

(b) *Dividend exclusion.* Under paragraph (f)(2)(ii) of this section, P's $100 of dividend income from S's distribution of the T stock, and its $10 of dividend income from T's $90 distribution, are not included in gross income.

(c) *Matching and acceleration rules.* Under the matching rule, S takes $75 of its $90 gain into account in Year 9 as a result of T becoming a nonmember, to reflect the difference between P's $0 gain taken into account and its $75 recomputed gain. If S's distribution to P were a transfer between the divisions, P would succeed to S's $10 basis in the T stock, and the adjustments under § 1.1502–32 for T's $90 distribution and $5 of earnings would have resulted in a $75 excess loss account. Thus, T's becoming a nonmember would have resulted in P taking into account the $75 excess loss account. See § 1.1502–19 (excess loss accounts). S's remaining $15 of gain is taken into account under the matching and acceleration rules based on subsequent events (e.g., under the matching rule if P subsequently sells its T stock, or under the acceleration rule if S becomes a nonmember).

(d) *Reverse sequence.* The facts are the same as in paragraph (a) of this *Example 2*, except that T borrows $90 and makes its $90 distribution to S before S distributes T's stock to P. Under section 301(d) P's initial basis in the T stock is $10 (the stock's fair market value), and the basis increases to $15 under § 1.1502–32 as a result of T's earnings in Year 6. Under paragraph (f)(2)(ii) of this section, T's $90 distribution to S ($10 of which is a dividend) is not included in S's gross income. The corresponding negative adjustment under § 1.1502–32 reduces S's basis in the T stock from $10 to an $80 excess loss account. Under section 311(b), S has a $90 gain from the distribution of T stock to P. The timing and attributes of S's gain are determined in the manner provided in paragraph (c) of this *Example 2*. Thus, $75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining $15 is taken into account under the matching and acceleration rules based on subsequent events.

(e) *Partial stock sale.* The facts are the same as in paragraph (a) of this *Example 2*, except that P sells 10% of T's stock to X on December 1 of Year 9 for $1.50 (rather than T's issuing additional stock and becoming a nonmember). Under the matching rule, S takes $9 of its gain into account to reflect the difference between P's $0 gain taken into account ($1.50 sale proceeds minus $1.50 basis) and its $9 recomputed gain ($1.50 sale proceeds plus $7.50 excess loss account).

(f) *Loss, rather than cash distribution.* The facts are the same as in paragraph (a) of this *Example 2*, except that T retains the loan proceeds and incurs a $90 loss in Year 3 that is absorbed by the group. The timing and attributes of S's gain are determined in the same manner provided in paragraph (c) of this *Example 2*. Under § 1.1502–32, the loss in Year 3 reduces P's basis in the T stock from $100 to $10, and T's $5 of earnings in Year 6 increase the basis to $15. Thus, $75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining $15 is taken into account under the matching and acceleration rules based on subsequent events. (The timing and attributes of S's gain would be determined in the same manner provided in paragraph (d) of this *Example 2* if T incurred the $90 loss before S's distribution of the T stock to P.)

(g) *Stock sale, rather than stock distribution.* The facts are the same as in paragraph (a) of this *Example 2*, except that S sells the T stock to P for $100 (rather than distributing the stock). The timing and attributes of S's gain are determined in the same manner provided in paragraph (c) of this *Example 2*. Thus, $75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining $15 is taken into account under the matching and acceleration rules based on subsequent events.

Example 3. Intercompany reorganization. (a) *Facts.* P forms S and B by contributing $200 to the capital of each. During Years 1 through 4, S and B each earn $50, and under § 1.1502–32 P adjusts its basis in the stock of each to $250. (See § 1.1502–33 for adjustments to earnings and profits.) On January 1 of Year 5, the fair market value of S's assets and its stock is $500, and S merges into B in a tax-free reorganization. Pursuant to the plan of reorganization, P receives B stock with a fair market value of $350 and $150 of cash.

(b) *Treatment as a section 301 distribution.* The merger of S into B is an intercompany reorganization to which paragraph (f)(3) of this section applies. P is treated as receiving additional B stock with a fair market value of $500 and, under section 358, a basis of $250. Immediately after the merger, $150 of the stock received is treated as redeemed, and the redemption is treated under section 302(d) as a distribution to which section 301 applies. Because the $150 distribution is treated as not received as part of the merger, section 356 does not apply and no basis adjustments are required under section 358(a)(1)(A) and (B). Because B is treated under section 381(c)(2) as receiving S's earnings and profits and the redemption is treated as occurring after the merger, $100 of the distribution is treated as a dividend under section 301 and P's basis in the B stock is reduced correspondingly under § 1.1502–32. The remaining $50 of the distribution reduces P's basis in the B stock. Section 301(c)(2) and § 1.1502–32. Under paragraph (f)(2)(ii) of this section, P's $100 of dividend income is not included in gross income. Under § 1.302–2(c), appropriate adjustments are made to P's basis in its B stock to reflect its basis in the B stock redeemed, with the result that P's basis in the B stock is reduced by the entire $150 distribution.

(c) *Depreciated property.* The facts are the same as in paragraph (a) of this *Example 3*, except that property of S with a $200 basis and $150 fair market value is distributed to P (rather than cash of B). As in paragraph (b) of this *Example 3*, P is treated as receiving additional B stock in the merger and a $150 distribution to which section 301 applies immediately after the merger. Under paragraph (f)(2)(iii) of this section, the principles of section 311(b) apply to B's $50 loss and the loss is taken into account under the matching and acceleration rules based on subsequent events (e.g., under the matching rule if P subsequently sells the property, or under the acceleration rule if B becomes a nonmember). The results are the same under section 267(f).

(d) *Divisive transaction.* Assume instead that, pursuant to a plan, S distributes the stock of a lower-tier subsidiary in a spin-off transaction to which section 355 applies together with $150 of cash. The distribution of stock is an intercompany reorganization to which paragraph (f)(3) of this section applies. P is treated as receiving the $150 of cash immediately before the section 355 distribution, as a distribution to which section 301 applies. Section 356(b) does not apply and no basis adjustments are required under section 358(a)(1)(A) and (B). Because the $150 distribution is treated as made before the section 355 distribution, the distribution reduces P's basis in the S stock under § 1.1502–32, and the basis allocated under section 358(c) between the S stock and the lower-tier subsidiary stock received reflects this basis reduction.

Example 4. Stock redemptions and distributions. (a) Facts. Before becoming a member of the P group, S owns P stock with a $30 basis. On January 1 of Year 1, P buys all of S's stock. On July 1 of Year 3, P redeems the P stock held by S for $100 in a transaction to which section 302(a) applies.

(b) *Gain under section 302.* Under paragraph (f)(4) of this section, P's basis in the P stock acquired from S is treated as eliminated. Thus, S's $70 gain is taken into account in Year 3. S's gain is taken into account as capital gain. (Under paragraph (c)(3)(iv) of this section, S's gain cannot be excluded from gross income.)

(c) *Gain under section 311.* The facts are the same as in paragraph (a) of this *Example 4*, except that S distributes the P stock to P in a transaction to which section 301 applies (rather than the stock being redeemed), and S has a $70 gain under section 311(b). The timing and attributes of S's gain are determined in the manner provided in paragraph (b) of this *Example 4*.

(d) *Loss stock.* The facts are the same as in paragraph (a) of this *Example 4*, except that S has a $130 (rather than $30) basis in the P stock and has a $30 loss under section 302(a). The limitation under paragraph (c)(3)(iv) of this section on recharacterization of items does not apply to intercompany losses. Thus, S's loss is taken into account in Year 3 as a noncapital, nondeductible amount.

Example 5. Intercompany stock sale followed by section 332 liquidation. (a) *Facts.* S owns all of the stock of T, with a $70 basis and $100 value, and T's assets have a $10 basis and $100 value. On January 1 of Year 1, S sells all of T's stock to B for $100. On July 1 of Year 3, T distributes all of its assets to B in an unrelated complete liquidation to which section 332 applies.

(b) *Timing and attributes.* Under paragraph (b)(2)(ii)(B) of this section, B's unrecognized gain or loss under section 332 is a

corresponding item for purposes of applying the matching rule. Thus, S's $30 gain is taken into account in Year 3 as a result of T's liquidation. Under paragraph (c)(1)(i) of this section, the attributes of S's gain and B's corresponding item are redetermined as if they were divisions of a single corporation. Although S's gain ordinarily would be treated as excluded from gross income to reflect the nonrecognition of B's gain or loss under section 332, the gain remains capital gain. Paragraph (c)(3)(iv) of this section permits S's gain to be excluded from gross income only if B has a corresponding deduction or loss disallowed directly under a provision of the Code or regulations. B's corresponding items from the liquidation do not satisfy this requirement. However, relief may be elected under paragraph (f)(5) of this section.

(c) *Intercompany sale at a loss.* The facts are the same as in paragraph (a) of this *Example 5*, except that S has a $130 (rather than $70) basis in the T stock. The limitation under paragraph (c)(3)(iv) of this section on recharacterization of items does not apply to intercompany losses. Thus, S's intercompany loss is taken into account in Year 3 as a noncapital, nondeductible amount. However, relief may be elected under paragraph (f)(5) of this section.

(g) *Obligations of members*—(1) *In general.* In addition to the general rules of this section, the rules of this paragraph (g) apply to intercompany obligations.

(2) *Definitions.* For purposes of this section—

(i) *Obligation of a member.* An obligation of a member is—

(A) Any obligation of that member constituting indebtedness under general principles of Federal income tax law (for example, under section 108, section 163, section 171, or section 1275, but not an executory obligation to purchase or provide goods or services); and

(B) Any security of the member described in section 475(c)(2)(D) or (E), and any comparable security with respect to commodities.

(ii) *Intercompany obligations.* An intercompany obligation is an obligation between members, but only for the period during which both parties are members.

(3) *Deemed satisfaction and reissuance of intercompany obligations*—(i) *Application*—(A) *In general.* If a member realizes an amount (other than zero) of income, gain, deduction, or loss, directly or indirectly, from the assignment or extinguishment of all or part of its remaining rights or obligations under an intercompany obligation, the intercompany obligation is treated for all Federal income tax purposes as satisfied under paragraph (g)(3)(ii) of this section and, if it remains outstanding, reissued under paragraph (g)(3)(iii) of this section. Similar principles apply under this paragraph (g)(3) if a member realizes any such amount, directly or indirectly, from a comparable transaction (e.g., a marking-to-market of an obligation or a bad debt deduction), or if an intercompany obligation becomes an obligation that is not an intercompany obligation.

(B) *Exceptions.* This paragraph (g)(3) does not apply to an obligation if any of the following applies:

(*1*) The obligation became an intercompany obligation by reason of an event described in paragraph (g)(4)(i)(B) of this section (exceptions to the application of section 108(e)(4)).

(*2*) The amount realized is from reserve accounting under section 585 or 593 (see paragraph (g)(5) of this section for special rules).

(*3*) Treating the obligation as satisfied and reissued will not have a significant effect on any person's Federal income tax liability for any year. For this purpose, obligations issued in connection with the same transaction or related transactions are treated as a single obligation. However, this paragraph (g)(3)(i)(B)(*3*) does not apply to any obligation if its aggregate effect for all obligations in a year would be significant.

(ii) *Satisfaction*—(A) *General rule.* If a creditor member sells intercompany debt to a nonmember for cash, the debt is treated as satisfied by the debtor immediately before the sale for the amount of the cash. For other transactions, similar principles apply to treat the intercompany obligation as satisfied immediately before the transaction. Thus, if the obligation is transferred for property, it is treated as satisfied for an amount consistent with the amount of the reissuance under paragraph (g)(3)(iii) of this section, and the basis of the property is also adjusted to reflect that amount. If this paragraph (g)(3) applies because the obligor or obligee becomes a nonmember, the obligation is treated as satisfied for cash in an amount equal to its fair market value immediately before the obligor or obligee becomes a nonmember. Similar principles apply to intercompany obligations other than debt.

(B) *Timing and attributes.* For purposes of applying the matching rule of paragraph (c) of this section and the acceleration rule of paragraph (d) of this section—

(*1*) Paragraph (c)(3)(iv) of this section (limitation on treatment of intercompany income or gain as excluded from gross income) does not apply to prevent any intercompany income or gain from being excluded from gross income; and

(*2*) Any intercompany gain or loss is not subject to section 354 or 1091.

(iii) *Reissuance.* If a creditor member sells intercompany debt to a nonmember for cash, the debt is treated as a new debt (with a new holding period) issued by the debtor immediately after the sale for the amount of cash. For other transactions, if the intercompany obligation remains outstanding, similar principles apply to treat the obligation as reissued immediately after the transaction. Thus, if the obligation is transferred for property, it is treated as a new obligation issued to the nonmember for the property. If this paragraph (g)(3) applies because the debtor or creditor becomes a nonmember, the obligation is treated as a new obligation issued for an amount of cash equal to its fair market value immediately after the debtor or creditor becomes a nonmember. Similar principles apply to intercompany obligations other than debt.

(4) *Deemed satisfaction and reissuance of obligations becoming intercompany obligations*—(i) *Application*—(A) *In general.* This paragraph (g)(4) applies if an obligation that is not an intercompany obligation becomes an intercompany obligation.

(B) *Exceptions.* This paragraph (g)(4) does not apply to an obligation if—

(*1*) The obligation becomes an intercompany obligation by reason of an event described in § 1.108–2(e) (exceptions to the application of section 108(e)(4)); or

(*2*) Treating the obligation as satisfied and reissued will not have a significant effect on any person's Federal income tax liability for any year. For this purpose, obligations issued in connection with the same transaction or related transactions are treated as a single obligation. However, this paragraph (g)(4)(i)(B)(*2*) does not apply to any obligation if its aggregate effect for all obligations in a year would be significant.

(ii) *Intercompany debt.* If this paragraph (g)(4) applies to an intercompany debt—

(A) Section 108(e)(4) does not apply;

(B) The debt is treated for all Federal income tax purposes, immediately after it becomes an intercompany debt, as satisfied and a new debt issued to the holder (with a new holding period) in an amount determined under the principles of § 1.108–2(f);

(C) The attributes of all items taken into account from the satisfaction are determined on a separate entity basis, rather than by treating S and B as divisions of a single corporation; and

(D) Any intercompany gain or loss taken into account is treated as not subject to section 354 or 1091.

(iii) *Other intercompany obligations.* If this paragraph (g)(4) applies to an intercompany obligation other than debt, the principles of paragraph (g)(4)(ii) of this section apply to treat the intercompany obligation as satisfied and reissued for an amount of cash equal to its fair market value immediately after the obligation becomes an intercompany obligation.

(5) *Bad debt reserve.* A member's deduction under section 585 or 593 for an addition to its reserve for bad debts with respect to an intercompany obligation is not taken into account, and is not treated as realized under paragraph (g)(3) of this section, until the intercompany obligation becomes an obligation that is not an intercompany obligation, or, if earlier, the redemption or collection of less than the recorded amount of the intercompany obligation (and the corresponding charge off against the reserve). For purposes of this paragraph (g)(5) an addition to a reserve that results from charging off an intercompany obligation is treated as with respect to the intercompany obligation.

(6) *Examples.* The application of this section to obligations of members is illustrated by the following examples.

Example 1. Interest and premium on intercompany debt. (a) *Facts.* On January 1 of Year 1, M2 borrows $100 from M1 in return for M2's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 5. M2 fully performs its obligations. Under their separate entity methods of accounting, M2 accrues a $10 interest deduction annually under section 163, and M1 accrues $10 of interest income annually under section 61(a)(4).

(b) *Matching rule.* Under paragraph (b)(1) of this section, the accrual of interest on M2's note is an intercompany transaction, M1 is the selling member, and M2 is the buying member. Under the matching rule of paragraph (c) of this section, M1 takes its $10 of income into account in each of Years 1 through 5 to reflect the $10 difference between M2's $10 of interest expense taken into account and its $0 recomputed expense.

(c) *Original issue discount.* The facts are the same as in paragraph (a) of this *Example 1*, except that M2 borrows $90 (rather than $100) from M1 in return for M2's note providing for $10 of interest annually and repayment of $100 at the end of Year 5. The principles described in paragraph (b) of this *Example 1* for stated interest also apply to the $10 of original issue discount. Thus, as M2 takes into account its corresponding expense under section 163(e), M1 takes into account its intercompany income.

(d) *Premium.* The facts are the same as in paragraph (a) of this *Example 1*, except that M2 borrows $110 from M1 (rather than $100), and M1 elects under section 171 to amortize the $10 premium. Under section 171(e), M1's premium deduction is allocated to its interest income and applied to reduce the amount of the income. Although there is no separate item of premium deduction to be taken into account, paragraph (b)(2)(ii)(B) of this section provides that M1's corresponding items include the premium even though it offsets interest income rather than being separately taken into account. Although M1 is the selling member with respect to the interest (i.e., the recipient member), M1 is the buying member with respect to the premium (i.e., the payor member). Thus, M2's intercompany premium income is taken into account under the matching rule to reflect the difference between M1's corresponding premium deduction taken into account and its recomputed premium deduction. Consequently, M2 takes its premium income into account in each of Years 1 through 5 based on M1's amortization and offset of allocable interest income. (If M1 does not make an election under section 171, but instead takes the premium into account when the debt is retired at the end of Year 5, M2 also does not take the premium into account until the debt is retired at the end of Year 5.)

(e) *Tax-exempt income.* The facts are the same as in paragraph (a) of this *Example 1*, except that M2's borrowing from M1 is allocable under section 265 to M2's purchase of state and local bonds to which section 103 applies. The timing of M1's income is the same as in paragraph (b) of this *Example 1*, but that M1's income is treated under the matching rule as excluded from gross income because M2's corresponding expense is nondeductible under section 265. See paragraph (c)(3)(iv) of this section.

Example 2. Intercompany debt becomes nonintercompany debt. (a) *Facts.* On January 1 of Year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 20. As of January 1 of Year 3, B has paid the interest accruing under the note and S sells B's note to X for $70, reflecting a change in the value of the note as a result of increases in prevailing market interest rates. B is never insolvent within the meaning of section 108(d)(3).

(b) *Deemed satisfaction.* Under paragraph (g)(3) of this section, B's note is treated as satisfied for $70 immediately before S's sale to X. Under the matching rule, B takes into account $30 of discharge of indebtedness income under section 61(a)(12). Although S ordinarily would take into account a $30 capital loss under section 1271(a)(1), S's loss is treated as ordinary loss to conform to B's corresponding $30 of discharge of indebtedness income.

(c) *Deemed reissuance.* Under paragraph (g)(3) of this section, B is also treated as reissuing, directly to X, a new note with a $70 issue price and a $100 stated redemption price at maturity. The new note is not an intercompany obligation, it has a $70 issue price and $100 stated redemption price at maturity, and the $30 of original issue discount will be taken into account by B and X under sections 163(e) and 1272.

(d) *Creditor deconsolidation.* The facts are the same as in paragraph (a) of this *Example 2*, except that P sells S's stock to X (rather than S's selling the note of B). Under paragraph (g)(3) of this section, the note is treated as satisfied by B for its $70 fair market value immediately before S becomes a nonmember, and B is treated as reissuing a new note to S immediately after S becomes a nonmember. The results for S's $30 of loss and B's discharge of indebtedness income are the same as in paragraph (b) of this *Example 2*. The new note is not an intercompany obligation, it has a $70 issue price and $100 stated redemption price at maturity, and the $30 of original issue discount will be taken into account by B and S under sections 163(e) and 1272.

(e) *Debtor deconsolidation.* The facts are the same as in paragraph (a) of this *Example 2*, except that P sells B's stock to X (rather than S's selling the note of B). The results are the same as in paragraph (d) of this Example 2.

(f) *Appreciated note.* The facts are the same as in paragraph (a) of this *Example 2*, except that S sells B's note to X for $130 (rather than $70), reflecting a decline in prevailing market interest rates. Under paragraph (g)(3) of this section, B's note is treated as satisfied for $130 immediately before S's sale of the note to X. Under the matching rule, B takes into account $30 of repurchase premium. Although S ordinarily would take into account a $30 capital gain under section 1271(a)(1), the attributes of S's capital gain conform to B's corresponding premium under the matching rule. Thus, S's gain is treated as ordinary income to conform to B's corresponding $30 premium. B is also treated as reissuing a new note directly to X which is not an intercompany obligation. The new note has a $130 issue price and a $100 stated redemption price at maturity. Under § 1.61–12(c), B's $30 premium income under the new note is taken into account over the life of the new note. Under section 171, X may elect to amortize its $30 of bond premium over the life of the note (with corresponding reductions in its basis), however, the election would have no effect on B's premium income.

Example 3. Bad debt deduction or loss with respect to intercompany debt. (a) *Facts.* On January 1 of Year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 5. For Year 3, S claims a $40 partial bad debt deduction under section 166(a)(2) on a separate entity basis. B is never insolvent within the meaning of section 108(d)(3).

(b) *Deemed satisfaction and reissuance.* Under paragraph (g)(3) of this section, B is treated as satisfying its note for $60 immediately before S's bad debt deduction, and reissuing a new note to S with a $60 issue price and a $100 stated redemption price at maturity. Thus, B takes into account $40 of discharge of indebtedness income, and S takes into account $40 of loss as an ordinary loss.

(c) *Loss sale.* The facts are the same as in paragraph (a) of this *Example 3*, except that S sells B's note to P for $60 (rather than claiming a partial bad debt deduction). The results are the same as in paragraph (b) of this *Example 3*. B's note is treated as satisfied

immediately before the sale, and a new note reissued directly to P immediately after the sale. B takes into account $40 of discharge of indebtedness income, and S takes into account $40 of loss as an ordinary loss.

Example 4. Nonintercompany debt becomes intercompany debt. (a) *Facts.* On January 1 of Year 1, B borrows $100 from X in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 5. As of January 1 of Year 3, B has fully performed its obligations, but the note's fair market value is $70. On January 1 of Year 3, P buys all of X's stock. B is solvent within the meaning of section 108(d)(3).

(b) *Deemed satisfied and reissuance.* Under paragraph (g)(4) of this section, B is treated as satisfying its indebtedness for $70 (determined under the principles of § 1.108–2(f)(2)) immediately after X becomes a member. Both X's $30 capital loss under section 1271(a)(1) and B's $30 of discharge of indebtedness income under section 61(a)(12) are taken into account in determining consolidated taxable income for Year 3. Under paragraph (g)(4)(ii)(C) of this section, the attributes of items resulting from the satisfaction are determined on a separate entity basis. But see section 382 and § 1.1502–15 (limitations on the absorption of built-in losses). B is also treated as reissuing a new note. The new note is an intercompany obligation, it has a $70 issue price and $100 stated redemption price at maturity, and the $30 of original issue discount will be taken into account by B and X.

(c) *Election to file consolidated returns.* Assume instead that B borrows $100 from S during Year 1, but the P group does not file consolidated returns until Year 3. Under paragraph (g)(4) of this section, B's indebtedness is treated as satisfied and a new note reissued immediately after the debt becomes intercompany debt. The satisfaction and reissuance are on January 1 of Year 3, at the fair market value of the note (determined under the principles of § 1.108–2(f)(2)) at that time.

Example 5. Notional principal contracts. (a) *Facts.* On April 1 of Year 1, M1 enters into a contract with counterparty M2 under which, for a term of five years, M1 is obligated to make a payment to M2 each April 1, beginning in Year 2, in an amount equal to the London Interbank Offered Rate (LIBOR), as determined on the immediately preceding April 1, multiplied by a $1,000 notional principal amount. M2 is obligated to make a payment to M1 each April 1, beginning in Year 2, in an amount equal to 8% multiplied by the same notional principal amount. LIBOR is 7.80% on April 1 of Year 1. On April 1 of Year 2, M1 owes $78 to M2, and M2 owes $80 to M1.

(b) *Matching rule.* Under § 1.446–3(d), the net income (or net deduction) from a notional principal contract for a taxable year is included in (or deducted from) gross income. Under § 1.446–3(e), the ratable daily portion of M2's fixed obligation to M1 as of December 31 of Year 1 is $60.27 ($80 multiplied by 275/365), and the ratable daily portion of M1's floating obligation as of December 31 of Year 1 is $58.77 ($78 multiplied by 275/365). Under the matching rule, M1's net income for Year 1 of $1.50 is taken into account to reflect the difference between M2's net deduction of $1.50 taken into account and its $0 recomputed net deduction. Similarly, the $.50 balance of the $2.00 of net periodic payments made on April 1 of Year 2 is taken into account for Year 2 in M1's and M2's net income and net deduction from the contract. (Note that although M1 is the selling member with respect to the payment on April 1 of Year 2, it may be the buying member in a subsequent period if it owes the net payment.)

(c) *Dealer.* The facts are the same as in paragraph (a) of this *Example 5*, except that M2 is a dealer in securities, the contract with M1 is not inventory in the hands of M2, and on December 31 of Year 1 the fair market value of the contract to M2 is ($100). Under section 475, M2 has a $100 loss as if the contract were sold on December 31 for its fair market value. Under paragraph (g)(3) of this section, M2 is treated as making a $100 payment to M1 to terminate the contract immediately before section 475 is applied. Under the matching rule, the net periodic payment in Year 1 is taken into account as described in paragraph (b) of this *Example 5*. In addition, M1's $100 of income from the termination payment is taken into account to reflect the timing of M2's deduction (as described in § 1.446–3(h)), and the character and other attributes of the income is conformed to the character and other attributes of the deduction. Paragraph (g)(3) of this section also provides that, immediately after section 475 would apply, a new contract is treated as reissued with an up front payment of $100. Under § 1.446–3(f), the deemed $100 payment by M2 to M1 is taken into account over the term of the new contract in a manner reflecting the economic substance of the contract (e.g., allocating a portion of the $100 to the periodic payment expected to be made by M2 on April 1 of Year 2, and the balance under the level payment constant yield to maturity method). (The results would be the same if M1, rather than M2, is the dealer subject to section 475.)

(h) *Anti-avoidance rules*—(1) *In general.* If a transaction is engaged in or structured with a principal purpose to avoid treatment as an intercompany transaction, or to avoid the purposes of this section, adjustments must be made to carry out the purposes of this section.

(2) *Examples.* The anti-avoidance rules of this paragraph (h) are illustrated by the following examples.

Example 1. Sale of a partnership interest. (a) *Facts.* S owns land with a $10 basis and $100 value. B has net operating losses from separate return limitation years (SRLYs) subject to limitation under § 1.1502–21(c). Pursuant to a plan to absorb the losses without limitation by the SRLY rules, S transfers the land to an unrelated, calendar-year partnership in exchange for a 10% interest in the capital and profits of the partnership in a transaction to which section 721 applies. The partnership does not have a section 754 election in effect. S later sells its partnership interest to B for $100. In the following year, the partnership sells the land to X for $100. Because the partnership does not have a section 754 election in effect, its $10 basis in the land does not reflect B's $100 basis in the partnership interest. Under section 704(c), the partnership's $90 built-in gain is allocated to B, and B's basis in the partnership interest increases to $190 under section 705. In a later year, B sells the partnership interest to X for $100.

(b) *Adjustments.* Under § 1.1502–21(c), the partnership's $90 built-in gain allocated to B ordinarily increases the amount of B's SRLY limitation, and B's $90 loss from its sale of the partnership interest ordinarily is not subject to limitation under the SRLY rules. Under paragraph (h)(1) of this section, however, B's allocable share of the partnership's gain from its sale of the land is treated as not increasing the amount of B's SRLY limitation.

Example 2. Sale to a related party. (a) *Facts.* S and B manufacture complimentary products that are sold in similar markets. On January 1 of Year 1, S and B enter into a partnership agreement to engage in common distribution. The partnership is formed and operated for substantial nontax, business reasons and is treated as a general partnership for Federal income tax purposes. S has loss carryovers from separate return years subject to limitation under section 382 as a result of an ownership change on January 1 of Year 1. S also has a net unrealized built-in gain (NUBIG) within the meaning of section 382(h), and S owns land with $30 of unrealized built-in gain that is included in the NUBIG. Pursuant to a plan to take into account $30 of recognized built-in gain before the end of the section 382(h)(7) recognition period without disposing of an interest in the land, the partnership buys S's land on July 1 of Year 3. On December 1 of Year 7, the partnership sells the land to X.

(b) *Adjustments.* Under paragraph (b)(1) of this section, S's sale to the partnership ordinarily would not be an intercompany transaction. Under paragraph (h)(1) of this section, however, the transaction is treated as an intercompany transaction. Thus, S's gain is not taken into account until Year 7, as a result of the partnership's sale to X. Because the gain is not recognized during the section 382(h)(7) recognition period, it is not recognized built-in gain under section 382(h).

Example 3. Transitory status as an intercompany obligation. (a) *Facts.* P historically has owned 70% of X's stock and the remaining 30% is owned by unrelated shareholders. On January 1 of Year 1, S borrows $100 from X in return for S's note requiring $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 20. As of January 1 of Year 3, the P group has substantial net operating loss carryovers, and the fair market value of S's note falls to $70 due to an increase in prevailing market interest rates. X is not permitted under section 166(a)(2) to take into account a $30 loss with respect to the note. Pursuant to a plan to permit X to take into account its $30 loss without disposing of the note, P acquires an additional 10% of X's stock, causing X to become a member, and P subsequently resells the 10% interest. X's $30 loss with respect to the note is a net unrealized built-in loss within the meaning of § 1.1502–15.

(b) *Adjustments.* Under paragraph (g)(4) of this section, X ordinarily would take into account its $30 loss as a result of the note becoming an intercompany obligation, and S would take into account $30 of discharge of indebtedness income. Under § 1.1502–22(c), X's loss is not combined with items of the other members and the loss would be carried to X's separate return years as a result of X becoming a nonmember. However, the transitory status of S's indebtedness to X as an intercompany obligation is structured with a principal purpose to accelerate the recognition of X's loss. Thus, S's note is treated under paragraph (h)(1) of this section as not becoming an intercompany obligation.

Example 4. Sale and leaseback. (a) *Facts.* S operates a factory with a $70 basis and $100 value, and has loss carryovers from SRLYs. Pursuant to a plan to take into account the $30 unrealized gain while continuing to operate the factory, S sells the factory to X for $100 and leases it back on a long-term basis. The sale and leaseback are not recharacterized under general principles of Federal income tax law. As a result of S's sale to X, the $30 gain is taken into account and increases S's SRLY limitation.

(b) *No adjustments.* Although S's sale was pursuant to a plan to accelerate the $30 gain, it is not subject to adjustment under paragraph (h)(1) of this section. Because S has transferred substantial interests in the factory to an unrelated person for Federal income tax purposes, the sale is not treated as engaged in or structured with a principal purpose to avoid treatment as an intercompany transaction, or to avoid the single and separate entity treatment that is the purpose of this section.

(i) [Reserved]

(j) *Miscellaneous operating rules.* For purposes of this section—

(1) *Successors*—(i) *Assets.* Any reference to an asset includes, as the context may require, a reference to any other asset the basis of which is determined, directly or indirectly, in whole or in part, by reference to the first asset.

(ii) *Persons*—(A) *In general.* Any reference to a person includes, as the context may require, a reference to a predecessor or successor. For this purpose, a predecessor is a transferor of assets to a transferee (the successor) in a transaction—

(*1*) To which section 381(a) applies;

(*2*) In which substantially all of the assets of the transferor are transferred to members in a complete liquidation;

(*3*) In which the successor's basis in assets is determined (directly or indirectly, in whole or in part) by reference to the basis of the transferor, but the transferee is a successor only with respect to the assets so determined; or

(*4*) Which is an intercompany transaction, but only with respect to assets that are being accounted for by the transferor in a prior intercompany transaction.

(B) *Intercompany items.* If the assets of a predecessor are acquired by a successor member, the successor succeeds to, and takes into account (under the rules of this section), the predecessor's intercompany items. If two or more successor members acquire assets of the predecessor, the successors take into account the predecessor's intercompany items in a manner that is consistently applied and reasonably carries out the purposes of this section and applicable provisions of law.

(2) *Acquisition of group*—(i) *Application.* This paragraph (j)(2) applies only if a consolidated group (the terminating group) ceases to exist as a result of—

(A) The acquisition by a member of another consolidated group of either the assets of the common parent of the terminating group in a reorganization described in section 381(a)(2), or the stock of the common parent of the terminating group; or

(B) The application of the principles of § 1.1502–75 (d)(2) or (d)(3).

(ii) *General rule.* The group that does not cease to exist (the surviving group) is treated as the terminating group for purposes of applying this section to the terminating group. For example, intercompany items and corresponding items from intercompany transactions between members of the terminating group are treated as continuing to be reflected in the terminating group's consolidated taxable income. This paragraph (j)(2) does not apply to members of the terminating group that are not members of the surviving consolidated group immediately after the terminating group ceases to exist (e.g., under section 1504(a)(3) relating to reconsolidation, or section 1504(c) relating to includible insurance companies).

(3) *Former common parent treated as continuation of group.* If a group terminates because the common parent is the only remaining member, the common parent succeeds to the treatment of the terminating group for purposes of applying this section so long as it is not a member of an affiliated group filing separate returns and does not become a corporation described in section 1504(b). For example, if the only subsidiary of the group liquidates into the common parent in a complete liquidation to which section 332 applies, or the common parent merges into the subsidiary and the subsidiary is treated as the common parent's successor under paragraph (j)(1)(ii)(A) of this section, the taxable income of the surviving corporation is treated as the group's consolidated taxable income in which the intercompany and corresponding items must be included. See § 1.267(f)-1 for additional rules applicable to intercompany losses or deductions.

(4) *Becoming a nonmember.* For purposes of this section, a member is treated as becoming a nonmember if it has a separate return year (including another group's consolidated return year). A member is not treated as having a separate return year if its items are treated as taken into account in computing the group's consolidated taxable income under paragraph (j) (2) or (3) of this section.

(5) *Recordkeeping.* Intercompany and corresponding items must be reflected on permanent records (including work papers). See also section 6001, requiring records to be maintained. From such permanent records the group must be able to identify the amount, location, timing, and attributes of the items, so as to permit the application of the rules of this section for each year.

(6) *Examples.* The operating rules of this paragraph (j) are illustrated generally throughout this section, and by the following examples.

Example 1. Intercompany sale followed by section 351 transfer to member. (a) *Facts.* S holds land for investment with a basis of $70. On January 1 of Year 1, S sells the land to M for $100. M also holds the land for investment. On July 1 of Year 3, M transfers the land to B in exchange for all of B's stock in a transaction to which section 351 applies. Under section 358, M's basis in the B stock is $100. B holds the land for sale to customers in the ordinary course of business and, under section 362(b), B's basis in the land is $100. On December 1 of Year 5, M sells 20% of the B stock to X for $22. In an unrelated transaction on July 1 of Year 8, B sells 20% of the land for $22.

(b) *Definitions.* Under paragraph (b)(1) of this section, S's sale of the land to M and M's transfer of the land to B are both intercompany transactions. S is the selling member and M is the buying member in the first intercompany transaction, and M is the selling member and B is the buying member in the second intercompany transaction. M has no intercompany items under paragraph (b)(2) of this section. Because B acquired the land in an intercompany transaction, B's items from the land are corresponding items to be taken into account under this section. Under the successor asset rule of paragraph (j)(1)(i) of this section, references to the land include references to M's B stock. Under the successor person rule of paragraph (j)(1)(ii) of this section, references to M include references to B with respect to the land.

(c) *Timing and attributes resulting from the stock sale.* Under paragraph (c)(3)(i) of this section, M is treated as owning and selling B's stock for purposes of the matching rule even though, as divisions, M could not own and sell stock in B. Under paragraph (c)(3)(ii)(A) of this section, both M's B stock and B's land can cause S's intercompany gain to be taken into account under the matching

rule of paragraph (c) of this section. Thus, S takes $6 of its gain into account in Year 5 to reflect the $6 difference between M's $2 gain taken into account from its sale of B stock and its $8 recomputed gain. Under paragraph (c)(3)(ii)(B) of this section, the attributes of this gain are determined by treating S, M, and B as divisions of a single corporation. Under paragraph (c)(3)(iii)(A) of this section, S's $6 gain and M's $2 gain are treated as long-term capital gain. The gain would be capital on a separate entity basis (assuming that section 341 does not apply), and this treatment is not inconsistent with treating S, M, and B as divisions of a single corporation because the stock sale and subsequent land sale are unrelated transactions and B remains a member following the sale.

(d) *Timing and attributes resulting from the land sale.* Under paragraph (c)(3)(ii)(A) of this section, S takes $6 of its gain into account in Year 8 under the matching rule to reflect the $6 difference between B's $2 gain taken into account from its sale of an interest in the land and its $8 recomputed gain. Under paragraph (c)(3)(ii)(B) of this section, the attributes of this gain are determined by treating S, M, and B as divisions of a single corporation and taking into account the activities of S, M, and B with respect to the land. Thus, both S's gain and B's gain might be ordinary income as a result of B's activities. (If B subsequently sells the balance of the land, paragraph (a)(4) of this section limits S's gain taken into account to its remaining $18 of intercompany gain.)

(e) *Sale of successor stock resulting in deconsolidation.* The facts are the same as in paragraph (a) of this *Example 1*, except that M sells 60% of the B stock to X for $66 on December 1 of Year 5 and B becomes a nonmember. Under the matching rule, M's sale of B stock results in $18 of S's gain being taken into account (to reflect the difference between M's $6 gain taken into account and its $24 recomputed gain). Under the acceleration rule of paragraph (d) of this section, however, the entire $30 gain is taken into account (to reflect B becoming a nonmember, because its basis in the land reflects M's $100 cost basis from the prior intercompany transaction). Under paragraph (c)(3)(ii)(A) of this section, S's entire $30 intercompany gain is taken into account under the acceleration rule of paragraph (d) of this section. Under paragraph (c)(3)(ii)(B) of this section, the attributes of S's gain are determined by treating S, M, and B as divisions of a single corporation. Because M's cost basis in the land will be reflected by B as a nonmember, all of S's gain is treated as from the land (rather than a portion being from B's stock), and B's activities with respect to the land may therefore result in S's gain being ordinary income.

Example 2. Intercompany sale of member stock followed by recapitalization. (a) *Facts.* Before becoming a member of the P group, S owns P stock with a basis of $70. On January 1 of Year 1, P buys all of S's stock. On July 1 of Year 3, S sells the P stock to M for $100. On December 1 of Year 5, P acquires M's original P stock in exchange for new P stock in a recapitalization described in section 368(a)(1)(E).

(b) *Timing and attributes.* Although paragraph (f)(4) of this section eliminates P's basis in the stock acquired from M, the new P stock received by M is exchanged basis property (within the meaning of section 7701(a)(44)) having a basis under section 358 equal to M's basis in the original P stock. Under the successor asset rule of paragraph (j)(1)(i) of this section, references to M's original P stock include references to M's new P stock. Under paragraph (c)(3)(ii)(A) of this section, if more than one corresponding item can cause S's intercompany gain to be taken into account under the matching rule, the gain is taken into account in connection with the corresponding item most consistent with the treatment of S, M, and P as divisions of a single corporation. S's gain is not taken into account as a result of the basis elimination under paragraph (f)(4) of this section. Instead, the gain is taken into account based on subsequent events with respect to M's new P stock (e.g., a subsequent distribution or redemption of the new stock).

Example 3. Successor group. (a) *Facts.* On January 1 of Year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of Year 20. As of January 1 of Year 3, B has paid the interest accruing under the note. On that date, X acquires all of P's stock and the former P group members become members of the X consolidated group.

(b) *Successor.* Under paragraph (j)(2) of this section, although B's note ceases to be an intercompany obligation of the P group, the note is not treated as satisfied and reissued under paragraph (g) of this section as a result of X's acquisition of P stock. Instead, the X consolidated group succeeds to the treatment of the P group for purposes of paragraph (g) of this section, and B's note is treated as an intercompany obligation of the X consolidated group.

(c) *No subgroups.* The facts are the same as in paragraph (a) of this *Example 3*, except that X simultaneously acquires the stock of S and B from P (rather than X's acquiring all of P's stock). Paragraph (j)(2) of this section does not apply to X's acquisitions. Unless the exception in paragraph (g)(3)(i)(B) applies, B's note is treated as satisfied immediately before S and B become nonmembers, and reissued immediately after they become members of the X consolidated group. The amount at which the note is satisfied and reissued under paragraph (g)(3) of this section is based on the fair market value of the note at the time of P's sales to X. Paragraph (g)(4) of this section does not apply to the reissued B note in the X consolidated group, because the new note is always an intercompany obligation of the X consolidated group.

Example 4. Liquidation—80% distributee. (a) *Facts.* X has had preferred stock described in section 1504(a)(4) outstanding for several years. On January 1 of Year 1, S buys all of X's common stock for $60, and B buys all of X's preferred stock for $40. X's assets have a $0 basis and $100 value. On July 1 of Year 3, X distributes all of its assets to S and B in a complete liquidation. Under § 1.1502–34, section 332 applies to both S and B. Under section 337, X has no gain or loss from its liquidating distribution to S. Under sections 336 and 337(c), X has a $40 gain from its liquidating distribution to B. B has a $40 basis under section 334(a) in the assets received from X, and S has a $0 basis under section 334(b) in the assets received from X.

(b) *Intercompany items from the liquidation.* Under the matching rule, X's $40 gain from its liquidating distribution to B is not taken into account under this section as a result of the liquidation (and therefore is not yet reflected under §§ 1.1502–32 and 1.1502–33). Under the successor person rule of paragraph (j)(1)(ii)(A) of this section, S and B are both successors to X. S is the only successor to X under section 381(a). Under paragraph (j)(1)(ii)(B) of this section, to be consistent with the anti-avoidance rules of paragraph (h)(1) of this section, S succeeds to X's $40 intercompany gain. The gain will be taken into account by S under the matching and acceleration rules of this section based on subsequent events. (The allocation of the intercompany gain to S does not govern the allocation of any other attributes.)

Example 5. Liquidation—no 80% distributee. (a) Facts. X has only common stock outstanding. On January 1 of Year 1, S buys 60% of X's stock for $60, and B buys 40% of X's stock for $40. X's assets have a $0 basis and $100 value. On July 1 of Year 3, X distributes all of its assets to S and B in a complete liquidation. Under § 1.1502–34, section 332 applies to both S and B. Under sections 336 and 337(c), X has a $100 gain from its liquidating distributions to S and B. Under section 334(b), S has a $60 basis in the assets received from X and B has a $40 basis in the assets received from X.

(b) *Intercompany items from the liquidation.* Under the matching rule, X's $100 intercompany gain from its liquidating distributions to S and B is not taken into account under this section as a result of the liquidation (and therefore is not yet reflected under §§ 1.1502–32 and 1.1502–33). Under the successor person rule of paragraph (j)(1)(ii)(A) of this section, S and B are both successors to X. Under paragraph (j)(1)(ii)(B) of this section, to be consistent with the anti-avoidance rules of paragraph (h)(1) of this section, S succeeds to X's $40 intercompany gain with respect to the assets distributed to B, and B succeeds to X's $60 intercompany gain with respect to the assets distributed to S. The gain will be taken into account by S and B under the matching and acceleration rules of this section based on subsequent events. (The allocation of the intercompany gain does not govern the allocation of any other attributes.)

(k) *Cross references*—(1) *Section 108.* See § 1.108–3 for the treatment of intercompany deductions and losses as subject to attribute reduction under section 108(b).

(2) *Section 263A(f).* See section 263A(f) for special rules regarding interest from intercompany transactions.

(3) *Section 267(f).* See section 267(f) for special rules applicable to certain losses and deductions transactions between members of a controlled group.

(4) *Section 382.* See § 1.1502–91(g) and (h) for the treatment of intercompany items as built-in amounts under section 382.

(5) *Section 460.* See § 1.460–4(j) for special rules regarding the application of section 460 to intercompany transactions.

(6) *Section 469.* See § 1.469–1(h) for special rules regarding the application of section 469 to intercompany transactions.

(7) *§ 1.1502–80.* See § 1.1502–80 for the nonapplication of certain Internal Revenue Code rules.

(l) *Effective dates*—(1) *In general.* This section applies with respect to transactions occurring in years beginning on or after [the date the final regulations are filed with the **Federal Register**]. If both this section and prior law apply to a transaction, or neither applies, with the result that items are duplicated, omitted, or eliminated in determining taxable income (or tax liability), or items are treated inconsistently, prior law (and not this section) applies to the transaction. For example, an intercompany dividend to which a shareholder becomes entitled before [the date the final regulations are filed with the **Federal Register**] but which is distributed after that date is taken into account under prior law (generally when distributed), because this section generally takes dividends into account when the shareholder becomes entitled to them but this section does not apply at that time.

(2) *Avoidance transactions.* This paragraph (l)(2) applies if a transaction is engaged in or structured on or after April 8, 1994, with a principal purpose to avoid the rules of this section applicable to transactions occurring in years beginning on or after [the date the final regulations are filed with the **Federal Register**], to duplicate, omit, or eliminate an item in determining taxable income (or tax liability), or to treat items inconsistently. If this paragraph (l)(2) applies, appropriate adjustments must be made in years beginning on or after [the date the final regulations are filed with the **Federal Register**], to prevent the avoidance, duplication, omission, elimination, or inconsistency.

(3) *Prior law.* For transactions occuring in S's years beginning before [the date the final regulations are filed with the **Federal Register**], see the applicable regulations issued under section 1502. See §§ 1.1502–13, 1.1502–13T, 1.1502–14, 1.1502–14T, 1.1502–31, and 1.1502–32 (as contained in the 26 CFR part 1 edition revised as of April 1, 1994).

§§ 1.1502–13T, 1.1502–14, and 1.1502–14T [Removed]

Par. 13. Sections 1.1502–13T, 1.1502–14, and 1.1502–14T are removed.

Par. 14. Section 1.1502–17 is amended as follows:

1. Paragraph (c) is redesignated as paragraph (d).

2. New paragraph (c) is added.

3. Newly designated paragraph (d) is amended by:

a. Revising the paragraph heading.

b. Revising the introductory text.

c. Designating the existing example as *Example 1* and revising the heading.

d. Adding *Example 2*, and *3*.

5. The added and revised provisions read as follows:

§ 1.1502–17 Methods of accounting.

* * * * *

(c) *Anti-avoidance rules*—(1) *General rule.* If one member (B) directly or indirectly acquires an activity of another member (S) or undertakes S's activity, with the principal purpose to avail the group of an accounting method that would be unavailable without securing consent from the Commissioner if S and B were treated as divisions of a single corporation, B must use the accounting method for the acquired or undertaken activity determined under paragraph (c)(2) of this section or secure consent from the Commissioner for a different method.

(2) *Treatment as divisions of a single corporation.* B must use the method of accounting that would be required if B acquired or undertook the activity in a transaction to which section 381 applies. Thus, the principles of section 381(c)(4) and (c)(5) apply to resolve any conflicts between the accounting methods of S and B, and the acquired or undertaken activity is treated as having the accounting method used by S. Appropriate adjustments are made to treat all acquisitions or undertakings that are part of the same plan or arrangement as a single acquisition or undertaking.

(3) *Effective date.* This paragraph (c) applies with respect to acquisitions or undertakings occurring in years beginning on or after [the date the final regulations are filed with the **Federal Register**].

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Separate return treatment generally. * * *

Example 2. Adopting methods. (a) Corporation P is a member of a consolidated group. P is a service provider with substantial parts and supplies on hand for use in its repair service business. P capitalizes its cost for the parts and supplies and deducts the cost under § 1.162–3. P is unable to adopt a LIFO inventory method under section 472 because the parts and supplies are used solely in its service business. With the principal purpose to avail of a LIFO inventory method, P forms corporation S, and S begins to purchase and maintain all of the parts and supplies using a LIFO inventory method. P purchases the parts and supplies that it needs from S, and S's only customer is P.

(b) Under paragraph (c) of this section, S must account for the parts and supplies under § 1.162–3 rather than adopting a LIFO inventory method.

Example 3. Changing inventory submethod. (a) Corporation P is a member of a consolidated group. P operates a manufacturing business that uses dollar-value LIFO, and has built up a substantial LIFO reserve. P has historically manufactured all its inventory and has used one natural business unit pool. P begins purchasing goods identical to its own finished goods from a foreign supplier, and is concerned that it must establish a separate resale pool under § 1.472–8(c). P anticipates that it will begin to purchase, rather than manufacture, a substantial portion of its inventory, resulting in a recapture of most of its LIFO reserve because of decrements in its manufacturing pool. With the principal purpose to avoid the decrements, P forms corporation S in Year 1. S operates as a distributor to nonmembers, and P sells all of its existing inventories to S. S adopts LIFO, and elects dollar-value LIFO with one resale pool. Thereafter, P continues to manufacture and purchase inventory, and to sell it to S for resale to nonmembers. P's intercompany gain from sales to S is taken into account under § 1.1502–13. S maintains its Year 1 base dollar value of inventory to prevent the recognition of the intercompany items by P that include the LIFO reserve.

(b) Under paragraph (c) of this section, S must maintain two pools (manufacturing and resale) in the manner that P would be required to maintain under § 1.472–8.

Par. 15. Section 1.1502–18 is amended by revising the heading for paragraph (f) and adding paragraph (g) to read as follows:

§ 1.1502–18 Inventory adjustment.

* * * * *

(f) *Transitional rules for years before 1966.* * * *

(g) *Transitional rules for years beginning on or after [the date the final regulations are filed with the Federal Register].* Paragraphs (a) through (f) of this section do not apply for taxable years beginning on or after [the date the final regulations are filed with the **Federal Register**]. Any remaining unrecovered inventory amount of a member under paragraph (c) of this section is recovered in the first taxable year beginning on or after [the date the final regulations are filed with the Federal Register], under the principles of paragraph (c)(3) of this section by treating the first taxable year as the first separate return year of the member. The unrecovered inventory amount can be recovered only to the extent it was previously included in taxable income.

The principles of this section apply, with appropriate adjustments, to comparable amounts under paragraph (f) of this section.

Par. 16. Section 1.1502–20 is amended as follows:

1. Paragraph (a)(5) *Example (6)* is amended as follows:

a. The fifth sentence of paragraph (i) is revised.

b. Paragraphs (ii) and (iii) are revised.

c. Paragraph (iv) is added.

2. Paragraph (b)(6) *Example (5)* is amended as follows:

a. The fifth sentence of paragraph (i) is revised.

b. A sentence is added at the beginning of paragraph (ii).

c. Paragraph (iii) is revised.

d. Paragraph (iv) is removed.

3. Paragraph (b)(6) *Example (7)* is amended as follows:

a. The fourth sentence of paragraph (i) is revised.

b. The first sentence of paragraph (iii) is revised.

4. Paragraph (c)(4) is amended as follows:

a. *Example (3)* is amended by removing paragraph (iii).

b. *Example (9)* is added.

5. Paragraph (e)(3) is amended as follows:

a. *Example (2)* is removed.

b. *Example (3)* through *Example (8)* are redesignated as *Example (2)* through *Example (7)*.

c. Newly designated *Example (5)* is revised.

d. Newly designated *Example (7)* is removed.

6. In paragraph (h)(1), the second sentence is revised.

7. The revised and added provisions read as follows:

§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.

(a) * * *

(5) * * *

Example (6). * * *

(i) * * * S sells its T stock to P for $100 in an intercompany transaction, recognizing a $60 intercompany loss that is deferred under section 267(f) and § 1.1502–13. * * *

(ii) Under paragraph (a)(3)(i) of this section, the application of paragraph (a)(1) of this section to S's $60 intercompany loss on the sale of its T stock to P is deferred, because S's intercompany loss is deferred under section 267(f) and § 1.1502–13. P's sale of the T stock to X ordinarily would result in S's intercompany loss being taken into account under the matching rule of § 1.1502–13(c). The deferred loss is not taken into account under § 1.267(f)–1, however, because P's sale to X (a member of the same controlled group as P) is a second intercompany transaction for purposes of section 267(f). Nevertheless, paragraph (a)(3)(ii) of this section provides that paragraph (a)(1) of this section applies to the intercompany loss as a result of P's sale to X because the T stock ceases to be owned by a member of the P consolidated group. Thus, the loss is disallowed under paragraph (a)(1) of this section immediately before P's sale and is therefore never taken into account under section 267(f).

(iii) The facts are the same as in (i) of this *Example*, except that S is liquidated after its sale of the T stock to P, but before P's sale of the T stock to X, and P sells the T stock to X for $110. Under §§ 1.1502–13(j) and 1.267(f)–1(b), P succeeds to S's intercompany loss as a result of S's liquidation. Thus, paragraph (a)(3)(i) of this section continues to defer the application of paragraph (a)(1) of this section until P's sale to X. Under paragraph (a)(4) of this section, the amount of S's $60 intercompany loss disallowed under paragraph (a)(1) of this section is limited to $50 because P's $10 gain on the disposition of the T stock is taken into account as a consequence of the same plan or arrangement.

(iv) The facts are the same as in (i) of this *Example*, except that P sells the T stock to A, a person related to P within the meaning of section 267(b)(2). Although S's intercompany loss is ordinarily taken into account under the matching rule of § 1.1502–13(c) as a result of P's sale, § 1.267(f)–1(c)(2)(ii) provides that none of the intercompany loss is taken into account because A is a nonmember that is related to P under section 267(b). Under paragraph (a)(3)(i) of this section, paragraph (a)(1) of this section does not apply to loss that is disallowed under any other provision. Because § 1.267(f)–1(c)(2)(ii) and section 267(d) provide that the benefit of the intercompany loss is retained by A if the property is later disposed of at a gain, the intercompany loss is not disallowed for purposes of paragraph (a)(3)(i) of this section. Thus, the intercompany loss is disallowed under paragraph (a)(1) of this section immediately before P's sale and is therefore never taken into account under section 267(d).

(b) * * *

(6) * * *

Example (5). * * *

(i) * * * S sells its T stock to P for $100 in an intercompany transaction, recognizing a $60 intercompany loss that is deferred under section 267(f) and § 1.1502–13. * * *

(ii) Under paragraph (a)(3)(i) of this section, the application of paragraph (a)(1) of this section to S's intercompany loss on the sale of its T stock to P is deferred because S's loss is deferred under section 267(f) and § 1.1502–13. * * *

(iii) T's issuance of the additional shares to the public does not result in S's intercompany loss being taken into account under the matching or acceleration rules of § 1.1502–13 (c) and (d), or under the application of the principles of those rules in section 267(f). However, the deconsolidation of T is an overriding event under paragraph (a)(3)(ii) of this section, and paragraph (a)(1) of this section disallows the intercompany loss immediately before the deconsolidation even though the intercompany loss is not taken into account at that time.

Example (7). * * *

(i) * * * S recently purchased its T stock from S1, a lower tier subsidiary, in an intercompany transaction in which S1 recognized a $30 intercompany gain that was deferred under § 1.1502–13. * * *

* * * * *

(iii) Under the matching rule of § 1.1502–13, S's sale of its T stock results in S1's $30 intercompany gain being taken into account. * * *

* * * * *

(c) * * *

(4) * * *

Example (9). Intercompany stock sales.

(i) P is the common parent of a consolidated group, S is a wholly owned subsidiary of P, and T is a wholly owned recently purchased subsidiary of S. S has a $100 basis in the T stock, and T has a capital asset with a basis of $0 and a value of $100. T's asset declines in value to $60. Before T has any positive investment adjustments or extraordinary gain dispositions, S sells its T stock to P for $60. T's asset reappreciates and is sold for $100, and T recognizes $100 of gain. Under the investment adjustment system, P's basis in the T stock increases to $160. P then sells all of the T stock for $100 and recognizes a loss of $60.

(ii) S's sale of the T stock to P is an intercompany transaction. Thus, S's $40 loss is deferred under section 267(f) and § 1.1502–13. Under paragraph (a)(3) of this section, the application of paragraph (a)(1) of this section to S's $40 loss is deferred until the loss is taken into account. Under the matching rule of § 1.1502–13(c), the loss is taken into account to reflect the difference for each year between P's corresponding items taken into account and P's recomputed corresponding items (the corresponding items that P would take into account for the year if S and P were divisions of a single corporation). If S and P were divisions of a single corporation and the intercompany sale were a transfer between the divisions, P would succeed to S's $100 basis and would have a $200 basis in the T stock at the time it sells the T stock ($100 of initial basis plus $100 under the investment adjustment system). S's $40 loss is taken into account at the time of P's sale of the T stock to reflect the $40 difference between the $60 loss P takes into account and P's recomputed $100 loss.

(iv) Under the matching rule of § 1.1502–13(c), the attributes of S's $40 loss and P's $60 loss are redetermined to produce the same effect on consolidated taxable income (and consolidated tax liability) as if S and P were divisions of a single corporation. Under § 1.1502–13(b)(4), attributes of the losses include whether they are disallowed under this section. Because the amount described in paragraph (c)(1) of this section is $100, both S's $40 loss and P's $60 loss are disallowed.

* * * * *

(e) * * *

(3) * * *

Example (5). Absence of a view.

(i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has 2 historic assets, asset 1 with a basis of $40 and value of $90, and asset 2

with a basis of $60 and value of $10. In Year 2, T sells asset 1 for $90. Under the investment adjustment system, P's basis in the T stock increases from $100 to $150. Asset 2 is not essential to the operation of T's business, and T distributes asset 2 to P in Year 5 with a view to having the group retain its $50 loss inherent in the asset. Under § 1.1502–13(f)(2), and the application of the principles of this rule in section 267(f), T has a $50 intercompany loss that is deferred. Under § 1.1502–32(b)(3)(iv), the distribution reduces P's basis in the T stock by $10 to $140 in Year 5. In Year 6, P sells all the T stock for $90. Under the acceleration rule of § 1.1502–13(d), and the application of the principles of this rule in section 267(f), T's intercompany loss is ordinarily taken into account immediately before P's sale of the T stock. Assuming that the loss is absorbed by the group, P's basis in T's stock would be reduced from $140 to $90 under § 1.1502–32(b)(3)(i), and there would be no gain or loss from the stock disposition. (Alternatively, if the loss is not absorbed and the loss is reattributed to P under paragraph (g) of this section, the reattribution would reduce P's basis in T's stock from $140 to $90.)

(ii) A $50 loss is reflected both in T's basis in asset 2 and in P's basis in the T stock. Because the distribution results in the loss with respect to asset 2 being taken into account before the corresponding loss reflected in the T stock, and asset 2 is an historic asset of T, the distribution is not with the view described in paragraph (e)(2) of this section.

* * * * *

(h) * * *

(1) * * * For this purpose, dispositions deferred under § 1.1502–13 are deemed to occur at the time the deferred gain or loss is taken into account unless the stock was deconsolidated before February 1, 1991.

* * *

* * * * *

Par. 17. Section 1.1502–26 is amended by revising paragraph (b) to read as follows:

§ 1.1502–26 Consolidated dividends received deduction.

* * * * *

(b) *Intercompany dividends.* The deduction determined under paragraph (a) of this section is determined without taking into account intercompany dividends to the extent that, under § 1.1502–13(f)(2), they are not included in gross income. See § 1.1502–13 for additional rules relating to intercompany dividends.

* * * * *

Par. 18. Section 1.1502–33, as proposed to be revised at 57 FR 53663, published November 12, 1992, is further amended by revising paragraph (c)(2) to read as follows:

§ 1.1502–33 Earnings and profits.

* * * * *

(c) * * *

(2) *Intercompany transactions.* Intercompany items and corresponding items are not reflected in earnings and profits before they are taken into account under § 1.1502–13. See § 1.1502–13 for the applicable rules and definitions.

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§ 1.1502–79 [Amended]

Par. 19. Section 1.1502–79 is amended by removing paragraph (f).

Par. 20. Section 1.1502–80, as proposed to be amended at 57 FR 53670, published November 12, 1992, is further amended by adding paragraphs (f) and (g) to read as follows:

§ 1.1502–80 Applicability of other provisions of law.

* * * * *

(f) *Non-applicability of section 163(e)(5).* Section 163(e)(5) does not apply to any intercompany obligation (within the meaning of § 1.1502–13(g)) issued in a consolidated return year beginning on or after [the date the final regulations are filed with the **Federal Register**].

(g) *Non-applicability of section 1031.* Section 1031 does not apply to any intercompany transaction occurring in consolidated return years beginning on or after [the date the final regulations are filed with the Federal Register].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–8488 Filed 4–8–94; 1:03 pm]

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26 CFR Part 1

[CO–11–91]

RIN 1545–AL63

Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearings on proposed rulemaking.

SUMMARY: This document contains a notice of two public hearings on proposed amendments to the consolidated return intercompany transaction system and to related rules. Because the proposed regulations affect a broad range of transactions, a preliminary hearing will be held to respond to general comments and questions by speakers, and a second hearing will be held to receive comments on the proposed regulations. Background information relating to the issues considered in developing the proposed regulations is provided in this document to facilitate comments.

DATES: A preliminary hearing will be held on May 4, 1994, beginning at 10 a.m. Requests to speak at this hearing must be received by April 20, 1994. A second hearing will be held on August 8, 1994, beginning at 10 a.m. Comments, requests to speak, and outlines of topics to be discussed at this hearing must be received by July 18, 1994.

ADDRESSES: The first public hearing will be held in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. The second public hearing will be held in the Auditorium, Internal Revenue Building, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington DC. Send submissions to: CC:DOM:CORP:T:R (CO–11–91), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, outlines may be hand delivered to: CC:DOM:CORP:T:R (CO–11–91), room 5228, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearings, Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7180; concerning the regulations relating to consolidated groups generally, Roy Hirschhorn or David Kessler of the Office of Assistant Chief Counsel (Corporate), (202) 622–7770; concerning stock of members of consolidated groups, Rose Williams of the Office of Assistant Chief Counsel (Corporate), (202) 622–7550; concerning obligations of members of consolidated groups, Victor Penico of the Office of Assistant Chief Counsel (Corporate), (202) 622–7750; concerning insurance issues, Gary Geisler of the Office of Assistant Chief Counsel (Financial Institutions and Products), (202) 622–3970; concerning international issues relating to members of consolidated groups, Philip Tretiak of the Office of Associate Chief Counsel (International), (202) 622–3860; and concerning controlled groups, Martin Scully, Jr. of the Office of Assistant Chief Counsel (Income Tax and Accounting), (202) 622–4960. (These numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

A. Hearing Procedures

The subject of the public hearings is the notice of proposed rulemaking (CO–11–91) that appears elsewhere in this issue of the **Federal Register**. Because

the proposed regulations affect a broad range of transactions, two public hearings are scheduled.

The rules of 26 CFR 601.601(a)(3) apply to both hearings.

The first hearing on May 4, 1994 will be devoted to general comments and questions by speakers, and policy discussions by the government panel to facilitate further evaluation of the proposed regulations. No outline of topics or comments is required of speakers at the first hearing, but persons wishing to present oral comments at the first hearing must submit their requests to speak by April 20, 1994.

The second hearing on August 8, 1994 is scheduled to receive comments after a reasonable opportunity has been provided to review the proposed regulations and evaluate the comments at the first public hearing. Persons wishing to present oral comments at the second hearing must submit written comments, requests to speak, and outlines of the topics to be discussed by July 18, 1994.

A period of 10 minutes will be allotted to each person for making comments at each hearing.

An agenda showing the scheduling of the speakers at each hearing will be prepared after the deadline for receiving submissions has passed. Copies of the agenda will be available free of charge at each hearing.

Because of access restrictions, visitors will not be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.m.

B. Background for Comments

The preamble in the notice of proposed rulemaking on the proposed revision of the intercompany transaction system describes the operation of the proposed regulations. See the notice of proposed rulemaking that appears elsewhere in this issue of the **Federal Register**. To assist in the preparation of comments, this document describes many of the significant issues and alternatives that were considered in developing the proposed regulations but does not repeat the discussion in the preamble.

Sections 1.1502–13, 1.1502–13T, 1.1502–14, 1.1502–14T, and 1.1502–31 contain most of the rules of the current intercompany transaction system. Developments in business practices and the tax law since the adoption of these rules in 1966 have greatly increased the problem of accounting for intercompany transactions. In addition, the consolidated return regulations have received increased attention in recent years because of their potential to facilitate circumvention of changes in tax law, such as repeal of the General Utilities doctrine by the Tax Reform Act of 1986. See Public Law 99–514.

Recent amendments to the intercompany transaction system have responded to specific problems but have not attempted a comprehensive revision. See, e.g., TD 8295 [1990–1 C.B. 165] (amendments to better coordinate the parties to an intercompany transaction), and TD 8402 [1992–1 C.B. 302] (inapplicability of section 304 to intercompany transactions).

The deferred sale approach of the current intercompany transaction system is retained in the proposed regulations, but the manner in which deferral is achieved is comprehensively revised. The proposed regulations reflect developments since 1966, including issues that are partially addressed in other recent consolidated return regulation projects. See, e.g., CO–30–92 [1992–2 C.B. 627] (proposed elimination of the current § 1.1502–31(b) special basis rules for in-kind distributions between members). The proposed regulations also incorporate many of the comments received in connection with recent proposals to amend the consolidated return regulations.

1. Separate and Single Entity Treatment

The current consolidated return regulations use a deferred sale approach that treats the members of a group as separate entities for some purposes and as a single entity for other purposes. For example, the amount, location, character, and source of items from an intercompany transaction are generally determined as if separate returns were filed (separate entity treatment), but the timing of items is determined more like the timing that would apply if the participants were divisions of a single corporation (single entity treatment).

If a selling member (S) sells property to a buying member (B), S must determine its own gain or loss, and B's basis in the property is generally its cost basis. These determinations treat the members as separate entities and they preserve the location within the group of income, gain, deduction, and loss from intercompany transactions. However, because consolidated taxable income is determined under §§ 1.1502–11 and 1.1502–12 by aggregating the income, gain, deduction, and loss of the members, the group's consolidated taxable income is clearly reflected only by generally matching the timing of S's and B's items from the intercompany transaction.

Some comments have suggested broadening the single entity treatment of consolidated groups for many purposes under the Internal Revenue Code of 1986 (Code) other than intercompany transactions. These suggestions generally have not been adopted in the proposed intercompany transaction regulations because they involve aspects of related-party and substance-over-form issues that are beyond the scope of the intercompany transaction system. The proposed regulations implement only those single entity principles that are essential to taking into account items from intercompany transactions to clearly reflect the taxable income (and tax liability) of the group as a whole. The taxable income (and tax liability) is clearly reflected by preventing intercompany transactions from creating, accelerating, avoiding, or deferring income (or tax liability) for the group.

2. Location of Items Within the Group

a. In General

If the members of a consolidated group remained constant, they had uniform status and accounting methods, and the only investment in the group were through the common parent, it would generally not be necessary to preserve the location of items within a group. Because these conditions are generally not present, however, preserving the location of items within a group is essential to the operation of the Code and consolidated return regulations.

Members of a consolidated group generally retain their treatment as separate entities for many purposes. Members may engage in unrelated activities, use different accounting methods, maintain separate status as a bank or insurance company, have nonmember investors in their stock and obligations, and enter or leave the group retaining their asset basis, their carryovers, and their special status.

Fixing the location of each member's items from intercompany transactions prevents circumvention of many Code provisions. For example, section 355 imposes exacting requirements for S to transfer appreciated assets without recognizing gain. If the intercompany transaction system permitted S's gain to be shifted to B, the benefits of section 355 would be available without satisfying the requirements of that section. Rather than transferring appreciated assets to a controlled subsidiary and distributing the stock to B under section 355, S could simply distribute the appreciated assets to B in an intercompany transaction without recognizing gain.

Similarly, members having a special status under the Code (e.g., a bank or an

insurance company) must make separate determinations of their income and deductions. For example, because section 1503(c) limits the use of consolidated group losses by life insurance company members, gain or loss cannot be transferred to or from a life insurance company member in circumvention of the limitation.

Fixing the items of each member is also essential to the operation of many consolidated return provisions outside the intercompany transaction system. See, e.g., §§ 1.1502–15 and 1.1502–21 (limitation on losses carried from separate return limitation years), 1.1502–32 and 1.1502–33 (adjustments to stock basis and earnings and profits), 1.1502–79 and 1.1552–1 (allocation among members of amounts computed on a consolidated basis).

For example, if S could shift the gain or loss in its assets to B, the related stock basis adjustments under § 1.1502–32 could also be shifted to eliminate any gain or loss to be recognized from a subsequent sale of the B stock. Similarly, direct interest of a creditor or nonmember shareholder in a subsidiary could be affected under a group tax sharing agreement by shifting gain or loss to or from the subsidiary through intercompany transactions. The distortions could extend into the separate return years of members (including consolidated return years of another group) by affecting the allocation of carryovers under § 1.1502–79 to a member leaving the group.

Commentators have suggested alternatives to the current deferred sale system that permit the shifting of items between members. These approaches are appealing because they simplify the operation of the intercompany transaction system by eliminating the need to value assets and services transferred between members.

The most common suggestion is to return to a carryover basis system similar to the pre-1966 intercompany transaction system. Under a carryover basis approach, the gain or loss of S from the sale of an asset to B is eliminated, and B succeeds to S's basis in the asset instead of taking a cost basis. All of the group's gain or loss from the asset would be taken into account by B, and the character and other attributes of the gain or loss would be determined solely by reference to B. This approach is consistent with generally accepted accounting principles (GAAP), which eliminate gross profit or loss from intercompany transactions in the preparation of consolidated financial statements.

A second suggestion has been to treat an intercompany transaction as if it had not occurred. Gain or loss from the transfer of an asset would be taken into account by S, and the timing and attributes of the gain or loss would be determined solely by reference to S. See, e.g., § 1.267(f)-1T(d) (deferred loss on depreciable property is restored based on the depreciation that would have been allowable to S if the transfer to B had not occurred).

The current deferred sale system was adopted in 1966 because of the many problems with the prior carryover basis system. The prior system permitted intercompany items to be recognized by the wrong member and at the wrong time, to be characterized improperly, and sometimes to be eliminated completely. See, e.g., *Beck Builders, Inc.* v. *Commissioner*, 41 T.C. 616 (1964), *appeal dismissed* (10th Cir. 1965) (intercompany income from the performance of services was eliminated without any corporate or shareholder level tax).

The problems with the alternatives to a deferred sale system have increased with the increasing complexity of the Code since 1966. Any system that allocates to one member the entire gain or loss from assets transferred in an intercompany transaction must compensate with numerous adjustments to accommodate each Code or regulatory provision that relies on location. For example, a carryover basis system might permit appreciated assets of S to be sold outside the group without gain recognition, by forming B with a cash contribution, selling S's asset to B for the cash, and then selling the B stock or S stock without recognizing the asset gain. This would be contrary to "mirror subsidiary" legislation. See, e.g., H.R. Rep. No. 391, 100th Cong., 1st Sess. 1081–84 (1987).

Although many of the problems could be addressed through supplemental adjustments to conform the outside stock basis of a member to changes in its inside asset basis, these adjustments would not eliminate all of the problems and would introduce new problems. See "Stock of members," discussed in this notice of hearing at B.5. Because each of the necessary adjustments would vary greatly as to its purpose and scope, the rules would be complex in the aggregate. By contrast, the deferred sale system under the proposed regulations will result in less complexity because it is based on separate return accounting and the rules required for single entity treatment have a common purpose that is more easily understood.

b. Comprehensive Single Entity Treatment

It is generally acknowledged that greater single entity treatment reduces anomalies and planning opportunities, and better reflects the economic unity of a consolidated group. See, e.g., CO–30–92, supra (investment adjustment regulations); CO–78–90 [1991–1 C.B. 757], and CO–132–87 [1991–1 C.B. 728] (limitations on the use of losses); and IA–57–89 [1993–6 I.R.B. 50] (alternative minimum tax computations). Single entity treatment has also been emphasized in the amendments to the intercompany transaction system since 1990.

It is sometimes suggested that the consolidated return regulations could be greatly simplified by adopting a comprehensive single entity approach. For example, the acquisition, disposition, or deconsolidation of a member's stock could be treated for all Federal income tax purposes as the acquisition or disposition of its assets in a manner similar to section 338(h)(10). Because the basis of the subsidiary's stock would then be irrelevant, the stock basis adjustment system under § 1.1502–32 could be eliminated, and the potential for "mirror subsidiary" transactions would be greatly reduced. Even this system would not completely eliminate the importance of the location of items within a group if, for example, members do not have uniform status or accounting methods, or nonmember shareholders or creditors have an interest in the group other than through the common parent.

Another approach to single entity treatment would be to completely ignore the separate existence of the members. This approach would significantly affect the application of many Code provisions to consolidated groups: members generally would not be permitted to have separate accounting methods; status as a bank or insurance company would be determined by treating all of the members as a single corporation; and losses and other carryovers would remain with the group in which they arose rather than be carried to separate return years as the members left the group. See also "Stock of members," discussed in this notice of hearing at B.5.

Comprehensive application of single entity treatment could be limited to specific activities of the members or to specific Code provisions. For example, if a group operates an integrated enterprise through subsidiaries, the members could be viewed as divisions to which single entity treatment would apply. Predominantly separate entity

treatment would apply to members engaging in unrelated activities. Differentiating between related and unrelated activities would present numerous definitional problems, and the treatment of members would have to be responsive to changes in their activities. Any approach that applies for only limited Code purposes would require numerous rules to coordinate with other Code provisions and to prevent inconsistent treatment.

3. Mechanical Rules

Until 1990, the intercompany transaction regulations were presented as a series of mechanical rules. See, e.g., § 1.1502–13(b) (intercompany transactions), and § 1.1502–13 (c) through (f) (deferred intercompany transactions). These rules reflect inconsistently applied single and separate entity principles.

For example, S's gain from the sale of property to B is taken into account under current § 1.1502–13(f) when B disposes of the property outside the group. Because the rule does not distinguish between different types of dispositions, S's restoration is required even if B disposes of the property in a like-kind exchange to which section 1031 applies. Restoring S's gain as a result of a section 1031 exchange by B does not, however, reflect single entity principles because a single entity generally would not recognize gain on the exchange. Moreover, the nonmember participating in the exchange does not succeed to B's cost basis from the intercompany transaction. Beginning in 1990, the mechanical rules were supplemented by more uniform, but narrowly focused rules. See, e.g., § 1.1502–13 (l) and (m). These new rules responded to specific transactions and were intended to limit inconsistent combinations of single and separate entity treatment under the mechanical rules. Because the 1990 amendments did not replace the fundamental mechanical approach, problems remain. For example, § 1.1502–13(m)(2) does not address the special issues presented by the disposition of property outside the group in a transaction that is a nonrecognition transaction under the Code. The proper treatment of these transactions cannot be uniform because they present a wide range of issues. Nonrecognition could reflect the deferral of gain or loss (e.g., because replacement property is received under section 1031 and the gain or loss will be taken into account by reference to the replacement property), duplication of gain or loss (e.g., through the operation of sections 358 and 362), or elimination or disallowance of gain or loss (e.g., section 301(d) provides for a fair market value basis even if the distributing member's loss is not recognized under section 311).

Some commentators have suggested that the current regulations be retained, but fine-tuned to address problems as they arise. Recent amendments have not been comprehensive revisions, and they have increased the already existing complexity because their interaction with the mechanical rules is unclear. For example, if S sells depreciable property to B, B's depreciation deductions result in restoration under both § 1.1502–13 (d) and (l) and these rules may restore S's gain at different rates.

Because mechanical rules cannot envision all the combinations of transactions and provisions of law that continue to develop, an approach based on mechanical rules will inevitably produce inappropriate results. Consequently, the proposed regulations adopt uniform rules of general application that reflect principles underlying the current mechanical rules. The uniform rules are flexible enough to apply to the broad range of transactions that can be intercompany transactions. For example, the proposed regulations do not require special rules to coordinate with the depreciation rules under section 168, the installment reporting rules under sections 453 through 453B, and the limitations under sections 267, 382, and 469. Flexible rules are consistent with the approach of recent guidance on tax accounting issues generally. See, e.g., § 1.461–4 (economic performance rules) and proposed § 1.446–4 (hedging transactions). Because the proposed regulations are flexible, they adapt to changes in the tax law and reduce the need for continuous updating. Thus, they should ultimately be easier to apply than mechanical rules.

4. Matching and Acceleration Rules

a. Matching Rule

The matching rule provides single entity treatment for the timing, character, source, and other attributes of items from intercompany transactions. For each consolidated return year, the matching rule requires S and B to take into account their intercompany items and corresponding items to reflect the treatment of S and B as divisions of a single corporation.

S generally determines its items taken into account based on the difference between the corresponding items B takes into account and B's recomputed items (the corresponding items B would have taken into account if S and B were divisions of a single corporation). One alternative that was considered would have determined the difference between the group's consolidated taxable income (rather than only B's items) and the group's recomputed consolidated taxable income (rather than only B's recomputed items). This approach was not adopted because determining the group's recomputed consolidated taxable income (determined by treating S and B as divisions of a single corporation) would be more complex than determining only B's recomputed items. For example, it would require interactive computations (e.g., the effect on absorption of a carryover loss), require numerous adjustments (e.g., for noncapital, nondeductible amounts), and involve circular computations in some cases (e.g., if S sells property to B, and B sells property to S).

Both the current regulations and the matching rule of the proposed regulations apply single entity treatment to redetermine the timing of S's intercompany items. The matching rule also redetermines the character, source, and other attributes of intercompany items and corresponding items on a single entity basis, while the current regulations redetermine attributes only in limited cases. The approach of the proposed regulations better reflects the economic unity of the members and coordinates single entity treatment with various systems under the Code. For example, if only timing is determined on a single entity basis, it must be distinguished from character, and the distinction is not always clear under the Code. See, e.g., section 469 (the passive activity rules may be viewed as character rules because they limit absorption of losses, or as timing rules because the losses ultimately will be absorbed).

In determining attributes, the proposed regulations take into account the activities of both S and B with respect to the intercompany transaction. Some argue that locking in character at the time of each intercompany transaction more accurately reflects the source and nature of the group's income. However, a single taxpayer generally does not lock in the character of its economic income as the use of its property changes. Instead, character is generally determined under common law principles based on all of the facts and circumstances. For example, the conversion of investment property to property held for sale to customers in the ordinary course of business generally causes any economically accrued gain or loss from the investment

period to become dealer gain or loss when later recognized.

b. Acceleration Rule

(i) In general. Under the acceleration rule, S's intercompany items are taken into account to the extent either the matching rule will not fully account for the items in consolidated taxable income, or the intercompany transaction is reflected by a nonmember. The acceleration rule reflects the conclusion that matching is appropriate only if the effect of treating S and B as divisions of a single corporation can be achieved.

Alternatives to the acceleration rule were considered, but none presented a satisfactory solution. Although it is possible to continue matching the items of S and B, matching would be inappropriate once S and B no longer join in the consolidated return of the group. In addition, continuing to integrate their accounting presents substantial administrative problems.

Another alternative would be for S and B to take their remaining items into account under their separate accounting methods. This approach would be administratively complex, because it would require numerous rules to resolve the issues that arise because of the differences between separate entity accounting and the matching rule. For example, if S sells a depreciable asset at a gain to B in exchange for a note, B depreciates the asset, and then the stock of B is sold to an unrelated person, S's remaining gain might be taken into account under the installment method. The limitations under section 453(g) (sale of depreciable property to a controlled entity) might not apply to S's gain if S is no longer related to B. If B's depreciation has caused S to restore more or less gain than S would have taken into account under the installment method, the difference would have to be reconciled.

Because separate entity accounting would produce the same results as the acceleration rule in most cases, the additional complexity is unwarranted.

(ii) Nonrecognition transactions. Under the current regulations, S's intercompany gain or loss from the sale of property is taken into account on the disposition of the property outside the group, even if the disposition is a nonrecognition transaction. By contrast, only certain nonrecognition dispositions by B result in S's intercompany gain being taken into account under the acceleration rule.

For example, if B transfers property to a nonmember in an exchange to which section 1031 applies, the acceleration rule would not apply because the intercompany transaction would have no effect on the nonmember, and S's intercompany items would continue to be matched with B's corresponding items from the replacement property. On the other hand, if B transfers the property to a partnership in a transaction to which section 721 applies, S's gain is accelerated because the partnership succeeds to B's cost basis under section 723. This result is inconsistent with single entity treatment because, if S and B had been divisions of a single corporation, S's transfer to B generally could not have created a cost basis to be reflected by the partnership in the property.

Some commentators argue that an intercompany sale of property from S to B, followed by a section 351 or 721 contribution of the property to a nonmember (including deemed contributions under section 708), warrants special rules. It is suggested that single entity treatment could be achieved by continuing the deferral of S's intercompany items, and adjusting the nonmember's basis in the property as if the order of events had been reversed. Thus, S would be treated as making the section 351 or 721 contribution to the nonmember and selling the stock or partnership interest in the nonmember to B. S's intercompany gain or loss would therefore be taken into account by reference to the stock or partnership interest in the nonmember rather than by reference to the asset.

Reversing the order of events may require numerous adjustments to reflect all of the resulting tax consequences. For example, results that could not have been achieved under the reverse order must be eliminated. If depreciable property is involved, the group would have to shift to the nonmember all depreciation deductions following the intercompany transaction because the property is treated as transferred by S to the nonmember before the intercompany transaction. Discontinuities would have to be addressed (e.g., if B contributes the property to a nonmember corporation subject to its own liabilities, treating S as contributing the property before the intercompany transaction might cause section 357 to apply to the nonmember's assumption of B's liability together with associated basis consequences. Different rules may be required for losses and gains (e.g., if S is a dealer but B is not, and B contributes the property to a partnership, reordering the events may allow the group to select the character of the property based on the rules under section 724). See also "Stock of members," in this notice of hearing at B.5. (problems with reversing the order of transactions).

Another alterative would continue deferral following B's contribution of the property to a partnership if the partnership adopts special allocations to prevent nonmember partners from being affected by B's cost basis. (Sections 704(c) and 737 would not address the problem.) Although special partnership allocations might be adopted, additional adjustments would be required to override otherwise applicable rules that might result in nonmembers reflecting the intercompany transaction.

(iii) Subgroups. The current regulations do not restore S's items if the group terminates by reason of its acquisition by another consolidated group (provided that all of the members immediately before the acquisition become members of the acquiring group). Consideration was given to expanding this successor rule to encompass subgroup principles. See, e.g., § 301.6402–7(h)(2) (insolvent financial institution subgroups), and proposed § 1.1502–21(c)(2) (subgroup rules under the separate return limitation year rules). For example, if another consolidated group simultaneously acquires only the stock of S and B, S's intercompany items could continue to be deferred and taken into account in the acquiring group under the matching rule. (S's intercompany items from intercompany transactions with members other than B would be accelerated.)

The essential issue raised by subgrouping is whether single entity treatment should focus on treatment of the entire consolidated group in which the intercompany transaction occurs, or only on the treatment of S and B as the parties to the transaction. It is not clear that subgroup rules would be consistent with single entity treatment under the intercompany transaction system.

For example, if S is deferring gain from a sale of property to B, and the stock of S and B are simultaneously purchased by another group, the basis of S's stock will not be increased under § 1.1502–32 for the intercompany gain unless it is accelerated before the sale. Thus, selling group's gain from the sale of S's stock may be duplicated when S's intercompany gain is later taken into account by the buying group. This gain duplication is inconsistent with treating the selling group as a single entity. See also § 1.1502–20 (the buying group will not be permitted a loss from stock basis adjustments under § 1.1502–32 attributable to S's built-in intercompany gain).

Because the purpose for single entity treatment under the intercompany

transaction system is based on the effect of intercompany transactions on consolidated taxable income, it is not clear that focusing on the individual members participating in intercompany transactions (rather than on the group) is appropriate. (But see the proposed section 267(f) regulations, which provide for subgrouping because the deferral of loss is based on the relationship of S and B to each other rather than on their membership in a particular controlled group.)

Subgroup rules would increase the complexity of the intercompany transaction system. Compare proposed §§ 1.1502-21(c)(2) and 1.1502–91 to 1.1502–96 (subgroup rules in other contexts). Subgroup rules might require distinguishing between gain and loss, special rules might be required to apply certain Code provisions to transactions indirectly between separate consolidated groups, and coordinating rules for S's reacquisition of property sold to B would be required. Rules would also be necessary for back-to-back intercompany transactions, and it may be necessary to require the members of a subgroup to bear a section 1504 relationship to each other to minimize the effect of intercompany items and corresponding items on stock basis under § 1.1502–32.

c. Simplifying Rules

Because of the complexity associated with accounting for items under any deferred sale system, consideration was given to proposing simplifying rules for de minimis or ordinary course intercompany transactions.

Simplifying rules might be appropriate for infrequent transactions between members of small groups, because the valuation difficulties of a deferred sale system could be disproportionate to the potential effect on consolidated taxable income. The relief might be to account for the transactions under a carryover basis system. Problems would arise, however, in defining an "infrequent transaction" and "small group." Complexities could also arise concerning the treatment of fluctuations in group size, and the need for special rules to limit the cumulative effect of simplifying rules.

At the other extreme, simplifying rules might be appropriate for large groups with members that transact primarily with nonmembers, but occasionally transact with members in the ordinary course and on the same terms and conditions. The burdens on the group of accounting for intercompany transactions under rules different from the group's other accounting systems may also be disproportionate. Relief in this situation might be separate return accounting that conforms with the group's generally applicable inventory systems, but any such system would present new problems and require special rules (e.g., to prevent a group for accelerating only its intercompany losses under the separate return rules).

Any simplifying rules of general application would be in addition to the general rules. Different groups may require different forms of relief, and groups would need to be familiar with all of the systems. The burdens of simplifying rules appear to outweigh their benefits. Instead of rules of general application, limited rules are included to simplify the treatment of inventories and reserve accounting. In addition, the election under current law to not apply the intercompany transaction system is retained.

In simplifying the rules for members using a dollar-value LIFO inventory method, consideration was given to a "carryover basis method" that more precisely conforms to the matching rule. Under the carryover basis method, B would determine the difference each year between its corresponding inventory items taken into account and its recomputed corresponding inventory items (the items that B would take into account for the year if S and B were divisions of a single corporation). For this purpose, B would recompute the value of its LIFO inventory using a carryover basis amount for its intercompany purchases rather than actual costs. The cumulative difference in the LIFO inventory value of B's pool that receives intercompany purchases would be treated as the amount of intercompany inventory items not taken into account by S, because that amount is included in a LIFO layer of B. To ensure that only S's intercompany inventory items are reflected in B's LIFO value difference, B's base-year cost of recomputed inventory purchases would be the same as the actual base-year costs under B's dollar-value LIFO inventory method.

An advantage of the carryover basis method is B's familiarity with its dollar-value LIFO inventory computations. The only required recomputations are the substitution of carryover costs for the actual costs of intercompany purchases. All of the LIFO submethods of B would otherwise be used. S would make no additional computations other than computing the carryover basis amount of its inventory sold to B.

Distortions could result under the carryover basis method, however, if other costs in the LIFO computation affect B's carryover basis amount in a manner different from their affect on B's actual cost for intercompany inventory purchases. For example, if S sells raw material to B for further processing, the raw material may be allocated additional costs by B under burden rate methods that use the cost of goods as the base for allocation. Thus, costs would be allocated to the raw materials one way at their carryover basis, and another way at their actual cost. This difference would be reflected in B's LIFO inventory value. Because the carryover basis method assumes that the difference in LIFO inventory values equals the amount of S's intercompany inventory items, any additional differences would distort the results.

5. Stock of Members

Notwithstanding their similarities, stock is different from other assets within a group. A member's stock generally has no value independent of the member's underlying assets, yet has its own basis and holding period under the Code.

Both the current regulations and the proposed regulations generally treat a member's stock as an asset separate from the member's underlying assets. For example, if a member's stock is sold in an intercompany transaction, the gain or loss from the sale is taken into account under the matching and acceleration rules of the proposed regulations like gain or loss from any other asset.

The stock basis adjustment rules under § 1.1502–32 provide a significant degree of single entity treatment for member stock. However, the complexities of single entity treatment for member stock under the Code prevent more generally disregarding the separate existence of stock for purposes of intercompany transactions.

Some commentators have argued for the elimination of any gain or loss from transactions with respect to a member's stock—in effect applying section 1032 on a single entity basis. Others would limit this treatment to transactions by a member involving the stock of the common parent (P). Thus, if P contributes its own stock to S, S should not recognize gain if it later sells the stock to a nonmember or if it later distributes the stock back to P. Compare proposed § 1.1032–2 (S's use of P stock in certain triangular reorganizations does not result in gain or loss to S).

The commentators argue that S should not recognize gain or loss from its sale of P stock because the transaction is equivalent to P selling its own stock and contributing the proceeds to S. It is argued that this single entity treatment is particularly

compelling in the consolidated return context. For example, S's gain or loss on the sale of P stock is reflected in P's earnings and profits under § 1.1502–33 and P's tax liability under § 1.1502–6, even though P would have no earnings and profits or tax liability from its sale of P stock.

Treating each member's sale of P stock as a direct sale by P would be an expansive application of single entity treatment. Although commentators generally focus only on sales of P stock by members, an expansive single entity approach, if adopted, would have far-reaching effects.

Consistently treating S and P as a single entity would require treating any acquisition by S of P stock as a direct acquisition by P of its own stock in a deemed redemption. The application of section 304 principles and the associated consequences (e.g., adjustments to earnings and profits) would have to be expanded to all such cases and coordinated with other Code provisions. Compare *Bhada* v. *Commissioner*, 892 F.2d 39 (6th Cir. 1989) (S stock exchanged by S for P stock is not "property" under section 304(a)(2)(A)).

Comparable results would be required in an indirect acquisition if, for example, S owns appreciated P stock when S becomes a member of the P group. The P stock owned by S would have to be treated as redeemed and taxed immediately. Compare proposed § 1.337(d)–3 (P's acquisition of an interest in a partnership that owns P stock is treated as a redemption of the stock).

Following the deemed redemption of the P stock owned by S, expansive application of single entity treatment would result in elimination of any subsequent gain or loss of S from disposing of the P stock. The gain or loss could be eliminated, for example, either by adjusting S's basis in the P stock to fair market value or by expanding the application of section 1032.

Any form of elimination will require a definition of the disposition to which the elimination applies (including indirect dispositions such as S becoming a nonmember), and rules to coordinate the effects of the elimination, including: The determination of P's basis in its S stock; the determination of each member's earnings and profits; the treatment of any interest by nonmember shareholders investing directly in S; the treatment of intermediate members if S is not a direct subsidiary of P; the treatment of stock equivalents (e.g., warrants, convertible debt, and indirect interests through passthrough entities); and the resolution of transitional problems.

Applying consistent single entity treatment for stock would raise numerous issues under the Code, including: Distinguishing between intercompany transactions that are taxable (e.g., as sales) and tax-free (e.g., as deemed reorganizations); sharing the earnings and profits of all members for purposes of characterizing distributions by either S or P; expanding the application of sections 305, 306, and 354 if S issues its own preferred stock to acquire existing P stock held by nonmember P shareholders; disqualifying a liquidation by P under section 332 that includes a distribution to S because the distribution to S prevents P from completely liquidating; and treating both P and S as a party in any two-party reorganization involving a nonmember and either S or P.

Single entity treatment may ultimately compel the conclusion that S stock held by P also be treated as treasury stock held by S (and any member's ownership of the stock of another member be treated as treasury stock held by that other member). For example, if P owns 79% of S's stock and later acquires the remaining 21%, single entity treatment may require treating P's 79% interest as redeemed immediately after S becomes a member because P's stock in S would be treated as becoming treasury stock of S. Thus, P's gain or loss inherent in the 79% interest would be taken into account immediately.

The proposed regulations do not adopt expanded single entity treatment for stock of members. That approach would greatly increase the complexity of the proposed regulations and would have significant consequences for the tax liability of a group. Although complexity could be reduced (e.g., by limiting single entity treatment to a higher-tier member's ownership of a lower-tier member's stock or to common parent stock owned by a wholly-owned, first-tier subsidiary), numerous problems would remain.

One stock transaction that has received a significant amount of attention regarding single entity treatment is the liquidation of a member following an intercompany sale or distribution of its stock. Under the current regulations, if S sells all of the stock of a lower-tier member (T) to B at a gain, and T subsequently liquidates under section 332, S's gain is taken into account. If the basis of T's assets conformed to the basis of its stock before S's sale, S's gain from the T stock will be duplicated by gain that the group later recognizes from the former T assets (because B succeeds to T's basis in the assets). The problem could also arise, for example, if T is deemed to liquidate as the result of an election under section 338(h)(10), or if B merges downstream into T. Commentators have argued that single entity treatment should apply to eliminate S's gain, or to coordinate the gain with any corresponding gain inherent in the former T assets.

The proposed regulations provide limited, administrable relief that should be available in the most common circumstances. Although several more comprehensive solutions to these problems have been suggested by commentators, they are generally not feasible. The simplest solution is to eliminate S's gain when T liquidates, but this approach would permit gain that arose in S to be eliminated and is therefore inconsistent with the objectives of the proposed regulations to preserve location. See "Location of items within the group," discussed in this notice of hearing at B.2.

A second approach would provide an election under section 336(e) to eliminate S's gain by treating S's sale of T stock as a sale by T of all of its assets. The implementation of section 336(e) raises several problems. For example, each of T's assets must be separately valued and intercompany gain traced to the individual assets, special rules would be necessary for lower-tier subsidiaries and transfers of less than all of the T stock, and liquidation-reincorporation concerns would have to be resolved. If the election is required at the time of S's sale, it would not be useful to many taxpayers because the subsequent liquidation will not be anticipated. However, if an election is not required until the liquidation occurs, it might no longer be feasible to determine the consequences of the treatment or to amend the returns for all affected prior years.

A third approach would effectively reverse the order of S's intercompany stock sale and the subsequent sale of the former T assets. S would take into account the subsequent asset gain from the former T assets as it is recognized, instead of taking into account its own stock gain. This approach approximates the results that would have occurred if T's asset gain had been recognized before the intercompany stock sale and the stock gain eliminated because of the basis adjustments under § 1.1502–32. Although the location of the group's single gain is preserved in S, and the character of the gain is consistent with the reversal of order, the tracing required of the former T assets would be complex, and additional adjustments would be required to account for S's use

of the stock sale proceeds. See also "Acceleration rule—nonrecognition transactions," in this notice of hearing at B.4.b.ii. (problems with reversing the order of transactions).

The proposed regulations provide special rules to clarify the results if a member acquires its own stock in an intercompany transaction. The proposed regulations generally take into account immediately any intercompany items from transferring an issuer's stock back to the issuer in an intercompany transaction, because future matching is no longer possible. The results are consistent with the separate entity treatment preserved under the proposed regulations by not deeming P's acquisition of S stock as a deemed redemption of any P stock that S owns. (Possible deemed redemption treatment remains under study. See, e.g., proposed § 1.337(d)–3, under which P's acquisition of an interest in a partnership that owns P stock is treated as a redemption of the stock.) Administrative difficulties prevent distinguishing S's gain or loss accruing after it is a member from the gain or loss that was built-in when it became a member, and any such distinctions would result in inconsistent combinations of single and separate entity treatment.

6. Obligations of Members

Legislative and judicial developments since 1966 that are applicable to all obligations have affected the treatment of obligations between members. For example, the Code provisions for taking into account bond premium and discount have been comprehensively revised to incorporate time value of money principles. See, e.g., Public Law 98–369, sections 41–44 (sections 163(e) and 1271 to 1288).

Section 108(e)(4) was enacted in 1980 to prevent avoidance of discharge of indebtedness. The statute adopts a limited single entity approach by treating the acquisition of debt by a person related to the debtor as comparable to the debtor's acquisition of its own debt. The regulations implementing section 108(e)(4) include some circumstances in which the holder of the debt becomes a person related to the debtor.

The preamble to the proposed section 108(e)(4) regulations indicates that the consolidated return regulations would be modified to apply similar principles to any transaction in which a debtor and the holder of the debt become members of the same consolidated group. See CO–90–90 [1991–1 C.B. 774], clarified by Notice 91–15, 1991–1 C.B. 319. The proposed intercompany transaction regulations implement this treatment of members of a consolidated group.

Special consideration has been given in recent years to the issues presented by developing markets for notional principal contracts and other sophisticated financial instruments. These obligations are not clearly described under the current consolidated return regulations because their exponential growth only began over the last decade. Section 1.446–3 provides for the timing of income and deductions from notional principal contracts, but does not address many of the issues arising from notional principal contracts between related parties.

Section 475 was enacted in 1993 to address problems with measuring the income of dealers in securities, including these contracts. See Public Law 103–66, § 13223. Section 475 generally requires a dealer to mark-to-market its position in securities, and may greatly expand the instances in which items are recognized by a member with respect to intercompany obligations.

Notional principal contracts and other securities are frequently used to hedge assets or liabilities. Section 1.1221–2T generally conforms the character of items from the contracts with the items from the underlying assets or liabilities. Similar rules are proposed in § 1.446–4 to conform the timing of the items. The purpose of these rules is to match the timing and character of items from hedging transactions with the items being hedged. See TD 8493, FI– 46–93, and FI–54–93 [1993–35 I.R.B. 16, 22, and 24]. Although these rules apply to certain hedging of aggregate risks, they do not apply if a taxpayer hedges the risk of a related party.

The proposed regulations provide greater single entity treatment for intercompany obligations than for member stock. Greater single entity treatment is possible because the separate return rules under the Code already provide that the aggregate income and deductions of the parties to obligations generally correspond in amount and effect on earnings and profits. In the consolidated return context, these provisions generally produce offsetting items whose timing and character can be conformed. Concerns about the location of items within a group can be addressed by making only limited adjustments to the separate return rules. For example, the separate return regulations under section 108(e)(4) provide essentially single entity treatment for related-party acquisitions of debt. Only limited rules are necessary under the proposed regulations to conform the section 108(e)(4) rules to the single entity treatment of consolidated groups.

By contrast, there are significant differences between the treatment of issuers and holders of stock that would entail numerous adjustments to conform the amount, location, and collateral effects of items, as well as timing and character. For example, section 304 treatment would be required for stock transactions that are comparable to section 108(e)(4) transactions. Thus, section 304 principles would have to be extended to all transactions which result in one member owning another member's stock (e.g., an indirect acquisition in which the holder of the stock becomes a member). Adjustments would be necessary for earnings and profits and stock basis, and additional rules would be necessary to treat a subsequent disposition of the stock as an issuance that does not result in gain or loss.

Several approaches to single entity treatment were considered for intercompany obligations. One approach would treat all gain or loss with respect to an intercompany obligation as a transfer with respect to stock. For example, if the debtor member retires its intercompany debt at a discount, the creditor member's corresponding loss would be treated as a capital contribution or distribution, as the case may be, to the debtor member. See generally §§ 1.61–12(a) and 1.301–1(m). If the debtor and creditor are in a brother-sister (rather than parent-subsidiary) relationship within a group, additional adjustments would be required.

Treating the creditor member's loss as a capital contribution (or distribution) ensures that the loss does not affect the overall determination of consolidated taxable income, but it would distort the location of items within a group. For example, if a debtor or creditor is a subsidiary with nonmember shareholders, a portion of any decrease in the value of the debt would be borne by these shareholders rather than the group. Treating the creditor member's entire loss as a capital contribution would also fail to reflect the interests of the nonmember shareholders in the debtor or creditor for purposes of stock basis and earnings and profits adjustments under §§ 1.1502–32 and 1.1502–33.

The proposed regulations generally adopt a single entity approach by requiring both parties to an intercompany obligation to take offsetting items into account under the matching rule. Because the income and loss of the parties are separately taken

into account, their items are separately reflected in the stock basis and earnings and profits adjustments under §§ 1.1502–32 and 1.1502–33 (and thereby reflect the interests of any nonmember shareholders).

The proposed regulations provide rules for two categories of transactions involving intercompany obligations. The first category generally includes transactions in which an intercompany obligation is sold to a nonmember or otherwise becomes an obligation that is not an intercompany obligation (e.g., the debtor or creditor becomes a nonmember). The proposed regulations treat the intercompany obligation as satisfied immediately before the transaction and reissued immediately after the transaction.

Treating the obligation as satisfied immediately before the transaction results in both gain and loss of the parties from the satisfaction being taken into account in the determination of consolidated taxable income. The matching rule conforms the timing and attributes of the items to prevent any effect on consolidated taxable income.

By conforming timing and attributes in the determination of consolidated taxable income and treating the obligation as reissued immediately after the transaction, the intercompany obligation is effectively treated as first existing as an obligation only after it is held by a nonmember. Thus, if S sells B's debt obligation to a nonmember at a discount, the debt is treated by both B and the nonmember as having original issue discount to which section 1272 applies (rather than market discount to which sections 1276 through 1278 apply). This single entity treatment avoids mechanical rules and accommodates any future changes in the separate return rules for the taxation of indebtedness.

The second category includes transactions in which an existing obligation becomes an intercompany obligation. Although section 108(e)(4) applies to many of these cases, it does not apply to all of them.

Because the focus of section 108(e)(4) is to prevent avoidance of discharge of indebtedness income, § 1.108–2 requires only the debtor to recognize gain or loss. The proposed regulations treat both the debtor and creditor as recognizing gain or loss. For example, if a nonmember creditor becomes a member, the obligation is treated as retired and reissued immediately after the obligation becomes an intercompany obligation. Because the amounts taken into account accrued before the debtor and creditor joined in filing a consolidated return, the proposed regulations preserve the separate return attributes of the gain and loss, and these amounts might not conform in character. The deemed satisfaction and reissuance avoids the need to expand the mechanical rules of § 1.108–2.

The separate return rules for obligations satisfied, modified, or issued in a reorganization or other nonrecognition transaction are under study as part of a separate project. See, e.g., Rev. Rul. 74–54, 74–1 C.B. 76 (indebtedness of a parent corporation is an asset to which section 332 applies); *Estate of Helen Gilmore* v. *Commissioner*, 40 B.T.A. 945 (1939), *acq.* 1940–1 C.B. 2 (indebtedness of a shareholder is an asset to which the predecessor of sections 331 applies); and Rev. Rul. 93–7, 1993–1 C.B. 125 (recognition of gain or loss on distribution of debt by creditor partnership to debtor partner). The rules for these nonrecognition transactions will be coordinated with the rules of the proposed regulations for the treatment of transactions in which an existing obligation that becomes an intercompany obligation, to the extent that the transactions are comparable. Different treatment may be appropriate if, for example, an insolvent target is acquired by its significant creditor, because the target's insolvency for purposes of section 108(a) might be eliminated if the discharge were treated as occurring immediately after the acquisition.

Although recent proposed regulations under § 1.446–4 generally attempt to match the timing of items from hedging transactions with the items being hedged, the current consolidated return regulations might prevent this matching. For example, S may reduce its interest rate risk on an existing debt owed to a nonmember by entering into an intercompany interest rate swap contract with B (the member that centralizes the hedging activities of the group). B may, in turn, offset its net aggregate risk by entering into an offsetting contract with a nonmember. If B is subject to section 475, B's interest in the intragroup contract and its interest in the contract with the nonmember are marked-to-market. If the intragroup contract is an intercompany obligation to which current § 1.1502–14(d) applies, however, B's marking to market gain or loss from the intragroup contract is deferred unless section 475 requires otherwise. If S is not subject to section 475, it does not mark to market either its debt or its interest in the intragroup contract. Thus, the timing of the items from the intragroup contract, S's debt, and B's contract with the nonmember may not necessarily match. Of S's two positions and B's two positions, only gain or loss from B's contract with the nonmember would be currently taken into account.

The proposed regulations treat B's marking to market of its interest in the intragroup contract as resulting in the satisfaction and reissuance of the contract. Thus, B takes into account immediately its gain or loss from the deemed retirement of the intragroup contract, and S takes into account an offsetting amount of loss or gain. A new intragroup contract is then deemed to be reissued at a discount or premium (to reflect its fair market value) that is taken into account over time based on the applicable rules for the type of obligation. The net timing effect on consolidated taxable income is similar to the deferral that would be required for the obligation under the current regulations if § 1.1502–14(d) applies. It is also analogous to the effect on consolidated taxable income if S and B had not entered into the intragroup contract, but B nevertheless had contracted with the nonmember by reason of S's interest rate risk (i.e., a related-party hedge). However, the deemed satisfaction and reissuance under the proposed regulations preserve the location of each member's items.

The proper treatment of related-party hedging transactions is also being considered in conjunction with the finalization of regulations under sections 446 and 1221. See, e.g., TD 8493, FI–46–93, and FI–54–93 [1993–35 I.R.B. 16, 22, and 24]. Depending on the treatment under those final regulations of hedging transactions in which one member of a consolidated group offsets the risk of another member, it may be necessary to modify the consolidated return regulations to clearly reflect consolidated taxable income.

7. Conclusion

This document was prepared to provide background information on the issues and approaches considered in developing the proposed regulations. Comments and questions concerning the intercompany transaction system need not be limited to the issues discussed in this document.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

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

[FR Doc. 94–8489 Filed 4–8–94; 1:03 pm]

BILLING CODE 4830–01–U

26 CFR Part 31

[EE–45–93]

RIN 1545–AR67

Electronic Filing of Form W–4

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations pertaining to Form W–4, Employee's Withholding Allowance Certificate. The proposed regulations would authorize employers to establish systems to permit employees to make certain changes electronically to their Forms W–4. The proposed regulations will provide employers and employees with guidance necessary to comply with the law, and will affect employers and employees who choose to avail themselves of the procedure. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by June 14, 1994. Requests to speak (with outlines of oral comments) at a public hearing scheduled for July 15, 1994, at 10 a.m., must be received by June 24, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–45–93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, seventh floor, 7400 corridor, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karin Loverud, 202–622–6060; concerning submissions and the hearing, Carol Savage, 202–622–8452. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is in § 31.3402(f)(5)–2. This information is required by the IRS to ensure that, if the IRS requests it, employers will be able to furnish a hard copy of the electronic Form W–4. This information will be used to verify that the employer used the electronic Form W–4 data properly. The likely respondents are state and local governments, business or other for-profit institutions, federal agencies or employees, nonprofit institutions, and small businesses or organizations. Estimated total annual reporting burden: 40,000 hours. The estimated annual burden per respondent varies from 10 minutes to 20 minutes, depending on individual circumstances, with an estimated average of 15 minutes. Estimated number of respondents: 2,000. Estimated annual frequency of responses: on occasion.

Background

This document contains proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 3402 of the Internal Revenue Code (Code). These amendments are proposed to authorize a procedure for employees to file Forms W–4, Employee's Withholding Allowance Certificate, and are to be issued under the authority of section 7805.

Every employee is required to furnish his or her employer with a signed withholding exemption certificate on or before commencing employment. The form and content of the certificate are prescribed by the regulations, which specifically identify the Form W–4 as the form prescribed. The number of withholding exemptions to which an employee is entitled on any day depends upon the employee's marital status, the employee's filing status, the number of the employee's dependents, the number of exemptions claimed by the employee's spouse (if any) on a Form W–4, and the amount of the employee's estimated itemized deductions, tax credits, and certain other deductions from income.

If the number of withholding exemptions to which an employee is entitled becomes greater than the number claimed by the employee on Form W–4, the employee may furnish the employer with a new Form W–4 showing the correct number of withholding exemptions. The employee is required to furnish the employer with a new Form W–4 within 10 days if the number of withholding exemptions to which the employee is entitled becomes fewer than the number claimed by the employee on Form W–4.

Similarly, if the employee incurred no income tax liability for the preceding taxable year and anticipates that he or she will incur no income tax liability for the current taxable year, the employee may furnish the employer with a new Form W–4 containing these statements. But, if the employee furnished such a Form W–4 and later in the year no longer believes that he or she will incur no income tax liability for the current taxable year, the employee is required within 10 days to furnish the employer with a new Form W–4 that does not contain the statements.

The existing regulations set forth rules for employers to submit copies of certain Forms W–4 to the IRS. Employers must submit a copy of each Form W–4 on which the employee claims more than 10 withholding exemptions. Employers must also submit a copy of each Form W–4 on which the employee claims exemption from withholding for the taxable year, and the employer reasonably expects, when the Form W–4 is received, that the employee's wages from that employer will usually be $200 or more per week.

Explanation of Provisions

Currently no provision exists for employees to furnish withholding exemption certificate information in a form other than on a paper Form W–4. The proposed regulations establish requirements for employers who wish to install electronic systems for employees to use to furnish withholding exemption changes to their employers.

If an employer chooses to establish an electronic system, the employer will be free to determine the type of system (such as telephone or computer) or systems available to its employees. The system or systems must, however, reliably identify the user, ensure that the information received is the information sent, and document occasions of employee access. The electronic filing must contain exactly the same information as the paper Form W–4. Upon request by the IRS, the employer must supply a hard copy of the electronic Form W–4 and a statement that, to the best of the employer's knowledge, the electronic Form W–4 was filed by the named employee.

The proposed regulations do not require employees of an employer who has established an electronic system to use the system to furnish withholding exemption information. Nor do the proposed regulations permit an employer who has established a system to require all employees to use the system in lieu of furnishing withholding exemption information on a paper Form W–4. The authorization of the use of electronic systems for the transmission

of withholding exemption information is merely an alternative to the use of a paper Form W–4 for employers and their employees who choose to use the electronic system.

The authorization provided in the proposed regulations does not apply to the initial Form W–4 furnished to an employer by a new employee. The authorization also does not apply to Forms W–4 that are required to be furnished by the employer to the IRS. Forms W–4 that are required to be furnished to the IRS are those on which the employee claims more than 10 withholding exemptions, and those on which the employee claims exemption from withholding for the taxable year (unless the employer reasonably expects that the employee's wages from that employer will not usually exceed $200 per week).

An employer should use electronically transmitted W–4 information furnished by an employee only for the purpose for which it is provided. W–4 records maintained by the employer should be kept confidential and disclosed internally only to authorized users of the electronic system and employer agents on a need-to-know basis.

The regulations are proposed to become effective when they are published in the **Federal Register** as a treasury decision.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in EO 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Friday, July 15, 1994, at 10 a.m., in the IRS Auditorium, 7400 corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 601.601(a)(3) apply to the hearing.

Persons that have submitted written comments by June 14, 1994, and want to present oral comments at the hearing must submit, not later than June 24, 1994, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

Drafting Information

The principal author of these proposed regulations is Karin Loverud, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

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

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.3402(f)(5)–2 is added to read as follows:

§ 31.3402(f)(5)–2 Electronic filing of withholding exemption certificates.

(a) *In general.* An employer may provide its employees with the option of electronic filing of those withholding exemption certificates to which this section applies. The employer must, nevertheless, provide its employees with the option of filing paper withholding exemption certificates.

(b) *Certificates to which this section applies*—(1) *In general.* This section applies to any withholding exemption certificate permitted or required by 31.3402(f)(2)–1(b) (change in status affecting calendar year) or 31.3402(f)(2)–1(c) (change in status affecting next calendar year). This section does not apply to the withholding exemption certificate required by 31.3402(f)(2)–1(a) (commencement of employment).

(2) *Exception for certificates that must be submitted.* Notwithstanding paragraph (b)(1) of this section, this section does not apply to any withholding exemption certificate for which submission to the Internal Revenue Service is required under 31.3402(f)(2)–1(g)(1) (regarding certificates that claim more than 10 withholding exemptions and certain claims of exemption from withholding).

(c) *Requirements*—(1) The electronic system must reliably identify the user, ensure that the information received is the information sent, and document occasions of employee access.

(2) The electronic filing must contain exactly the same information as the paper Form W–4.

(3) Upon request by the Service, the employer must supply a hard copy of the electronic Form W–4 and a statement that, to the best of the employer's knowledge, the electronic Form W–4 was filed by the named employee.

Margarett Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 94–8935 Filed 4–14–94; 8:45 am]
BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[OPP–36189; FRL–4186–4]

Flammability Labeling Requirements for Total Release Fogger Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to require additional precautionary labeling relating to the flammability of total release fogger pesticides. EPA has found that total release foggers as currently labeled represent an unreasonable risk to property and pesticide users from fires and explosions that can be caused by a build-up of extremely flammable propellants. EPA expects that the additional flammability label warnings would reduce the potential for fires and explosions by alerting consumers to the dangers of total release foggers and providing specific directions for proper use of these products with minimal costs to industry or consumers. Specific label requirements are proposed, including physical and chemical hazards warning statements and specific directions for use for total release foggers.

DATES: Written comments, identified by the document control number [OPP–36189], must be received on or before June 14, 1994.

ADDRESSES: By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Room 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed as confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be put in the public record by EPA without further notice to the submitter. All written comments will be available for public inspection in Room 1132 at the Virginia address given above, from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, 2800 Crystal Drive, Arlington, VA (703–308–8319).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

This proposed amendment to the labeling requirements for pesticides and devices, 40 CFR 156.10, is issued under the authority of sections 2, 3, 6, 12, and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. 136 through 136y. FIFRA section 25(a) authorizes the Administrator of EPA to prescribe regulations to carry out the provisions of FIFRA. The statutory standard that is the basis for Agency regulation of pesticide labeling is contained in section 2(q) of FIFRA, which defines a "misbranded" pesticide and enumerates specific labeling deficiencies that constitute misbranding. EPA's labeling regulations interpret and elaborate upon the statutory standard.

EPA imposes labeling requirements pursuant to its authority to regulate pesticide distribution and sale. FIFRA section 3 provides that no person may distribute or sell in the United States any pesticide that is not registered under FIFRA. Under FIFRA section 3(c)(5), the labeling of the pesticide must comply with the requirements of FIFRA. Sections 12(a)(1)(E) and (F) of FIFRA provide that it is unlawful to distribute or sell a pesticide or device that is misbranded. Under FIFRA section 2(q), a pesticide may be considered to be misbranded in a number of circumstances. Of most significance to this proposal, sections 2(q)(1)(E)-(G) provide part of the basis for EPA's authority to impose label restrictions to protect health and the environment. Specifically, sections 2(q)(1)(F) and (G) provide that a pesticide is misbranded if its labeling does not contain directions for use which are necessary for effecting the purposes for which the pesticide is intended and if complied with, together with any requirements imposed under section 3(d) of FIFRA, are adequate to protect health and the environment, or if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment. Under FIFRA section 2(x), the term "protect health and the environment" means protect against any unreasonable adverse effects on the environment. FIFRA defines the term "unreasonable adverse effects on the environment" as any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide. In this proposal, EPA is giving notice of its determination that pesticide total release foggers that are not labeled in accordance with the directions for use and warning statements required by this rule would be considered to cause unreasonable adverse effects on the environment and thus, would be considered to be misbranded and subject to possible enforcement action.

In addition, before a product may be registered as a pesticide under FIFRA, it must be shown that when used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment. Pesticide total release foggers that do not comply with the proposed rule's label requirements designed to warn of hazards and provide directions for proper use to minimize risk would be considered to pose unreasonable adverse effects on the environment, and thus, failure to comply with these label requirements could result in a denial of an application for registration.

FIFRA section 6(b) also provides that the Administrator of EPA may issue a notice of intent to cancel a pesticide registration if it appears that the pesticide or its labeling or other materials required to be submitted under FIFRA do not comply with the provisions of FIFRA, or if the pesticide, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment. Total release foggers that are not labeled in accordance with the requirements in this rule would not have labeling that complies with FIFRA and would be determined to pose unreasonable adverse effects on the environment. Thus, failure to comply with these proposed label requirements could result in initiation of cancellation proceedings under FIFRA section 6(b).

Each of the provisions described above is designed to prevent the registration, sale or distribution of pesticides which, due to inadequate labeling might cause unreasonable adverse effects on the environment. Section 25 (a) provides EPA with the authority to promulgate regulations to carry out the purposes of these provisions. This rule is being proposed under these authorities.

B. Background

On February 20, 1991, EPA published in the **Federal Register** (56 FR 6856) a Notice concerning Pesticide Aerosol Flammability and solicited comments in three areas related to the potential hazards due to fires and explosions that could be caused by a build-up of flammable gases used as propellants in aerosol pesticide products: (1) Revised precautionary label language; (2) the use of a modified closed drum test to determine flammability; and (3) static electricity generation in connection with the use of aerosol pesticide products containing extremely flammable hydrocarbon propellants. Aerosol pesticide products are considered to be those that are sold under pressure where the pesticide cannot be poured or dispensed from the container as a liquid, the container is not designed to allow the opening of the container for dispensing as a liquid, and where the containers are designed to contain pressurized materials.

The February 1991 Notice was prompted by evidence of an increase in fires and explosions caused by certain aerosol pesticide products related to the use of hydrocarbon propellants in those pesticides. Fourteen comments were received in response to the February 20,

1991 Notice. The major comments are summarized as follows:

1. Five of the commenters from the aerosol pesticide industry did not believe that EPA needed to take any action regarding the labeling issue. They maintained that the existing labeling regulations were adequate. EPA disagrees. EPA believes that the continued receipt of reports of fires and explosions related to use of total release foggers indicates that further regulatory action is warranted.

2. Seven of the comments (three industry representatives , two trade associations and two government agencies) agreed with EPA that additional precautionary label language should be required. Two of these seven comments specifically indicated that EPA should require additional label requirements for the total release foggers, but not require any additional label requirements for other aerosol pesticide products. Generally these commenters agreed that the additional language should deal with the following areas of concern: Limits on the number of foggers to be used; use of foggers in extremely small rooms, closets, or cabinets; and placement of total release foggers in proximity to pilot lights and other ignition sources. One commenter thought that labels should direct users to turn off pilot lights and electrical appliances before using total release foggers, but several other commenters recommended against such directions, citing the potential hazards presented by inexperienced persons relighting pilot lights. EPA agrees with most of these comments and has incorporated suggestions from the commenters or asked for additional information where there were questions.

3. One commenter suggested the use of graphic or figurative symbols in conjunction with the additional language to help convey the hazards associated with these products. An industry trade group suggested the use of collateral labeling, such as package inserts, pamphlets, cards, etc. Also, a local government suggested a public education program to inform the general public of the hazards of total release foggers. EPA agrees and is proposing a graphic symbol for the labels of total release foggers. In addition, EPA has prepared a fact sheet on these products and is considering additional informational materials.

4. Most of the comments received (both industry and government), made reference to the modified closed drum test to determine flammability of pressurized products. Several commenters stated that the closed drum test as modified by EPA would be inappropriate, was not workable and was dangerous to the person conducting the test. Another commenter stated that current tests were sufficient and that the drum test was not required by DOT or CPSC and would therefore lead to inconsistent labeling. However, a comment from DOT noted that it used ASTM's D3065 drum tests. This comment recommended uniformity and noted that DOT was evaluating a report from the Bureau of Mines which recommended only the "Flame Projection Method" for determining the flammability of aerosols. Another commenter stated that no test exists to evaluate the flash point of a formula and that the modified closed drum test will still only evaluate the propellant. Another commenter stated that EPA's modifications to the drum test are major and need to be verified. Another commenter endorsed all of EPA's modifications to the closed drum test for total release foggers. Because there are many issues which need to be resolved regarding flammability testing and the hazards of aerosol products in general, EPA will consider the testing methods at a later date. Three comments were received (an industry representative, an industry trade association and a fire department) relative to the static electricity generation or triboelectric ignition (autoignition) potential. The comments indicated that at the present time, there are no data to confirm an autoignition problem. Therefore, EPA is not proposing, at this time, to impose any requirements regarding autoignition.

EPA notes that there has been some confusion relative to the correct flammability test for aerosol pesticide products. The current requirements for aerosol pesticide product flammability testing include the flame extension test, which tests the entire contents of the product, including the propellant, and the flash point test for the liquid component. EPA would be very interested in further information or data regarding the testing methods and the autoignition problem and solicits comments regarding same. This proposed rule only addresses the proposed precautionary label requirements.

EPA has chosen to focus the proposed precautionary label requirements on the total release foggers containing extremely flammable propellants, since these aerosol products seem to be the products of most concern regarding potential fires and explosions. A total release fogger, as referred to in this proposal, is an aerosol pesticide product designed to automatically release the total contents in one operation, for the purpose of creating a permeating fog within a confined space to deliver the pesticide throughout the space. Under this proposal, an extremely flammable propellant is one which meets EPA's current definition of extremely flammable (40 CFR 156.10), that is, having a flash point at or below 20° F. EPA is proposing to require precautionary label language that would better communicate to pesticide users the hazards of the total release foggers and directions for the proper use of these products. EPA solicits comments about applying the requirement of the proposed label language to all total release foggers in the future, as opposed to just the foggers containing extremely flammable propellants. Because of the phaseout of nonflammable CFC's, EPA believes that most, if not all, total release foggers contain extremely flammable propellants. Comments specifically proposing other criteria for selecting additional fogging products subject to these new labeling requirements are welcome. Also, EPA believes other communication methods (such as brochures, product hang-tags, posters and signs, etc.) may be useful to reinforce these label requirements. EPA is interested in any other communication vehicles that could be used and would like comments on this issue. In addition, EPA solicits comments and information on the hazards of other aerosol pesticide products for possible future rulemaking.

II. The Hazards Caused By Total Release Foggers

A. Summary

EPA believes that additional precautionary labeling on total release foggers is necessary due to the nature of incidents of fires and explosions reported. The New York City Fire Department (NYCFD) reported 40 incidents of fires or explosions (28% resulting in personal injuries) that were reported to be caused by total release foggers over a 12 year period. Fifteen of the 40 reported incidents occurred in 1990 and 1991 alone. In 32 of those 40 documented incidents, the specific total release fogger product involved was identified.

Fire experts believe the actual number of such incidents occurring around the country is much higher. However, they recognize that most fire investigation personnel are not experienced in determining such causes. The NYCFD indicated that building superintendents and emergency service personnel frequently attribute a total release fogger explosion to a gas leak. This is a logical and common mistake for a person

inexperienced in investigating fires caused by total release foggers.

Additionally, in most of the 40 documented incidents, it was determined that the products were not used properly; generally too many foggers were used for the space treated or as recommended on the label for a small space. EPA has been informed of other similar incidents that have occurred in at least three other states. EPA believes that total release foggers containing extremely flammable propellants present a risk that is not adequately addressed by current label warnings and use directions.

B. Specific Incidents

What follows is a discussion of some of the incidents that have been reported to EPA. All of the incident reports EPA has received are included in the public docket. One explosion that occurred on August 23, 1991 in the Bronx, NYC involved a waterbased total release fogger. However, the product also contained a significant amount of an extremely flammable hydrocarbon propellant. The fire investigation report indicated that at least six cans of the product were used in the two bedroom apartment. The resulting explosion, which caused considerable property damage, and indirectly caused bodily injury to persons in the adjoining apartment, was determined to be ignited by the cycling of the refrigerator motor. The total release fogger product label stated the warning: "Use one unit for each 6,000 cubic feet of unobstructed area. Do not use this unit in an area less than 100 cubic feet." Although the apartment dweller used far more cans than the label called for, in this case EPA has concluded that the label directions for use are inadequate to properly warn the user of the hazard.

Another house fire/explosion incident occurred in South Bend, Indiana. In this case, a two story, 1,500 square feet house was completely destroyed by an explosion and fire caused by an excessive use of total release foggers. The homeowner used four large foggers which dispersed vapors throughout the house via the central air conditioning system. Ignition was caused by a water heater pilot light. Based on the volume of the house, the fire investigator calculated that four times "the required fumigant aerosol mist" was used in this incident. With this incident, EPA could not conclude whether or not the products involved were used correctly or if the labeling was adequate to warn the user of the hazard.

In the South Bend Fire Department report, additional reference is made to four Albuquerque (New Mexico) explosions in residential homes and two in mobile homes (one in Texas and one in Peru, Indiana), "all caused by excessive aerosol fumigants applied in relation to volume," as stated by the fire investigator.

On July 4, 1989, a chemist used two small total release foggers 6 feet apart in a large kitchen cabinet with the doors open. An explosion resulted when he touched one of the foggers that was malfunctioning after it had been activated. The product's label read: "Use additional units for remote rooms or where free flow of mist is not assured." and "Open cabinets and doors to areas to be treated."

A more recent fire and explosion resulting from use of a total release fogger was reported to EPA from Jamestown, New York. In this incident, a man used a large total release fogger in the basement of a downtown store with an open flame coal heater operating, in addition to a gas water heater. The resulting fire totally demolished the building and three adjoining buildings.

After reviewing several total release fogger labels, EPA has reached the general conclusion that the total release foggers present a risk which is not adequately addressed by current label warnings and use directions. EPA believes that the information gathered so far is sufficient to justify the label changes proposed in this notice of Proposed Rulemaking. However, EPA is requesting additional information from fire departments and other organizations with such information relative to similar incidents involving the use of total release foggers that may further support the proposed label changes, or indicate better changes to reduce the risks.

C. Technical Reference

The National Fire Protection Association (NFPA) has published the Fire Protection Handbook, 17th Edition, 1991. This association, organized in 1896, has the mission of safeguarding people, their property, and the environment from destructive fire, using scientific and engineering techniques and education. The NFPA's handbook references the problem of insecticidal fogging, which may include insecticidal fog generators, total release foggers, and other indoor fogging products: "Insecticidal fogging presents combustion, explosion, and flash fire hazards. Safeguards include: (1) The use of solvents having flash points well above normal ambient temperatures, and (2) limiting the quantities applied to structures in relation to their volume." A copy of this reference is included in the public docket and is available for inspection at the address shown above.

D. Potential Hazards With Regard to the "Storage and Disposal" Statements

EPA is concerned about the storage and disposal practices of total release foggers, and indeed all aerosol pesticide products. Some hazards posed by inappropriate storage and disposal statements on some product labels and incorrect storage and disposal practices (specifically incineration) are common to all aerosol pesticide containers and are not limited solely to the total release foggers. Therefore, in the future, EPA intends to revise the "Storage and Disposal" statements for all aerosol pesticide products, including the total release foggers.

III. Options

First, EPA considered whether the hazards associated with aerosol pesticide products in general, or specifically, total release foggers, were significant enough that they should be canceled under FIFRA section 6, or alternatively, classified for restricted use under FIFRA section 3(d). Under section 6, EPA would propose cancellation of the products if the risks outweighed the benefits. Under section 6, before taking any final action to cancel a registration, the Administrator must consider measures short of cancellation, such as labeling, that could sufficiently reduce risks. With regard to the restricted use classification standard, EPA would determine if other additional regulatory restrictions would mitigate the hazards. Such restrictions could take the form of classification of these products as Restricted Use Pesticide products so that no one except certified applicators could use the products.

Thus, as discussed above and in Unit I. A. of this preamble, EPA has several procedural options available to implement label changes that are necessary to bring the risks of a pesticide in line with the benefits of that pesticide. EPA has determined that labeling changes will provide sufficient warning of the hazards with the use of the total release foggers, and sufficient directions for proper use of these products, and that with these labeling changes, neither restriction nor cancellation is necessary. Products not in compliance with the proposed labeling requirements specified in this rule would pose unreasonable adverse effects on human health or the environment and, thus, could be subject to cancellation action.

Having determined that appropriate precautionary labeling would be required to mitigate the hazards, EPA

then considered the scope of the necessary warnings. EPA considered several approaches to the problem of these hazardous pesticide products. An economic analysis has been completed for this proposed rule and is in the public docket and available for inspection at the Virginia address shown above.

One approach would be to require label changes for all aerosol pesticide products to warn users of potential hazards. However, while EPA has considerable information on the hazards posed by total release foggers from commenters and others, information on the hazards of other aerosol products is more limited. EPA would be very interested in any information or data regarding similar hazards with other aerosol pesticide products, and solicits such information. Accordingly, today's proposal is limited to labeling of total release foggers.

IV. Today's Proposal

A. Proposed Amendments

The current labeling regulations (40 CFR 156.10) do not provide any specific requirements for the total release foggers. The "Physical and Chemical Hazards" warning statements required for aerosol pesticides have been judged by EPA to be inadequate for the total release foggers. Although many of these products do not meet the criteria for Extremely Flammable or Flammable warning statements, when the product as a whole is tested, they contain extremely flammable propellants. These propellants have an extremely low flash point, the temperature at which they will catch fire if exposed to an ignition source. EPA uses a flash point of 20° F as the cut-off for "extremely flammable." Other Agencies may vary somewhat in the temperature cut-off that defines "extremely flammable." EPA believes this is due to the unique nature of the use pattern for foggers. When used, the entire contents of the fogger are released and are dispersed into the space surrounding the fogger. A fire/explosion hazard may be created if an ignition source comes in contact with the released extremely flammable propellants.

The proposed amendments to 40 CFR 156.10 would add required label language to the "Directions for Use" and the "Physical and Chemical Hazards" warning statements. This new language would warn users about the hazard of a concentration of gases that could cause a fire or explosion. The warnings would limit the number of foggers that can be released in a certain volume within the dwelling. The proposed precautionary label language reads:

> To avoid an explosion or fire hazard from the concentration of gases: Do NOT use more than one fogger per ____ square feet. DO NOT use in small, enclosed spaces including, but not limited to closets, cabinets or under counters or tables. DO NOT place within 6 feet of ignition sources including, but not limited to pilot lights, open flames or running electrical appliances that cycle off and on (i.e., refrigerators).

Calculation of the dosage rate using square footage should be based upon a rate not to exceed one ounce of product per 1,000 cubic feet of space. Parenthetical language must provide the user with an idea of the typical room size and number of rooms this is equal to. For example, "(This is equal to x rooms that measure x by x feet with an 8 foot ceiling.)."

The applicant/registrant would be required to propose the appropriate minimum volume based on the container size using the general guide that the limitation shall not exceed 1 ounce of product per 1,000 cubic feet of space, a proposed limitation based on discussions with producers of these products. EPA requests comments on this limitation. Use of the foggers in certain small volume areas, such as closets, cabinets or under counters or tables, etc. would be prohibited.

The precautionary language would establish a use prohibition buffer zone (6 feet) from an ignition source, including, but not limited to, pilot lights, open flames and electrical appliances that cycle on and off, such as refrigerator compressors. This buffer zone is currently included on the labels of some of these products and EPA believes this buffer zone setback would decrease the risk of a fire or explosion by minimizing the potential for a propellant or other gas to reach its lower explosive limit (LEL) near a flame or other ignition source. The Agency has considered buffer zone distances as low as 3 feet to as much as 10 feet, but indications from the incident information do not support these buffer zones. EPA is aware that a 6 foot buffer zone would not guarantee the prevention of fire or explosion, however, EPA believes this 6 foot set-back will minimize risk while still allowing for reasonable use of the product. However, EPA will consider and may in the final rule, establish a buffer zone within this range if evidence can be presented to support a different buffer zone from that which is proposed. Because the substances used as propellants tend to be heavier than air, these gases may accumulate near the floor instead of being completely mixed with the air in the use area. Also, drafts within the rooms may blow the gases toward an ignition source. EPA requests comments on the buffer zone setback, particularly regarding the appropriateness of a 6 foot setback from an ignition source and on experiences with non-ideal conditions (e.g., incomplete mixing or drafts) increasing the potential for fires or explosions.

EPA also considered requiring total release fogger users to turn off a pilot light and unplug electric appliances. However, EPA believes that there are safety concerns involved with relighting pilot lights and unplugging/plugging back in electrical appliances such as refrigerators. There is concern that improper relighting of pilot lights or replugging of appliances may pose a greater risk of fires or other hazards than leaving this source alone and following the other precautions. EPA requests comments on the option of directing users to eliminate potential ignition sources by turning off pilot lights and electrical appliances before using total release foggers.

In addition to the proposed label language, EPA is proposing to require the use of a standard graphic symbol representing fire and explosion on all total release foggers. EPA is aware of several different symbols used to depict flammability. The DOT uses a graphic symbol to depict flammability, as does the Canadian government. Some registrants have adopted graphic symbols on their own and the CPSC has investigated a number of different graphic symbols for this purpose. During the comment period, EPA would entertain an alternative symbol from that which is proposed in this notice.

The new required language would replace other precautionary language already on some fogger products. Therefore, any language already on a total release fogger label that is inconsistent with the new required language would be required to be removed and replaced with the language proposed in this rule.

In addition to the required label changes, applicants/registrants would be encouraged to use other hazard communication mechanisms regarding these products to reinforce the required precautionary language.

EPA has identified approximately 223 total release foggers registered by 63 registrants that would be subject to these new labeling requirements. A listing of these registrants and products is included in the public docket. Any total release fogger inadvertently omitted from this list would still be subject to this rule.

B. Benefits of Total Release Foggers

In considering whether to propose the required label changes described above, EPA considered the benefits of allowing total release fogger products to remain without these label changes. The benefits of these products without the proposed changes are potentially cheaper prices for the products.

The cost ramifications of the proposed rule will be felt by consumers to the extent that manufacturers are able to pass their increase in cost on to consumers in the form of a higher price for products. Although the label change is required of all firms in the industry, companies will vary in their ability to absorb the cost of those changes. However, since the cost of changing labels is a one-time cost and does not affect the variable cost of production, it is not likely that a significant portion of that cost would be passed on to consumers.

If the required label changes can be completely absorbed within the plans a company already has, there will be essentially no cost of the required changes. However, if a label change is not planned, the costs of making these changes will be the costs associated with developing new product labels and submitting them for approval to EPA and State agencies and the actual cost of converting the printing process from an old to a new label. These costs have been estimated at between $8,000 and $13,000 per product. These costs are a one-time cost, and are not of an on-going nature. Registrants are being given time to comply with the labeling changes in the proposed rule, and already-labeled products are being permitted to clear the channels of trade, which should allow registrants to absorb these label changes into their ongoing label maintenance program.

C. Risk/Benefit Determination

After evaluating the risks and benefits of maintaining the current labeling for total release foggers, EPA believes that proposed additional precautionary labeling is necessary to protect the public health and environment. The economic benefits of continuing to allow the existing total release fogger labeling to remain unamended were not judged of sufficient magnitude to offset the risks of fires and explosions that can result in personal injury and property damage. Such incidents continue to be reported to EPA. Accordingly, EPA has concluded that products which do not bear the proposed additional precautionary labeling will cause unreasonable adverse effects to man or the environment.

V. Implementation

Implementation of these additional label requirements would be conducted by the appropriate Registration Division Product Managers within the Office of Pesticide Programs. EPA would require that revised labels with an application to amend the registration be submitted for existing product registrations no later than 3 months from the effective date of the final rule. Failure to submit an application for amendment with the revised labeling could result in EPA's issuance of a Notice of Intent to Cancel or Suspend under FIFRA section 6 and/or enforcement action pursuant to section 12. New registration applications would be denied unless they comply with these proposed labeling requirements. The details of this implementation would be set out in a Pesticide Regulation (PR) Notice sent to all affected registrants.

No total release fogger product containing an extremely flammable propellant, would be permitted to be distributed or sold by registrants and supplemental registrants after 18 months from the date of publication of the final rule unless the product bears the amended label language required by the final rule and approved by the Registration Division. Thereafter, EPA may initiate cancellation or suspension proceedings under FIFRA section 6, or an enforcement action for misbranding under FIFRA section 12(a)(1)(E), for any total release fogger registration not in compliance with the requirements of FIFRA and the final rule. All affected products distributed or sold by any person other than the registrant after 42 months from the date of the publication of the final rule would be required to bear the amended label language required by the final rule and approved by the Registration Division.

VI. Economic Assessment

In order to satisfy requirements for analysis as specified by Executive Order 12866 and the Regulatory Flexibility Act, EPA has analyzed the costs and benefits of this proposal. This analysis (Economic Assessment: Proposed Flammability Labeling Requirements for Total Release Foggers) is included in the public docket.

VII. Invitation To Comment

Interested persons are invited to submit written comments on this proposed regulation. Comments are requested relative to any and all aspects of this proposal, especially in those areas mentioned throughout this Preamble. All comments should be submitted to the address and in the manner listed in the "ADDRESSES" section above. All written comments will be available for public inspection in the public docket, from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public docket is located in Room 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

VIII. Statutory Requirements

The FIFRA Scientific Advisory Panel has waived scientific review and comment on this proposed rule. This proposed rule has been sent to the Secretary of Agriculture, the Committee on Agriculture, Nutrition, and Forestry of the United States Senate, and to the Committee on Agriculture, of the U.S. House of Representatives. No comments have been received from either house. The Secretary of Agriculture commented without objection to this proposal.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant' and therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities ("economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Under the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore, not subject to OMB review.

B. Regulatory Flexibility Act

This proposed rule has been reviewed by the OMB under the provision of section 3(a) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 et seq.) and it has been determined that it will not have a significant economic impact on small

businesses, small organizations and small governmental jurisdictions.

Allowing sufficient time to incorporate the proposed label changes is expected to minimize the impact of this action for entities of all sizes, but is particularly important to smaller entities who typically do not modify labels as frequently as relatively larger ones.

Assuming a worst case scenario, that the full cost of label modification is associated with regulation requirements and the maximum expected incremental cost impact will be incurred, the increased cost is expected to represent roughly 0.2 percent of annual revenues on average for all businesses categorized as small. The likelihood that small businesses will incur the maximum cost increase is low. The maximum cost increase represents costs associated with lithograph cans which are utilized less by smaller businesses due to minimum quantity order requirements.

Accordingly, EPA certifies that this regulatory action does not require a separate, detailed regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB Control Number 2070–0060.

The reporting burden for registrants is estimated to average 0.85 hours per product, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the Office of Management and Budget, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 156

Environmental protection, Administrative practice and procedure, Pesticides and pests, Labeling.

Dated: March 22, 1994.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR chapter I, subchapter E, part 156 be amended as follows:

PART 156 — [AMENDED]

1. The authority citation for part 156 continues to read as follows:

Authority: 7 U.S.C. 136 – 136y.

2. In Section 156.10, by designating the text after the italic heading in paragraph (h)(2)(iii) as paragraph (h)(2)(iii)(A), and by adding new paragraphs (h)(2)(iii)(B), and (i)(2)(x)(D), to read as follows:

§ 156.10 Labeling requirements.

* * * * *

(h) * * *

(2) * * *

(iii) * * *

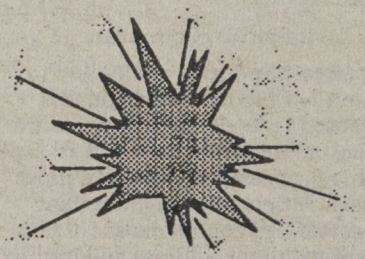
(B)(*1*) A total release fogger is an aerosol pesticide product designed to automatically release the total contents in one operation, for the purpose of creating a permeating fog within a confined space to deliver the pesticide throughout the space. If the pesticide product is a total release fogger containing a propellant with a flash point at or below 20° F, then the following special instructions must be added to the "Physical and Chemical Hazards" warning statement:

This product contains an extremely flammable propellant. Improper use could cause explosion or fire. Follow very carefully the "Directions for Use" on this label.

(*2*) In addition to this required language, the graphic symbol illustrated below must be displayed adjoining the "Physical and Chemical Hazards" warning statement. The graphic symbol must be no smaller than twice the size of the first character of the human hazard signal word.



Extremely Flammable Ingredient
Ingrediente extremadamente inflamable



Explosive Potential Potencialmente explosivo

* * * * *

(i) * * *

(2) * * *

(x) * * *

(D)(*1*) For total release foggers as defined in paragraph (h)(2)(iii)(B) of this section, the following precautions must be included in the "Directions for Use":

To avoid an explosion or fire hazard from the concentration of gases: DO NOT use more than one fogger per ____ square feet (This is equal to x rooms that measure x by x feet with an 8 foot ceiling.). DO NOT use in small, enclosed spaces including but not limited to closets, cabinets or under counters or tables. DO NOT place within 6 feet of ignition sources including but not limited to pilot lights, open flames or running electrical appliances that cycle off and on (i.e., refrigerators).

(*2*) Calculation of the dosage rate using square footage should be based upon a rate not to exceed one ounce of product per 1,000 cubic feet of space. Parenthetical language must provide the user with an idea of the typical room size and number of rooms this is equal to. For example, "(This is equal to x rooms that measure x by x feet with an 8 foot ceiling.)."

* * * * *

[FR Doc. 94–8729 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–266, FCC 94–38]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposed rule is one segment of the Second Order On Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in this proceeding. The final rules adopted in this decision may be found elsewhere in this issue. In the Fifth Notice of Proposed Rulemaking in this proceeding, the Commission: (1) Provided notice concerning further rate requirements for systems currently eligible for transition treatment; (2) sought comment on the treatment of systems with more than 100 channels; (3) sought comment on the proper compensation to operators adding or deleting channels; and, (4) sought

comment on regulations governing rates charged to commercial establishments.

DATES: Comments are due on or before June 29, 1994 and Reply comments are due on or before July 29, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joel Kaufman (202) 416–1164, Aliza Katz (202) 416–0939 or Kathleen Franco (202) 416–0956, Cable Services Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the proposed rules segment of the Commission's Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC 94–38, adopted February 22, 1994, and released March 30, 1994. The Complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Fifth Notice of Proposed Rulemaking

1. *Termination of transition relief.* As determined in the Second Order on Reconsideration in this proceeding, systems owned by small operators and systems with low prices will not have to apply the full 17 percent competitive differential pending our analysis of the relationship between costs and prices for those systems. We are initiating these cost studies in our Cost Proceeding. Accordingly, we are here providing notice that we will establish further requirements concerning permitted rates for systems currently eligible for transition treatment. As stated, depending on the results of our cost studies, these further provisions could require such systems to terminate transition relief and establish full reduction rates.

2. *Going-forward methodology.* Cable operators are actively exploring new technical developments that may enable them to provide up to 500 channels. Some of these technical capabilities may involve significant modifications or additions to distribution plant. Others may involve compression and multiplexing techniques that permit derivation of many channels without significant new distribution plant. The benchmark table adopted in the Rate Order (58 FR 29716, May 21, 1993) and our table reflecting the efficiency curve observed in our Competitive Survey, establish per channel adjustments for systems with total channels on regulated tiers of 100 channels or less. It does not currently establish per channel rates for systems that provide more than 100 channels.

3. We solicit comment on whether we should establish a methodology for adjusting capped rates in situations where there are more than 100 regulated channels. We solicit comment generally on what that methodology should be. We also seek comment on whether we could use mathematical formulations derived from existing data or tables. We also solicit comment on whether, instead of adopting a methodology for setting rates for offerings of more than 100 channels, we should cap rates at the 100 channel level unless the operator could justify a higher rate based on a cost-of-service showing. We solicit comments on how any of these proposals would effect incentives for operators to provide additional channels on an "a la carte" basis. We additionally solicit comment on whether our going-forward methodology should be modified to provide greater or lesser compensation to operators for adjustments to capped rates when channels are added or deleted from regulated tiers, and whether this would better meet our goals of encouraging infrastructure development and growth of programming. Operators should provide a complete factual justification for any claims that the current methodology is inadequate.

4. *Commercial rates.* We have determined that we would not establish rules permitting special rates for regulated commercial cable service on reconsideration of the Rate Order. We stated, however, that allowances for commercial rates might help assure that rates for subscribers are reasonable if higher commercial earnings were offset by savings to consumers. Therefore, we solicit comment on whether we should establish regulations governing rates for regulated cable service provided to commercial establishments. In particular, we ask whether higher earnings for commercial establishments should be offset by lower rates to other subscribers. We solicit comment on whether the offset in rates to other subscribers should be exactly equal to the additional earnings from higher commercial rates. Alternatively, we could establish regulations that would mandate a specified level of sharing of earnings from higher commercial rates between operators and subscribers. We solicit comment on which approach would best serve subscribers and operators. We also solicit comment on what standards of reasonableness we could establish to govern commercial rates.

Administrative Matters

5. *Initial regulatory flexibility analysis for the fifth notice of proposed rulemaking.* Pursuant to section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

I. *Reason for action.* The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rates of cable systems subject to effective competition, as defined in the Cable Act of 1992 and represented in the revised benchmark formula. This Notice proposes to establish regulations governing the setting of rates for regulated cable systems with more than 100 channels, and to consider separate rate regulations for commercial entities and rules for termination of transition relief.

II. *Objectives.* To propose rules to implement section 3 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

III. *Legal basis.* Action as proposed for this rulemaking is contained in sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

IV. *Description, potential impact and number of small entities affected.* We anticipate a possible impact on small entities because the Notice addresses the termination of transition relief for small systems owned by small

operators. The Cable Act of 1992 defines a small system as serving 1,000 or fewer subscribers.

V. *Reporting, record keeping and other compliance requirements.* None.

VI. *Federal rules which overlap, duplicate or conflict with this rule.* None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* None.

6. *Paperwork reduction act.* The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Procedural Provisions

7. *Ex parte rules—non-restricted proceeding.* This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

8. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 29, 1994 and reply comments on or before July 29, 1994. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street NW., Washington DC 20554.

Ordering Clauses

9. Authority for this proposed rule is contained in sections 4(i), 4(j), 303(r), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, 542(c) and 543.

10. *It is ordered* That, pursuant to sections 4(i), 4(j), 303(r), 612(c), 622(c) and 623 of the Communications act of 1934, 47 U.S.C. 154(i), 154(j), 303(r), 532(c), 542(c), and 543, *Notice is hereby given* of proposed amendments to part 76, in accordance with the proposals, discussions, and statement of issues in this Notice of Proposed Rulemaking, and that *Comment is Sought* regarding such proposals, discussion, and statement of issues.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–8999 Filed 4–14–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 93–215, CS Docket No. 94–28; FCC 94–39]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Further Notice of Proposed Rulemaking.

SUMMARY: The Commission has adopted both a Report and Order and a Further Notice of Proposed Rulemaking regarding implementation of the Cable Television Consumer Protection and Competition Act of 1992. In the Report and Order, the Commission establishes interim rules implementing a cost-of-service alternative to our primary benchmark and price cap approach to setting regulated cable service rates.[1] (The Report and Order may be found elsewhere in this **Federal Register**). In this Further Notice of Proposed Rulemaking, we propose that these interim requirements become permanent; we propose a productivity factor that could be incorporated into the price cap mechanism governing cable service rates; and we solicit comment on a permanent upgrade incentive plan for regulated cable service. We also announce initiation of cable industry cost studies that will be used to develop average cost schedules for regulated cable services and equipment, and to evaluate whether we should require full competitive rate reductions for systems currently eligible for transition relief. We solicit comment on rate of return prescription methodologies, and on proposed rules for an accounting system and for affiliate transactions. This action will provide notice to the public that the Commission intends to amend its rate regulations governing regulated cable services. This action is intended to provide a record on which the Commission can establish further requirements governing regulated cable services.

DATES: Comments due July 1, 1994; Reply Comments due August 1, 1994.

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

FOR FURTHER INFORMATION CONTACT: JoAnn Lucanik (202) 416–1163; Paul D'Ari (202) 416–1166; John Adams (202) 416–1165.

SUPPLEMENTARY INFORMATION:

Synopsis of Notice

In this Further Notice, we seek comment on the following matters.

(1) Establishment of Final Rules

In the Report and Order, we establish a comprehensive interim regulatory framework for setting cost-based rates for regulated cable service. We tentatively conclude that the rules adopted here reflect goals and policies that will continue to apply, and that those rules may therefore appropriately be adopted on a final basis. We request comment on whether we should adopt these requirements as our final cost rules in this proceeding.

(2) Rate of Return Prescription

In the Report and Order, we establish an interim overall rate of return of 11.25% for use in cable cost-of-service proceedings. We invite comment on whether we should establish a different permanent rate of return for regulated cable service, including the equipment basket. In this regard, we request interested persons to submit data and expert analyses regarding the risks of regulated cable service, and on how those risks are affected by our cost-of-service and our benchmark/price cap rules for cable. We also invite commenters to submit data and expert analyses regarding equity and debt costs for regulated cable service, and the capital structure we should use in determining any permanent rate of return for that service. We also invite comment on whether we should adopt fixed cost of debt and capital structure methodologies for possible use in changing the rate of return for cable in the future and, if so, what those methodologies should be.

[1] In a separate decision, the Commission is adopting significant modifications to the benchmark and price cap approach to setting regulated cable service rates. Implementation of sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket 92–266, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, FCC 94–38 (Benchmark Order). That decision does not alter our determination in the Rate Order to afford cable operators an opportunity to set rates based on costs.

(3) Cable Accounting System

In the Report and Order we have decided to establish a uniform accounting system for cable operators electing cost-of-service regulation. In a separate attachment to the Report and Order, we set forth a draft system that we intend to serve as a starting point for development of a uniform accounting system for cable operations. This proposal is attached to the FNPRM. We seek comment on this proposal. In order to facilitate administration of establishment of a uniform accounting system for cable services, we are removing this issue from MM Docket 92–666 and designating it as CS Docket No. 94–28. The Cable Services Bureau will obtain suggestions on how to improve this proposal through informal meetings with representatives from the cable industry and other interested parties. Such cooperative efforts will, of course, be subject to relevant *ex parte* rules. (47 CFR 1.1206). Following these meetings and the completion of the initial comment cycle, we may seek comment on a revised proposal for a uniform system of accounts for provision of regulated cable service.

The system of accounts that we are proposing is adapted from the USOA for Class B telephone companies contained in part 32 of the Commission's rules, (47 CFR 32.11) and from NARUC model cable accounting rules. (*Uniform System of Accounts for Class A Community Antenna (CATV) Utilities,* (National Association of Regulatory Utility Commissioners 1977)). This proposed system of accounts is highly aggregated and is, therefore, far less burdensome than the USOA for Class A telephone companies. We seek comment, however, on whether we should adopt an accounting system for cable that is disaggregated to a greater extent than that which we have proposed. We have relied on Part 32 in developing an accounting system for cable because it was designed as a functional accounting system that would be adaptable to changes in communications technology. (47 CFR 32.2(d), (e)). We tentatively conclude that we can accommodate the cable technology of signal transport by adding certain cable-specific accounts and by modifying account definitions to include cable-specific equipment and activities within existing functions.

We also seek comment on whether smaller cable systems that elect cost-of-service regulation should be required to maintain their books in accordance with the accounting system we adopt for cable or with some alternative system of accounts. In addition, we seek comment on accounting requirements for cable operators seeking rate adjustments due to changes in their external costs under the benchmark/price cap approach. Although we conclude in the Report and Order the operators regulated under that approach should not be subject to the uniform system of accounts that we adopt for cable, we believe further accounting requirements may be necessary to ensure that external cost adjustments are correct. Finally, we propose an exemption from these requirements for companies that are currently required to maintain their accounts in accordance with Part 32 of our rules. We tentatively conclude that it would be unduly burdensome to require such companies to follow separate accounting procedures for their telephone and cable operators.

(4) Affiliate Transactions

In the Report and Order, we adopt affiliate transaction requirements that will govern the costs incurred that can be recovered in rates for regulated cable service. These requirements are substantially similar to our proposals in the notice in this proceeding. Subsequent to the release of that notice, however, we conducted a detailed analysis of each of these transaction methods for telephone companies. In the Telco notice, (Notice of Proposed Rulemaking in CC Docket No. 93–251, FCC 93–453, 58 FR 62080, Nov. 24, 1993) we proposed to sharply curtail prevailing company pricing for transactions between telephone companies and their nonregulated affiliates. We also proposed to require telephone companies to value affiliate transactions for which we do not permit prevailing company pricing at the higher of cost and estimated fair market value when the telephone company is the seller, and at the lower of cost and estimated fair market value when the telephone company is the buyer.

We tentatively conclude that the general changes we have proposed for telephone companies should be applied to cable operators as well. Therefore, we propose to limit the application of the prevailing company price as a measure of a reasonable price for an affiliate transaction. We tentatively conclude that we should not permit prevailing company pricing as a valuation method for transactions between cable operators and their affiliates when a primary purpose of the non-cable affiliate in transactions is to serve the cable operator and its affiliates. We tentatively conclude that prevailing company pricing for affiliate transactions should only be utilized where the predominant purpose of the non-cable affiliate in the transaction is to serve nonaffiliates. We believe that we can identify when the non-cable affiliates' predominant purpose is to serve nonaffiliates by measuring the percentage of each non-cable affiliate's total output that is sold to nonaffiliates.

Accordingly, we propose that any non-cable affiliate that sells less than 75 percent of its output to non-affiliates has too large a volume of affiliate transactions to be deemed to have a predominant purpose of serving non-affiliates. Therefore, we propose to continue to allow prevailing company pricing only for affiliate transactions in which the non-cable affiliate sells at least 75 percent of its output to non-affiliates. We invite the commenters to discuss this proposal as well as alternative percentages we might use. We also invite comment on whether we should abandon prevailing company pricing as a valuation method for all affiliate transactions if we find no workable test for determining when prevailing company prices provide reliable measures of how affiliate transactions should be valued.

For those affiliate transactions that do not meet the prevailing company price test, we propose to require cable operators to value all affiliate transactions at the higher of cost and estimated fair market value when the cable operator is the seller, and at the lower of cost and estimated fair market value when the cable operator is the purchaser. Since this proposal applies to the sale of both assets and services, it would, in effect, retain the existing standard that applies to affiliate transactions that involve the sale of assets and it would expand the application of this rule to affiliate transactions that involve the sale of services. Hence, our proposal would change the requirement under the rules we have adopted with this Report and Order, which provides that affiliate transactions that do not meet the prevailing company price test and involve the sale of services shall be recorded at cost. We invite comment on this proposal.

We propose to retain the definition of affiliate that we adopt in the Report and Order. Under that definition, an entity is affiliated with a cable system operator when it has a five percent or greater ownership interest in the cable system operator. That definition also specifies that a cable system operator is affiliated with another entity when it has a five percent or greater interest in that entity and that two companies that do not own each other are affiliates when a single entity has a five percent or greater interest in each of the two companies. We also propose that our final affiliate

transactions rules for cable, like the interim rules, apply to cable operators who either elect cost-of-service regulation or seek to adjust benchmark/price cap rates for affiliated programming costs. We propose, in addition, to require cable operators to apply the costing methods and rate of return we adopt for cable in determining the costs of affiliate transactions. we propose to include our final affiliate transactions rules in the uniform system of accounts we adopt for cable. We invite comment on these proposals. Consistent with our approach with regard to the uniform system of accounts, we also invite comment on whether we should adopt alternative affiliate transactions rules for small cable companies.

(5) Establishment of Productivity Offset

In the Rate Order, we incorporated an annual inflation adjustment into our price cap mechanism governing rates for cable television service. (See Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC 93–177, 58 FR 29736, May 21, 1993). Specifically, we adopted the Gross National Product Price Index (GNP–PI) as the annual adjustment index for the cap for basic service tier rates. As a result, regulated cable operators are permitted to adjust the capped based per channel rate for the basic service tier annually by the GNP–PI. In addition, there are certain categories of costs that cable operators are generally permitted to "pass through" to subscribers without a cost-of-service showing, even if the resulting rates exceed the applicable price cap. These costs include retransmission consent fees, programming costs, taxes, franchise fees, and the costs of other franchise requirements.

In the Rate Order, we declined to adopt a productivity offset to the GNP–PI for the non-programming costs incurred by cable companies given the paucity of information in the record that would provide a basis for determining productivity in the cable industry. We made it clear, however, that we should seek such information in the notice.

In the notice, we solicited comment on whether there is a valid economic basis for assuming that cable television service has been, and will be, experiencing efficiency gains. We observed that there had been insufficient information in the record to adopt a productivity offset in the price cap mechanism for cable operators. In considering a regulatory framework to govern cost-of-service ratemaking for cable service, we invited the submission of industry studies or other expert economic analysis to examine four possible options:

(1) No productivity offset;

(2) A consumer productivity dividend of 0.5 percentage points;

(3) a "telecommunications" industry adjustment of between 3.0 (for AT&T) and 3.3 (for the local exchange carriers) percentage points; and

(4) A different productivity offset for cable operators.

The comments received in response to the notice provided three general perspectives on the use of a productivity offset in cost-of-service ratemaking. The first perspective, which incorporates the views of cable operators and programmers, generally supports the first option—that is, no productivity offset under the cost-of-service rules. The second perspective, articulated by New Jersey, supports the use of a productivity offset of 2% as reflecting the known benefits of technology improvement in the cable industry. The third perspective, which includes CFA, municipal franchising authorities, local exchange carriers, and ETS, generally supports the adoption of a 3.3% productivity offset, the standard imposed on the local exchange carriers, to be the standard for the cable television companies that choose cost-of-service ratemaking.

In this Further Notice, we affirm our tentative decision to incorporate an annual inflation adjustment into our price cap mechanism governing rates for cable television service. We believe that the use of the GNP–PI index in the price cap mechanism will help achieve the statutory goal of reducing administrative burdens on cable systems, consumers and regulators by permitting rate increases when cable operators experience increases in the cost of doing business shared by all sectors of the economy, without requiring cable operators to make, and regulators to consider, cost-of-service showings.

We also tentatively conclude that cable operators should reasonably be expected to achieve productivity gains in the future analogous to those historically realized by other communications firms. Cable television networks are similar in many ways to telephone networks, and both have benefited from advances in telecommunications technology in the past; both are likely to see benefits in the future, especially as cable and telephone networks converge. Both are likely to have opportunities to improve their productivity in other aspects of their operations, including customer service and maintenance. In the near term, however, the productivity growth that cable operators may reasonably be expected to achieve may differ from that of telephone companies, because of the current differences in their networks, operators, services, and histories. For example, local telephone companies have benefited from advances in computerized local switches, which are not in general use by cable systems. Moreover, the productivity offsets selected for telephone companies reflect adjustments to conform them with Commission policy goals. While we recognize the merits of moving toward regulatory parity for cable and telephone regulation, we do not believe the current record provides adequate support for the automatic adoption of the same productivity factor for cable systems as for local telephone companies subject to price caps.

The only evidence of record for productivity growth by cable systems appears to be that submitted by New Jersey, supporting a 2 percent productivity offset. We take note, however, of comments from cable operators that there is not sufficient evidence to adopt a productivity offset, without providing them the opportunity to develop such data. We will accordingly allow them another opportunity to provide this data. Based on the current record, we tentatively propose to adopt a 2 percent productivity offset as part of the price cap mechanism for regulated cable rates. Any interested party seeking to justify a different productivity offset will of course be expected to provide reliable, detailed, and credible evidence that some other figure represents the productivity gains, after inflation, that cable systems can reasonably be expected to achieve. In particular, cable systems should not expect that their failure to provide any evidence of cable system productivity gains, information they are best able to provide, should justify the conclusion that cable systems cannot reasonably be expected to achieve productivity improvements.

The Commission envisions the productivity offset as a basic part of the two alternatives open to cable operators for setting rates. Under the first, the price cap, including the productivity factor, would apply to all regulated rates. Under the second, an operator can elect to use cost-of-service regulation, using the standards discussed in the Report and Order. Once the operator's rates are set based upon actual costs of service, however, we would ordinarily expect that the operator could achieve the same future productivity gains as other operators. We therefore propose that future rate changes should at least meet the productivity offset, absent a credible demonstration in the cost-of-

service showing that this will not be the case.

We do not, however, wish indirectly to restrict the ability of cable programmers to obtain fair value for their products. As a result, we tentatively conclude that programming costs should not be included within the productivity offset for cable system technological and operational improvement.

We invite comment on these proposals, including the 2 percent productivity offset and exemption of programming costs from the effects of the offset. We emphasize that comments should be supported by relevant evidence, such as detailed industry studies and expert economic analysis.

(6) Experimental Upgrade Incentive Plan

In the Report and Order, we adopted an Upgrade Incentive Plan that we will implement on an experimental, case-by-case basis. The Upgrade Incentive Plan is intended to provide greater assurance of reasonable, stable rates to customers for existing services, while also generating profit incentives to operators to upgrade their systems in cost-effective ways that will benefit subscribers. The basic approach of the plan is to establish a type of social contract between customers and operators, under which the rates for current regulated services are frozen or limited to changes permitted by the benchmark/price cap mechanism, while the quality of service is at least maintained at current levels by some reasonable measure. For their part, operators are given substantial rate flexibility for the new services and capabilities they introduce. The operator thus gains the opportunity to earn higher profits as an incentive and reward for successful innovations. The contract would remain in effect for a fixed, minimum term of years.

Developing a permanent incentive plan for cable systems is also likely to raise other issues, including issues that might suggest different regulations than in the case of the incentive programs we have adopted for telephony. One issue involves enrollment. We might, for example, require cable systems to seek enrollment in the incentive plan in advance of any system upgrade if it wishes to claim the rate and profit flexibility accorded to additional regulated services and capabilities. Enrollment would make clear to this Commission and to customers that the operator was committing itself to keeping existing service rates and quality within the bounds set by the plan. We request comment on these issues.

Another issue involves coordination with the regulation of basic service tier rates exercised by local franchising authorities. Setting price and quality limits on regulated services above the basic tier may encourage operators to attempt to shift costs to the basic tier. It may be difficult to identify such cost-shifting in a cost-of-service study review. One remedy for this problem, which may also reduce regulatory burdens for operators, franchising authorities, and this Commission, may be to require the operator to commit to maintaining its basic service tier rates and quality within baseline/price cap guidelines set by a certified franchise authority. We request comment on this or approaches to coordinating FCC and local regulation of cable rates within the Plan.

An important part of any incentive plan that limits prices is to assure that the value of the service provided to customers under those prices does not suffer. The customer should be assured that the regulated company is not evading the intent of the plan by increasing profits not through improved efficiency or added services, but by adulterating the products or services the customer receives. For cable service, assuring that appropriate standards are maintained includes assuring that programming services valued by customers are not shifted out of current tiers and into the additional tiers for which the operator would seek to claim rate flexibility. We seek comment on appropriate standards to assure that operators subject to the incentive plan provide services equal to or better than that offered under current rates applicable to those services.

One possible approach to maintaining the value of current services while permitting flexibility to adjust tiers might be to require operators to seek the approval of its customers to changes in the composition or rates for current regulated services, in effect empowering customers to decide whether the change is worthwhile. If most of the operator's customers affirmatively agreed by ballot to revise regulated services subject to the incentive plan, this Commission could be confident that the change was reasonable. In any case, of course, operators would be free to offer new services, and we expect this Plan will encourage them to do so. The only issue would be whether the operator had fulfilled its commitment to maintain or improve the quality of the service provided at regulated rates. We request comment on this and other approaches that would permit reasonable revisions to the current services and rates subject to the incentive plan, especially approaches that take into account the views of the customers using those services.

We request comment on whether we should adopt rules for our Upgrade Incentive Plan. We request that commenters address how the plan, if adopted permanently, might best be structured to maximize the benefits to consumers and operators and to encourage efficient operation and innovative services, and what procedures should govern implementation of the Upgrade Incentive Plan by operators. We solicit comment on what standard we should adopt to measure quality of service for existing services; we seek comment also on the extent to which we should permit operators to move existing channels to new regulated tiers eligible for pricing flexibility under an upgrade incentive plan.

(7) Development and Use of Average Cost Schedules

The Cable Act of 1992 instructs us to consider administrative burdens in establishing rate regulation, and to design rate regulation in a manner that reduces "the administrative burdens and cost of compliance of cable systems that have 1,000 or fewer subscribers." (47 U.S.C. 543(i)). We have met this mandate by providing in the Benchmark Order for streamlined rate reductions for small systems; by providing in the Report and Order here for abbreviated Cost of Service filings by small systems; and by other measures adopted in this Rate Order.

We sought comment in the notice regarding the desirability of allowing cable operators to justify rates based on average costs of providing regulated cable service, in an approach similar to the "average schedule" regulatory scheme for provision of interstate access by some telephone companies. We believe that average cost schedules could provide administrative relief for cable operators and regulators by permitting setting of rates for regulated equipment and cable service by reference to average costs rather than an evaluation of each individual operator's costs. Accordingly, we tentatively conclude that we should establish average cost schedules for provision of regulated cable service and equipment.

We will obtain necessary cost information through our industry cost studies as described below. In addition, operators and other interested parties may submit other cost information that they believe will be useful. The Cable Service Bureau will additionally work

informally with interested organizations to facilitate the compilation, analysis and development of average cost schedules.

We solicit comment on whether average cost schedules should be available for all operators, or only small systems. We note that the average schedules developed for use by telephone companies in calculating access charges are not restricted to small telephone companies, although that has been their principal use. (47 CFR 69.606). If use of average cost schedules should be limited to small entities, we solicit comment on how we should define small systems for this purpose. Commenters suggesting the restriction of average schedules to small entities, or suggesting a particular threshold or definition for "small," should support their recommendations with data, including differences in costs, efficiencies, corporate structures or other factors, that would necessitate the proposed differences in treatment.

Initiation of Cost Studies

In the notice we stated that we would conduct cost studies of the cable industry to provide information that could be useful to develop requirements to set rates based on costs. We have additionally tentatively concluded in this proceeding to develop average cost schedules for provision of regulated cable service and equipment. In the Benchmark Order, we have determined that we will collect information on costs with respect to small operators and systems with relatively low prices. Accordingly, we are initiating at this time general cost studies of the cable industry that will be used for these purposes as well as to provide information that will help us determine whether any changes should be made in our interim framework for cost-of-service regulation. We delegate to the Chief, Cable Services Bureau authority to conduct these studies. Since the cost studies will be part of this rulemaking proceeding, the *ex parte* rules for non-restricted proceedings apply. Requests for confidentiality may be made pursuant to section 0.459 of the Commission's rules.

Initial Regulatory Flexibility Analysis for the Further Notice

Pursuant to section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Further Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

Reason for Action

The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rate of cable systems subject to effective competition, as defined in the Cable Act of 1992, and interim regulations for setting rates for regulated services based on cost. This Further Notice proposes to establish additional and permanent regulations governing the setting of rates for regulated cable service based on costs.

Objectives

To propose rules to implement section 623 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

Legal Basis

Action as proposed for this rulemaking is contained in sections 4(i), 4(j), 612(c), and 623 of the Communications Act of 1934, as amended.

Description, Potential Impact and Number of Small Entities Affected

Until we receive more data, we are unable to estimate the number of small cable systems that would be affected by any of the proposals discussed in the Further Notice. We have, however, attempted to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by section 623(i) of the Cable Act of 1992.

Reporting, Record Keeping and Other Compliance Requirements

The proposals under consideration in this Further Notice include new and revised reporting and record keeping requirements for cable systems. These reporting requirements include the filings by cable operators of financial and/or leased access data annually at the Commission or participating in an annual survey. Additionally, this Further Notice proposes the permanent use of forms to submit data that is to be presented to the regulating entity in a cost-of-service showing by a cable operator. Furthermore, the Further Notice proposes general cost accounting and cost allocation requirements that could be imposed on the cable industry.

Federal rules which overlap, duplicate or conflict with this rule. None.

Any significant alternatives minimizing impact on small entities and consistent with stated objectives. Wherever possible, the Further Notice proposes general rules, or alternative rules for small systems, to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by section 3(i) of the Cable Act of 1992.

Paperwork Reduction Act

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Procedural Provisions

For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft Order proposing a substantive disposition of the proceeding is placed on the Commission's Open Meeting Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and oral arguments) between a person outside this addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation addressing matters not fully covered in any written summary must be served on this Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which

it relates. See generally § 1.1231 of the Commission's Rules. 47 CFR 1.1231.

Pursuant to applicable procedures set forth in § § 1.415 and 1.419 of the Commission's Rules, 47 CFR § § 1.415 and 1.419, interested parties may file comments on or before July 1, 1994 and reply comments on or before August 1, 1994. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW. Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street NW., Washington DC 20554.

Ordering Clause

Accordingly, *it is ordered* That, pursuant to sections 4(i), 4(j), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 532, 542(c) and 543, that *authority is delegated* to the Chief, Cable Services Bureau to conduct cost studies in conjunction with this proceeding and to develop forms necessary and appropriate to implement this Order.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 76 of title 47 of the CFR is amended as follows:

Part 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. Part 76 is proposed to be amended by adding Subpart P, consisting of §§ 76.1100–76.1241, to read as follows:

Subpart P—Uniform System of Accounts for Cable System Operators

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Subpart P—Uniform System of Accounts for Cable System Operators

§ 76.1100 Background.

The Uniform System of Accounts (USOA) for cable systems is designed for those cable operators that elect cost of service regulation. The purpose of the USOA is to help ensure that in cost of service proceedings, regulators will have accurate records of cable operators' revenues, operating expenses, depreciation expenses and capital investments. In order for an accounting system to fulfill this purpose, it must exhibit consistency and stability in financial reporting. This USOA has, therefore, been designed to reflect stable, recurring, financial data, based to the extent regulatory considerations permit, upon the consistency of the well established body of accounting theories and principles commonly referred to as generally accepted accounting principles.

§ 76.1101 Reporting companies.

(a) Cable operators, that elect cost of service regulation must have or develop accounting records in accordance with this Subpart for the relevant test year in the cost of service proceeding.

(b) If a cable operator does not develop or maintain its accounting records in accordance with this subpart for the relevant test year, the cable operator's cost of service application will be dismissed.

§ 76.1102 Records.

(a) The reporting company's financial records shall be kept in accordance with generally accepted accounting principles to the extent permitted by this system of accounts.

(b) The reporting company's financial records shall be kept with sufficient particularity to show fully the facts pertaining to all entries in these accounts. The detail records shall be filed in such manner as to be readily accessible for examination by representatives of this Commission.

(c) The Commission shall require a company to maintain financial and other subsidiary records in such a manner that specific information, of a type not warranting disclosure as an account or subaccount, will be readily available. When this occurs, or where the full information is not otherwise recorded in the general books, the subsidiary records shall be maintained in sufficient detail to facilitate the reporting of the required specific information. The subsidiary records, in which the full details are shown, shall be sufficiently referenced to permit ready identification and examination by representatives of this Commission.

§ 76.1103 Accounts—General.

(a) As a general rule, all accounts kept by reporting cable companies shall conform in numbers and titles to those prescribed herein. However, reporting companies may use different numbers for internal purposes when separate accounts (or subaccounts) maintained are consistent with the title and content of accounts and subaccounts prescribed in this system. A company may subdivide any of the accounts prescribed. The titles of all such subaccounts shall refer by number or title to the controlling account.

(b) A company may make any such subdivisions,reclassifications or consolidations of existing balances as are necessary to meet requirements of this system of accounts.

§ 76.1104 Regulated accounts.

(a) In the context of this subpart, regulated accounts shall be interpreted to include the investments, revenues and expenses associated with basic cable service, cable programming services, equipment and installation and other cable activities. For those cable operators that elect cost of service regulation, these regulated products and services are fully subject to the accounting requirements in this subpart.

(b) In the application of detailed accounting requirements contained in this subpart, when a regulated activity involves the common or joint use of assets and resources in the provision of regulated and nonregulated products and services, companies shall account for these activities within the accounts prescribed in this system. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to basic cable services, amounts solely assignable to cable programming services, amounts solely assignable to equipment and installation, amounts solely assignable to nonregulated cable programming services, amounts solely assignable to other cable activities, amounts solely assignable to noncable activities and amounts related to assets used and expenses incurred jointly or in common, which will be allocated among these service cost categories. Companies shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission. Nonregulated revenue items not qualifying for incidental treatment shall be recorded in the Nonregulated Operating Revenue account.

(c) Other income items which are incidental to the provision of regulated products and services shall be accounted for as regulated activities.

§ 76.1105 Interpretation of accounts.

In order to maintain uniform accounting within the prescribed system, questions involving matters of significance which are not clearly provided for, shall be submitted to the Chief, Cable Services Bureau, for explanation, interpretation, or resolution. Questions and answers thereto with respect to this system of accounts will be maintained by the Cable Services Bureau.

§ 76.1106 Waivers.

A waiver from any provision of this system of accounts shall be made by the Federal Communications Commission upon its own initiative or upon the submission of written request therefore from any reporting company, provided that such waiver is in the public interest and each request for waiver expressly demonstrates that: Existing peculiarities or unusual circumstances warrant a departure from a prescribed procedure or technique; a specifically defined alternative procedure will result in

substantially equivalent or more accurate portrayal of operating results or financial condition, consistent with the principles embodied in the provisions of this system of accounts; and the application of such alternative procedure will maintain or improve uniformity in substantive results as among reporting companies.

§ 76.1107 Address for reports and correspondence.

Reports, statements, and correspondence submitted to the Federal Communications in accordance with or relating to instructions and requirements contained herein shall be addressed to the Cable Services Bureau, Federal Communications Commission, Washington, DC 20554.

§ 76.1108 Number convention.

(a) The number "76" (appearing to the left of the first period) indicates the part number.

(b) The numbers immediately following to the right of the period indicate, respectively, the section or account. All account numbers contain 4 digits to the right of the period.

(c) Cross references to accounts are made by citing the account numbers to the right of the period; e.g., Account 1114, rather than the corresponding complete reference number 76.1114.

§ 76.1109 Sequence of accounts.

The order in which the accounts are presented in this system of accounts is not to be considered as necessarily indicative of the order in which they will be scheduled at all times in reports to this Commission.

§ 76.1110 Nonregulated activities.

(a) This section describes the accounting treatment of activities classified for accounting purposes as "nonregulated." Activities classified as "nonregulated cable programming services" and "noncable activities" will be classified for accounting purposes as "nonregulated." Activities that qualify for incidental treatment under the policies of this Commission will be classified for accounting purposes as regulated activities. The treatment of nonregulated activities shall differ depending on the extent of the common or joint use of assets and resources in the provision of both regulated and nonregulated products and services.

(b) When a nonregulated activity does not involve the joint of common use of assets and resources in the provision of both regulated and nonregulated products and services, reporting companies shall account for these activities on a separate set of books. In the separate set of books, reporting companies may establish whatever detail they deem appropriate beyond what is necessary to provide this Commission with the information required in this subpart.

(c) When a nonregulated activity does involve the common or joint use of assets and resources in the provision of regulated and nonregulated products and services, the reporting company shall account for these activities within accounts prescribed in this system. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to nonregulated cable programming activities, amounts solely assignable to other cable activities, amounts solely assignable to noncable activities, amounts solely assignable to basic cable services, amounts solely assignable to cable programming services, amounts solely assignable to equipment and installation, and amounts related to assets used and expenses incurred jointly or in common, which will be allocated among these service costs categories. Companies shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission. Nonregulated revenue items not qualifying for incidental treatment shall be recorded in the nonregulated operating revenue account.

§ 76.1111 Compensated absences.

Reporting companies shall record a liability and charge the appropriate expense accounts for compensated absences (vacations, sick leave, etc.) in the year in which these benefits are earned by employees.

§ 76.1112 Materiality.

Reporting companies shall follow this system of accounts in recording all financial and statistical data irrespective of an individual item's materiality under GAAP, unless a waiver has been granted under the provisions of § 76.1106 to do othewise.

§ 76.1113 Nonregulated investments.

Nonregualted investments shall include the investments in nonregulated activities that are conducted through the same legal entity as the cable operator, but does not involve the joint or common use of assets or resources in the provision of both regulated and nonregulated products and services.

Current Assets

§ 76.1114 Cash and equivalents.

This account shall include the following:

(a) The amount of current funds available for use on demand in the hands of financial officers and agents, deposited in banks or other financial institutions and also funds in transit for which agents have received credit.

(b) The amount of cash on special deposit, other than in sinking and other special funds provided for elsewhere, to pay dividends, interest, and other debts, when such payments are due one year or less from the date of deposit; the amount of cash deposited to insure the performance of contracts to be performed within one year from date of the deposit; and other cash deposits of a special nature not provided for elsewhere. Cash on special deposit shall include the amount of cash deposited with trustees to be held until mortgaged property sold, destroyed, or otherwise disposed of is replaced, and also cash realized from the sale of the company's securities and deposited with trustees to be held until invested in physical property of the company or for disbursement when the purposes for which the securities were sold are accomplished. Cash on special deposit to be held for more than one year from the date of deposit shall be included in the Other Noncurrent Assets Account.

(c) The amount of cash advanced to officers, agents, employees, and others as petty cash or working funds from which expenditures are to be made and accounted for.

(d) The cost of securities acquired for the purpose of temporarily investing cash, such as time drafts receivable and time loans, bankers's acceptances, United States Treasury certificates, marketable securities, and other similar investments of a temporary character. Accumulated changes in the net unrealized losses of current marketable equity securities shall be included in the determination of net income in the period in which they occur in the Other Nonoperating Income Account.

§ 76.1115 Accounts receivable—cable services.

This account shall include all amounts due from customers for services rendered or billed and from agents and collectors authorized to make collections from customers. This account shall also include all amounts due from customers or agents or products sold. This account shall be kept in such manner as will enable the company to make the following analysis:

(a) Amounts due from customers who are receiving cable service.

(b) Amounts due from customers who are not receiving service and whose accounts are in process of collections.

(c) Collections in excess of amounts charged to this account may be credited

to and carried in this account until applied against charges for services rendered or until refunded.

§ 76.1116 Accounts receivable allowance—cable services.

(a) This account shall be credited with amounts charged to the Uncollectible Revenue Account, to provide for uncollectible amounts included in the Accounts Receivable—Cable Services account. There shall be credited to this account amounts collected which previously had been written off through charges to this account and credits to the Accounts Receivable—Cable Services account. There shall be charged to this account any amounts covered thereby which have been found to be impracticable of collection.

(b) If no such allowance is maintained, uncollectible amounts shall be charged directly to the Uncollectible Revenue account.

§ 76.1117 Other accounts receivable.

This account shall include all amounts currently due, and not provided for in other accounts, such as divisions of revenue, material and supplies, matured rents, and interest receivable under monthly settlements on short term loans, advances, and open accounts.

§ 76.1118 Accounts receivable allowance—other.

(a) This account shall be credited with amounts charged to Uncollectible Revenue—Other account to provide for uncollectible amounts included in Other Accounts Receivable account. There shall also be credited to this account amounts collected which previously had been written off through charges to this account and credits to the Other Accounts Receivable account. There shall be charged to this account any amounts covered thereby which have been found to be impracticable of collection.

(b) If no such allowance is maintained, uncollectible amounts shall be charged directly to the Uncollectible Revenue—Other account.

§ 76.1119 Notes receivable.

This account shall include the cost of demand or time notes, bills and drafts receivable, or other similar evidences (except interest coupons) of money receivable on demand or within a time not exceeding one year from date of issue.

§ 76.1120 Notes receivable allowance.

(a) This account shall be credited with amounts charged to the Provision for Uncollectible Notes Receivable account to provide for uncollectible amounts included in the Notes Receivable account. There shall also be credited to this account amounts collected which previously had been written off through charges to this account and credits to the Notes Receivable account. There shall be charged to this account any amounts covered thereby which have been found to be impracticable of collection.

(b) If no such allowance is maintained, uncollectible amounts shall be charged directly to the Provision for Uncollectible Notes Receivable account.

§ 76.1121 Interest and dividends receivable.

(a) This account shall include the amount of interest accrued to the date of the balance sheet on bonds, notes and other commercial paper owned, on loans made, and the amounts of dividends receivable on stocks owned.

(b) This account shall not include dividends or other returns on securities issued or assumed by the company and held by or for it, whether pledged as collateral, or held in its treasury, in special deposits, or in sinking and other funds.

(c) Interest receivable under monthly settlements on short term loans, advances, and open accounts, shall be included in the Accounts Receivable—Cable Services account or the Accounts Receivable—Other account, as appropriate.

(d) Dividends received and receivable from affiliated companies accounted for on the equity method shall be included in the Investments in Affiliated Companies account, as a reduction of the carrying value of the investment.

§ 76.1122 Inventories.

(a) This account shall include the cost of materials and supplies held in stock and inventories of goods held for resale or lease. This investment in inventories shall include materials and supplies and property held for sale or lease. This account shall not include items which are related to a nonregulated activity unless that activity involves joint or common use of assets and resources in the provision of regulated and nonregulated products and services.

(b) This account shall include cost of material and supplies held in stock, including plant supplies, motor vehicles supplies, tools, fuel, other supplies and material and articles of the company in process of manufacture for supply stock.

(c) This account shall include transportation charges and sales and use taxes, so far as practicable, as a part of the cost of the particular material to which they relate. Transportation and sales and use taxes which are not included as part of the cost of a particular material shall be equitably apportioned among the detail accounts to which material is charged.

(d) So far as practicable, cash and other discount on material shall be deducted in determining cost of the particular material to which they relate or credited to the account to which the material is charged. When such deduction is not practicable, discounts shall be equitably apportioned among the detail accounts to which material is charged.

(e) Material recovered in connection with construction, maintenance or retirement of property shall be charged to this account as follows:

(1) Reusable items that, when installed or in service, were retirement units, shall be included in this account at the original cost, estimated if not known.

(2) Reusable minor items that, when installed or in service, were not retirement units, shall be included in this account at current prices new.

(3) The cost of repairing reusable material shall be charged to the appropriate account in the Plant Specific Operations Expense accounts.

(4) Scrap and nonusable material included in this account shall be carried at the estimated amount which will be received therefor. The difference between the amounts realized for scrap and nonusable material sold and the amounts at which it is carried in this account, so far as practicable, shall be adjusted in the accounts credited when the material was taken up in this account.

§ 76.1123 Prepayments.

(a) This account shall include the following:

(1) The amounts of rents paid in advance of the period in which they are chargeable to income, except amounts chargeable to cable plant under construction and minor amounts which may be charged directly to the final accounts.

(2) The balance of all taxes, other than amounts chargeable to cable services plant under construction and minor amounts which may be charged to the final accounts, paid in advance and which are chargeable to income within one year.

(3) The amount of insurance premiums paid in advance of the period in which they are chargeable to income, except premiums chargeable to cable services plant under construction and minor amounts which may be charged directly to the final accounts.

(b) As the term expires for which any prepayment applies, this account shall

be credited monthly and the appropriate account charged.

§ 76.1124 Other current assets.

This account shall include the amount of all current assets which are not includable in Accounts 1115 through 1123.

Noncurrent Assets

§ 76.1125 Investments in affiliated companies.

(a) This account shall include the acquisition cost of the company's investment in equity or other securities issued or assumed by affiliated companies, other than securities held in special funds which shall be charged to the Sinking Funds account. The carrying value of the investment (securities) accounted for on the equity method shall be adjusted to recognize the company's share of the earnings or losses and dividends received or receivable of the affiliated company from the date of acquisition.

(b) Declines in value of investments accounted for under the cost method shall be charged to the Other Capital account, if temporary and as a current period loss if permanent. Detail records shall be maintained to reflect unrealized losses for each investment.

(c) This account shall also include advances represented by book accounts only with respect to which it is agreed or intended that they shall be either settled by issuance of capital stock or debt; or shall not be subject to current cost settlement.

(d) A subsidiary record shall be kept identifying separately common stocks, preferred stocks, long-term debt, investment advances and special deposits of cash for more than one year from the date of deposit. Further, the company's record shall identify the securities pledged as collateral for any of the company's long-term debt or short-term loans or to secured performance of contracts.

(e) Amounts due from nonaffiliated companies which are subject to current settlement shall be included in the Accounts Receivable—Cable Services account or the Notes Receivable account, as appropriate.

(f) Subsidiary record categories shall be maintained in order that the entity may separately report the amounts contained herein that relate to the equity method and the cost method.

§ 76.1126 Investments in nonaffiliated companies.

(a) This account shall include the acquisition cost of the company's investment in securities issued or assumed by nonaffiliated companies and individuals, other than securities held in special funds which shall be charged to the Sinking Funds account, and also its investment advances to such parties and special deposits of cash for more than one year from date of deposit.

(b) Declines in value of investment shall be charged to the Other Capital account, if temporary and as a current period loss if permanent. Detail records shall be maintained to reflect unrealized losses for each investment.

(c) This account shall also include advances represented by book accounts only with respect to which it is agreed or intended that they shall be either settled by issuance of capital stock or debt; or shall not be subject to current cost settlement.

(d) A subsidiary record shall be kept identifying separately common stocks, preferred stocks, long-term debt, investment advances and special deposits of cash for more than one year from the date of deposit. Further, the company's record shall identify the securities pledged as collateral for any of the company's long-term debt or short-term debt or short-term loans or to secure performance of contracts.

(e) Amounts due from nonaffiliated companies which are subject to current settlement shall be included in the Accounts Receivable—Cable Services account, the Accounts Receivable—Other account, or the Notes Receivable account, as appropriate.

§ 76.1127 Nonregulated investments.

This account shall include the reporting company's investment in nonregulated activities accounted for in a separate set of books as provided in § 76.1110(b).

§ 76.1128 Unamortized debt issuance expense.

(a) This account shall include the total unamortized balance of debt issuance expense for all classes of outstanding long-term debt. Amounts included in this account shall be charged to Interest and Related Items account.

(b) Debt Issuance expense includes all expenses in connection with the issuance and sale of evidence of debt, such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; costs of engraving and printing bonds, certificates of indebtedness, and other commercial paper; fees paid trustees; specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen; fees and expenses of listing on exchanges, and other like costs.

(c) A subsidiary record shall be kept of each issue outstanding.

§ 76.1129 Sinking funds.

(a) This account shall include the amount of cash and other assets which are held by trustees or by the company's treasurer in a distinct fund, for the purpose of redeeming outstanding obligations.

(b) Interest or other income arising from funds carried in this account shall generally be charged to this account.

(c) A subsidiary record shall be kept for each sinking fund which shall designate the obligation in support of which the fund was created.

§ 76.1130 Other noncurrent assets.

This account shall include the amount of all noncurrent assets which are not includable in Accounts 1125 through 1129.

§ 76.1131 Deferred maintenance and retirements.

This account shall include such items as the unprovided-for loss in service value of cable plant for extraordinary non-recurring retirement not considered in depreciation and the cost of extensive replacements of plant normally chargeable to the current period Plant Specific Operations Expense accounts.

§ 76.1132 Deferred charges.

(a) This account shall include all deferred charges not provided for in the Deferred Maintenance and Retirements account. Such charges include unaudited amounts and other debit balances in suspense that cannot be cleared and disposed of until additional information is received; the amount, pending determination of loss, of funds on deposit with banks which have failed; revenue, expense, and income items held in suspense; amounts paid for options pending final disposition.

(b) This account shall include the cost of preliminary surveys, plans, investigation, etc., made for construction projects under contemplation. If the projects are carried out, the preliminary costs shall be included in the cost of the plant constructed. If the projects are abandoned, the preliminary costs shall be charged to the Nonoperating income and Expense account.

(c) This account shall include also the cost of evaluations, inventories, and appraisals taken in connection with the acquisition or sale of property. If the property is subsequently acquired, the preliminary costs shall be accounted for as a part of the cost of acquisition, or if it is sold, such costs shall be deducted

from the sale price in accounting for the property sold. If purchases or sales are abandoned, the preliminary costs included herein (including options paid, if any) shall be charged to the Nonoperating Income and Expense account.

Regulated Plant

§ 76.1133 Instructions for cable services plant accounts.

(a) *Purpose of cable services plant accounts.* (1) The cable services plant accounts (1134 to 1138 inclusive) are designed to show the investment in the reporting company's tangible and intangible cable services plant which ordinarily has a service life of more than one year, including such plant whether used by the company or others in providing cable service.

(2) The cable services plant accounts shall not include the cost or other value that cable plant contributed to the company. Contributions in the form of money or its equivalent toward the construction of cable services plant shall be credited to the accounts charged with the cost of such construction. Amounts of non-recurring reimbursements based on the cost of plant or equipment furnished in rendering service to a customer shall be credited to the accounts charged with the cost of the plant or equipment. Amounts received for construction which are ultimately to be repaid wholly or in part, shall be credited to the Other Deferred Credits account; when final determination has been made as to the amount to be returned, any unrefunded amounts shall be credited to the accounts charged with the cost of such construction. Amounts received for the construction of plant, the ownership of which rests with or will revert to others, shall be credited to the accounts charged with the cost of such construction.

(b) *Cable services plant acquired.* (1) Property, plant and equipment acquired from an entity, whether or not affiliated with the accounting company, shall be accounted for at original cost.

(2) The accounting for property plant and equipment to be recorded at original cost shall be as follows:

(i) The amount of money paid (or current money value of any consideration other than money exchanged) for the property (together with preliminary expenses incurred in connection with the acquisition) shall be charged to the Deferred Charges account.

(ii) The original cost, estimated if not known, of cable services plant, governmental franchises and other similar rights acquired shall be charged to the applicable cable services plant accounts, Cable Services Plant Under Construction, and Property Held for Future Use as appropriate, and credited to the Deferred Charges account. When the actual original cost cannot be determined and estimates are used, the company shall be prepared to furnish the Commission with the particulars of such estimates.

(iii) Depreciation and amortization of plant acquired shall be credited to the Accumulated Depreciation account, the Accumulated Depreciation-Held for Future Cable Services Use account, the Accumulated Amortization—Tangible account, the Accumulated Amortization—Capitalized Leases account, the Accumulated Amortization—Leasehold Improvements account, the Accumulated Amortization—Intangibles account and the Accumulated Amortization—Other account, and debited to the Deferred Charges account.

(iv) Any amount remaining in the Deferred Charges account, applicable to the plant acquired, shall, upon completion of the entries provided in paragraphs (b)(2) (i), (ii) and (iii) of this section, be debited or credited, as applicable to the Goodwill account, or the Plant Adjustment account, as appropriate.

(3) A memorandum record shall be kept showing the amount of contributions in aid of construction applicable to the property acquired as shown by the accounts of the previous owner.

(c) *Cost of construction.* (1) Cable services plant represents an economic resource which will be used to provide future services, the cost of which will be allocated in a rational and systematic manner to the future periods in which it provides benefits. In accounting for construction costs, the reporting company shall charge to the cable services plant accounts, where applicable, all direct and indirect costs.

(2) Direct and indirect costs shall include, but not be limited to the following:

(i) *Labor,* which includes the wages and expenses of employees directly engaged in or in direct charge of construction work. It includes expenses directly related to an employee's wages, such as worker's compensation insurance, payroll taxes, benefits and other similar items of expenses.

(ii) *Engineering,* which includes the portion of the wages and expenses of engineers, draftsmen, inspectors, and their direct supervision applicable to construction work. It includes expenses directly related to an employee's wages, such as worker's compensation insurance, payroll taxes, benefits and other similar items of expense.

(iii) *Material and supplies,* which includes the purchase price of material used at the point of free delivery plus the costs of inspection, loading and transportation, and an equitable portion of provisioning expense. In determining the cost of material used, proper allowance shall be made for unused material, for material recovered from temporary structures used in performing the work involved, and for discounts allowed and realized in the purchase of material. This item does not include construction material that is stolen or rendered unusable due to vandalism. Such material should be charged to the applicable plant specific operations expense accounts.

(iv) *Transportation,* which includes the cost of transportating employees, material and supplies, tools and other work equipment to and from the physical construction location. It includes amounts paid therefor to other companies or individuals and the cost of using the company's own motor vehicles or other transportation equipment.

(v) *Contract work,* which includes amounts paid for work performed under contract or other agreement by other companies, firms or individuals; engineering and supervision applicable to such work; cost incident to the award of contracts; and the inspection of such work. The cost of construction work performed by affiliated companies and other details relating thereto shall be available from the work in progress and supporting records.

(vi) *Protection,* which includes the cost of protecting the company's property from fire or other casualties and the cost of preventing damages to others or the property of others.

(vii) *Privileges, Permits and Rights of Way,* which includes such costs incurred in obtaining these privileges, permits, or rights of way in connection with construction work, such as for use of private property, streets or highways. The cost of such privileges and permits shall be included in the cost of the work for which the privileges or permits are obtained, except for costs includable in the Land account and the Intangibles account.

(viii) *Taxes,* which includes taxes properly includable in construction costs before the facilities are completed for service, which taxes are assessed separately from taxes on operating property or under conditions that permit separate identification of the amount chargeable to construction.

(ix) *Special machine service*, which includes the cost of labor expended, materials and supplies consumed and other expenses incurred in the maintenance, operation and use of special and other labor saving machines (other than transportation equipment) such as trenching equipment, cable plows and pole setting trucks. Also included are expenditures for rental, maintenance and operation of such machines owned by others. When a construction job requires the purchase of special machines, the cost thereof, less the appraised or salvage value at the time of release from the job, shall be included in the cost of construction.

(x) *Insurance*, which includes premiums paid specifically for protection against loss and damage in connection with the construction of cable services plant due to fire or other casualty, injury to or death of employees or others, damages to property of others, defalcations of employees and agents, and the nonperformance of contractual obligations of others.

(xi) *Construction services*, which includes the cost of cable, electricity, power, construction quarters, office space and equipment directly related to the construction project.

(xii) *Indirect construction costs*, which includes indirect costs such as general engineering, supervision and support. Such costs, in addition to direct supervision, shall include indirect plant operations and engineering supervision up to, but not including, supervision by executive officers whose pay and expenses are chargeable to the Executive and Planning account. The records supporting the entries for indirect construction cost shall be kept so as to show the nature of the expenditures, the individual jobs and accounts charged, and the bases of the distribution. The amounts charged to each plant account for indirect costs shall be readily determinable. The instructions contained herein shall not be interpreted as permitting the addition to plant of amounts to cover indirect costs based on arbitrary allocations.

(xiii) The cost of construction shall not include any amounts classifiable as Corporate Operations Expense.

§ 76.1134 Cable services plant in service.

This account shall include the original cost of the investment included in Accounts 1139 through 1151.

§ 76.1135 Property held for future use.

(a) This account shall include the original cost of property owned and held for no longer than two years under a definite plan for use in cable service. If at the end of two years the property is not in service, the original cost of the property shall be transferred to the Nonoperating Plant account.

(b) Subsidiary records shall be maintained to show the character of the amounts carried in this account.

§ 76.1136 Cable service plant adjustment.

(a) This account shall include amounts determined in accordance with § 76.1133(b) representing the difference between

(1) The fair market value of the cable services plant acquired, plus preliminary expenses incurred in connection with the acquisition; and

(2) The original cost of such plant, governmental franchises and similar rights acquired, less the amounts of reserve requirements for depreciation and amortization of the property acquired. If the actual original cost is not known, the entries in this account shall be based upon an estimate of such costs.

(b) The amounts recorded in this account with respect to each property acquisition (except land and artworks) shall be disposed of, written off, or provision shall be made for the amortization thereof, as follows:

(1) Debit amounts may be charged to, in whole or in part, or amortized over a reasonable period through charges to the Other Nonoperating Income Account. When the provisions of paragraph (b)(3) of this section apply, debit amounts shall be amortized to the Amortization Expense—Other account.

(2) Credit amounts shall be disposed of in such manner as this Commission may approve or direct, except for credit amounts referred to in paragraph (b)(3) of this section.

(3) Within one year from the date of inclusion in this account of a debit or credit amount with respect to a current acquisition, the company may dispose of the total amount from an acquisition of cable services plant by a lump-sum charge or credit, as appropriate, to the Amortization Expense—Other account without further approval of this Commission, provided that such amount does not exceed $100,000 and that the plant was not acquired from an affiliated company.

§ 76.1137 Nonoperating plant.

(a) This account shall include the company's investment in regulated property which is not includable in the plant accounts as operating cable services plant. It shall include the company's investment in cable services property held for sale.

(b) Subsidiary records shall be maintained to show the character of the amounts carried in this account.

§ 76.1138 Goodwill.

This account shall include any portion of the plant purchase price that cannot be assigned to specifically identifiable property acquired and such amount should be identified as "goodwill".

§ 76.1139 Land.

(a) This account shall include the original cost of all land held in fee and of easements, and similar rights in land having a term of more than one year used for purposes other than the location of outside plant. It shall also include special assessments upon land for the construction of public improvements.

(b) When land, together with buildings thereon, is acquired, the original cost shall be fairly apportioned between the land and the buildings and accounted for accordingly. If the plan of acquisition contemplates the removal of buildings, the total cost of the land and buildings shall be accounted for as the cost of the land, and the salvage value of the buildings when disposed of shall be deducted from the cost of the land so determined.

(c) Annual or more frequent payments for use of land shall be recorded in the rent subsidiary record category for the Land and Building Expense.

(d) When land is acquired for which there is not a definite plan for its use in cable service, its costs shall be included in the Nonoperating Plant account.

(e) When land is acquired in excess of that required for cable purposes, the cost of such excess land shall be included in the Nonoperating Plant account.

(f) Installments of assessments for public improvement, including interest, if any, which are deferred without option to the company shall be included in this account only as they become due and payable. Interest on assessments which are not paid when due shall be included in the Interest and Related Items account.

§ 76.1140 Buildings.

(a) This account shall include the original cost of buildings, and the cost of all permanent fixtures, machinery, appurtenances and appliances installed as a part thereof. It shall include costs incident to the construction or purchase of a building and to securing possession and title.

(b) When land, together with the buildings thereon, is acquired, the original cost shall be fairly apportioned

between the land and buildings, and the amount applicable to the buildings shall be included in this account. The amount applicable to the land shall be included in the Land account.

(c) This account shall not include the cost of any cable services equipment or wiring apparatus for generating or controlling electricity for operating the cable system.

§ 76.1141 Headend equipment.

This account shall include the original cost of headend equipment. It shall include the original cost of towers and antennas comprising the headend tower assemblies or arrays, headend receiving and signal processing equipment, all power supply and distribution equipment serving as or associated with the prime source of power used in headend operations, and miscellaneous equipment devoted to general station use.

§ 76.1142 Distribution system.

This account shall include the following:

(a) The original cost installed of towers and poles together with appurtenant fixtures used for supporting overhead distribution conductors and service wires;

(b) The original cost installed of underground conduit and tunnels used for housing distribution cables or wires.

(c) The original cost installed of conductors and devices for distribution purposes.

(d) The original cost of all power supply and distribution equipment serving as or associated with the prime source of power used in signal distribution. This account shall include also the cost of power rectifiers or motor generator installations (not forming an integral part of the transmitting or head end stations) that are provided as a source of power for the distribution system.

§ 76.1143 Drops.

This account shall include the original cost of overhead and underground conductors leading from the pressure tap to the point of connection with the customers outlet or wiring. This account includes conduit used for underground service conductors.

§ 76.1144 Production equipment.

This account shall include the original cost of all production equipment owned by the reporting company that is used for the production of programming, including public, educational, and governmental access and local origination programming.

§ 76.1145 Customer premises equipment.

This account shall include the original cost of equipment on customers' premises, leased or loaned to customers, but not including property held for sale. This account also shall include the cost installed of equipment on customer's premises when the reporting company incurs such cost and when the reporting company retains title to and assumes full responsibility for maintenance and replacement of such property.

§ 76.1146 Maintenance and warehouse equipment.

This account shall include the original cost of the following:

(a) Motor vehicles of the type which are designed and routinely licensed to operate on public streets and highways.

(b) Special purpose vehicles.

(c) Tools and equipment used to maintain items included in paragraphs (a), (b) and (d) of this section.

(d) Power operated equipment, general purpose tools and other items of work equipment.

§ 76.1147 Furniture.

This account shall include the original cost of furniture in offices, storerooms, shops, and all other quarters. This account shall also include the cost of objects which possess aesthetic value, are of original or limited edition, and do not have a determinable useful life. The cost of any furniture attached to and constituting a part of a building shall be charged to the Buildings account.

§ 76.1148 Office equipment.

This account shall include the original cost of office equipment in offices, shops and all other quarters. The cost of any equipment attached to and constituting a part of a building shall be charged to the Building account.

§ 76.1149 Capital leases.

(a) This account shall include all property acquired under a capital lease. A lease qualifies as a capital lease when one or more of the following criteria is met:

(1) By the end of the lease term, ownership of the leased property is transferred to the leasee.

(2) The lease contains a bargain purchase option.

(3) The lease term is substantially (75% or more) equal to the estimated useful life of the leased property. However, if the beginning of the lease term falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(4) At the inception of the lease, the present value of the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, including any profit thereon, equals or exceeds 90% or more of the fair value of the leased property. However, if the beginning of the lease term falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(b) All other leases are operating leases.

(c) The amounts recorded in this account at the inception of a capital lease shall be equal to the original cost, if known, or to the present value not to exceed fair value, at the beginning of the lease term, of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs to be paid by the lessor, together with any profit thereon.

§ 76.1150 Leasehold improvements.

(a) This account shall include the original cost of leasehold improvements made to cable services plant held under a capital or operating lease, which are subject to amortization treatment. This account shall also include those improvements which will revert to the lessor.

(b) Improvements to leased cable services plant which are of a relatively minor cost or short life or for which the period of the lease is one year or less shall be charged to the account chargeable with the cost of repairs to such plant.

(c) Amounts contained in this account shall be amortized over the term of the related lease.

§ 76.1151 Intangibles.

(a) This account shall include the cost of organizing and incorporating the company, the original cost of government franchises, the original cost of patent rights, and other intangible property having a life of more than one year and used in connection with the company's cable operations.

(b) Subsidiary records for this account shall include a description of each class of intangible property.

(c) The cost of other intangible assets having a life of one year or less shall be charged directly to the Amortization Expense—Intangible account. Such intangibles acquired at small cost may also be charged to the Amortization Expense—Intangibles account, irrespective of their term of life.

(d) This account shall not include any discounts on securities issued, nor shall

it include costs incident to negotiating loans, selling bonds or other evidences of debt, or expenses in connection with the authorization, issuance, sale or resale of capital stock.

(e) When charges are made to this account for expenses incurred in mergers, consolidations, or reorganizations, amounts previously included in this account on the books of the various companies concerned shall not be carried over.

(f) Franchise taxes payable annually or more frequently shall be charged to Operating Taxes account.

(g) This account shall not include the cost of plant, material and supplies, or equipment furnished to municipalities or other governmental authorities when given other than as initial consideration for franchises or similar rights.

(h) This account shall not include the original cost of easements, rights of way, and similar rights in land having a term of more than one year. Such amounts shall be recorded in the Land account, or in the appropriate outside plan account.

76.1152 Accumulated depreciation.

(a) This account shall include the accumulated depreciation associated with the investment contained in Cable Services Plant in Service account.

(b) This account shall be credited with depreciation amounts concurrently charged to the Depreciation Expense—Cable Services Plant in Service account.

(c) At the time of retirement of depreciable operating cable services plant, this account shall be charged with the original cost of the property, retired plus the cost of removal and credited with the salvage value and any insurance proceeds recovered.

(d) This account shall be credited with amounts charged to the Deferred Maintenance and Retirements account. This account shall be credited with amounts charged to the Depreciation Expense—Cable Services Plant in Service account with respect to other than relatively minor losses in service values suffered through terminations of service when charges for such terminations are made to recover the losses.

76.1153 Acculated depreciation held for future use.

(a) This account shall include the accumulated depreciation associated with the investment contained in the Property Held for Future Use account.

(b) This account shall be credited with amounts concurrently charged to the Depreciation and Amortization Expense account.

76.1154 Accumulated depreciation—nonoperating.

(a) This account shall include the accumulated amortization and depreciation associated with the investment contained in the Nonoperating Plant account.

(b) This account shall be credited with amortization and depreciation amounts concurrently charged to the Nonoperating Income and Expense account.

(c) When nonoperating plant not previously used in cable service is disposed of, this account shall be charged with the amount previously credited hereto with respect to such property and the book cost of the property so retired less the amount chargeable to this account and less the value of the salvage recovered or the proceeds from the sale of the property shall be included in the Nonoperating Income and Expense account. In case the property had been used in cable service previous to its inclusion in the Nonoperating Plant account, the amount accrued for depreciation thereon after its retirement from cable service shall be charged to this account and credited to the Accumulated Depreciation account, and the accounting for its retirement from the Nonoperating Plant account shall be in accordance with that applicable to cable services plant retired.

76.1155 Accumulated amortization—capitalized leases.

(a) This account shall include the accumulated amortization associated with the investment contained in the Capital Leases account.

(b) This account shall be credited with amounts for the amortization of capital leases concurrently charged to the Amortization Expense—Tangible account. (Note also the Accumulated Depreciation—Nonoperating account.)

(c) When any item carried in the Capital Leases account is sold, is relinquished, or is otherwise retired from service, this account shall be charged with the cost of the retired item. Remaining amounts associated with the item shall be debited to the Nonoperating Income and Expense account.

§ 76.1156 Accumulated amortization—leasehold improvements.

(a) This account shall include the accumulated amortization associated with the investment contained in the Leasehold Improvements account.

(b) This account shall be credited with amounts for the amortization leasehold improvements concurrently charged to the Amortization Expense—Tangible account. (Note also the Accumulated Depreciation—Nonoperating account.)

(c) When any item carried in the Leasehold Improvements account is sold, is relinquished, or is otherwise retired from service, this account shall be charged with the cost of the retired item. Remaining amounts associated with the item shall be debited to the Nonoperating Income and Expense account.

§ 76.1157 Accumulated amortization—intangible.

(a) This account shall include the accumulated amortization associated with the investment contained in the Intangibles account.

(b) This account shall be credited with amortization amounts concurrently charged to the Amortization Expense—Intangible account. (Note also the Accumulated Depreciation—Nonoperating account.)

(c) When any item carried in the Intangibles account is sold, relinquished, or otherwise retired from service, this account shall be charged with the cost of the retired item. Remaining amounts associated with the item shall be debited to the Nonoperating Income and Expense account.

§ 76.1158 Accumulated amortization—other.

(a) This account shall include the accumulated amortization associated with the investment contained in the Plant Adjustment account.

(b) This account shall be credited with amortization amounts concurrently charged to the Amortization Expense—Other. (Note also the Accumulated Depreciation—Nonoperating account.)

(c) When any item carried in the Plant Adjustment account is sold, relinquished, or otherwise retired from service, this account shall be charged with the cost of the retired item. Remaining amounts associated with the item shall be debited to the Nonoperating Income and Expense account.

Current Liabilities

§ 76.1159 Accounts payable.

(a) This account shall include all amounts currently due to others for recurring trade obligations, and not provided for in other accounts, such as those for material and supplies, repairs to cable services plant, matured rents, and interest payable under monthly settlements on short-term loans, advances, and open accounts. It shall also include amounts of taxes payable

that have been withheld from employees' salaries.

(b) Subsidiary record categories shall be maintained for this account in order that the company may separately report the amounts contained herein that relate to nonaffiliates and affiliates.

(c) There shall be included herein accounts payable arising from sharing of revenues.

§ 76.1160 Notes payable.

(a) This account shall include the face amount of notes, drafts, and other evidences of indebtedness issued or assumed by the company (except interest coupons) which are payable on demand or not more than one year or less from the date of issue.

(b) Subsidiary record categories shall be maintained for this account in order that the company may separately report the amounts contained herein that relate to nonaffiliates and affiliates.

(c) If any part of an obligation, otherwise includable in this account matures more than one year from date of issue, it shall be included in the Funded Debt account, the Advances from Affiliated Companies account, or other appropriate account.

(d) The records supporting the entries to this account shall be kept so that the company can furnish complete details as to each note, when it is issued, the consideration received, and when it is payable.

§ 76.1161 Advance billing and payments.

This account shall include the amount of advance billing creditable to revenue accounts in future months; also advance payments made by prospective customers prior to the establishment of service. Amounts included in this account shall be credited to the appropriate revenue accounts in the months in which the service is rendered or cleared from this account as refunds are made.

§ 76.1162 Customers' deposits.

(a) This account shall include the amount of cash deposited with the company by customers as security for the payment for cable services.

(b) Advance payments made by prospective customers prior to the establishment of service shall be credited to the Advance Billing and Payments account.

§ 76.1163 Current maturities—long-term debt.

This account shall include the amount (including any obligations for premiums) of long-term debt matured and unpaid without any specific agreement for extension of maturity, including unpresented bonds drawn for redemption through the operation of sinking and redemption fund agreements.

§ 76.1164 Current maturities—capital leases.

This account shall include the current portion of obligations applicable to property obtained under capital leases.

§ 76.1165 Income taxes—accrued.

(a) This account shall be credited or charged with the offsetting amount of current year income taxes (Federal, state and local) accrued during the period or adjustments to prior accruals.

(b) If significant, current year income taxes paid in advance shall be reclassified to the Prepayments account.

§ 76.1166 Other taxes—accrued.

(a) This account shall be credited or charged and the Operating Taxes account, or the Nonoperating Taxes account, or, for payroll related costs, the appropriate expense accounts shall be charged or credited for all taxes, other than Federal, State and local income taxes, accrued or adjusted for previous accruals during the period. Among the taxes includable in this account are property, gross receipts, franchise, capital stock, social security and unemployment taxes.

(b) Taxes paid in advance of the period in which they are chargeable to income shall be included in the Prepayments account or the Other Noncurrent Assets account, as appropriate.

§ 76.1167 Net current deferred operating income taxes.

(a) This account shall include the balance of income tax expense related to current items from regulated operations which have been deferred to later periods as a result of the normalized method of accounting for tax differentials authorized by this Commission and not provided for elsewhere.

(b) As regulated assets or liabilities which generated the deferred income tax are reclassified from long-term or noncurrent status to current, the appropriate deferred income tax shall be reclassified from the Net Noncurrent Deferred Operating Income Taxes account, to this account.

(c) This account shall be debited or credited with the amount being debited or credited to the Provision for Deferred Operating Income Taxes—Net account.

(d) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the tax timing difference.

(e) Subsidiary record categories shall be maintained in order that the company may separately report the amounts contained herein that are property related and those that are nonproperty related.

§ 76.1168 Net current deferred nonoperating income taxes.

(a) This account shall include the balance of income tax expense resulting from comprehensive interpreted tax allocation which has been deferred to later periods.

(b) As other assets or liabilities which generated the deferred income tax are reclassified from long-term or noncurrent status to current, the appropriate deferred income tax shall be reclassified from the Net Noncurrent Deferred Nonoperating Income Taxes account, to this account.

(c) This account shall be debited or credited with the amount being credited or debited to the Provision for Deferred Nonoperating Income Taxes—Net account.

(d) This account shall also include the balance of the income taxes (Federal, state and local) related to current extraordinary items which have been deferred to later periods resulting from comprehensive interperiod tax allocation.

(e) As the extraordinary item which generated the deferred income tax becomes current, the appropriate deferred income tax shall be reclassified from the Net Noncurrent Deferred Nonoperating Income Taxes account, to this account.

(f) This account shall be debited or credited with the amount being credited and debited to the Extraordinary Items account.

(d) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expect turnaround.

(h) Subsidiary record categories shall be maintained in order that the company may separately report the amounts contained herein that are property related and those that are nonproperty related.

§ 76.1169 Other accrued liabilities.

(a) This account shall include the amount of wages, compensated absences, interest on indebtedness of the company, dividends on capital stock, and rents accrued to the date for which the balance sheet is made, but not payable until after that date.

(b) This account shall be maintained so as to show separately the amount and nature of the items accrued to the date of the balance sheet.

(c) Matured rents, dividends and interest shall be included in the Accounts Payable account.

(d) Interest payable under monthly settlements on short-term loans, advances, and open accounts shall be included in the Accounts Payable account.

§ 76.1170 Other current liabilities.

This account shall include liabilities of current character which are not includable in Accounts 1160 through 1169.

§ 76.1171 Funded debt.

(a) This account shall include the total face amount of unmatured debt, maturing more than one year from date of issue, issued by the company and not retired, and the total face amount of similar unmatured debt of other companies, the payment of which has been assumed by the company, including funded debt the maturity of which has been extended by specific agreement.

(b) This account shall include such items as mortgage bonds, collateral trust bonds, income bonds, convertible debt, debt securities with detachable warrants and other similar obligations maturing more than one year from date of issue.

(c) In the case of debt securities with detachable warrants this account shall include only the face amount of the security at the time of issuance. The value of detachable warrants shall be charged to either the Premium on Long-Term Debt account, or the Discount on Long-Term Debt account, as appropriate, and credited to the Additional Paid-in Capital account, in the case of capital stock warrants or retained in this account as a separately identifiable amount in the case of detachable long-term debt warrants. No similar allocation shall be made for the issuance of either convertible debt or debt securities with non-detachable warrants.

(d) Subsidiary records shall be maintained for each issue.

(e) Securities maturing in one year or less, including securities maturing serially, shall be included in the Current Maturities—Long-Term Debt account.

(f) Investment advances, including those represented by notes, shall be included in the Other Long-Term Debt account.

§ 76.1172 Premium on long-term debt.

(a) This account shall include the premium associated with all classes of long-term debt. Premium, as applied to securities issued or assumed by the company, means the excess of the current money value received at their sale over the sum of their book or face amount and interest or dividends accrued at the date of the sale.

(b) Amounts included in this account shall be amortized monthly by the interest method and credited to the Interest and Related Items account.

(c) Subsidiary records shall be maintained to identify the premium attributable to each issue.

§ 76.1173 Discount on long-term debt.

(a) This account shall include the discount associated with all classes of long-term debt. Discount, as applied to securities issued or assumed by the company, means the excess of the book or face amount of the securities plus interest or dividends accrued at the date of the sale over the current money value of the consideration received at their sale.

(b) Amounts included in this account shall be amortized monthly by the interest method and charged to the Interest and Related Items account.

(c) Subsidiary records shall be maintained to identify the discount attributable to each issue.

§ 76.1174 Reacquired debt.

This account shall include the face amount of debt reacquired prior to maturity that has not been retired. Gain or loss shall be recognized at the time of reacquisition by credits or charges to the Nonoperating Income and Expense account, except that material gains or losses shall be treated as extraordinary. (See Extraordinary Income Credits account and Extraordinary Items account.)

§ 76.1175 Obligations under capital leases.

(a) This account shall include the noncurrent portion of obligations applicable to property obtained under capital leases.

(b) Amounts subject to current settlement shall be included in the Current Maturities—Capital Leases account.

§ 76.1176 Advances from affiliated companies.

(a) This account shall include the amount of advances from affiliated companies.

(b) Amounts due affiliated companies which are subject to current settlement shall be included in the Notes Payable account or the Accounts Payable account, as appropriate.

§ 76.1177 Other long-term debt.

This account shall include long-term debt not provided for elsewhere.

§ 76.1178 Other long-term liabilities.

(a) This account shall include amounts accrued to provide for such items as unfunded pensions (if actuarially determined), death benefits, deferred compensation costs and other long-term liabilities not provided for elsewhere.

(b) Subsidiary records shall be maintained to identify the nature of the items included herein.

§ 76.1179 Unamortized operating investment tax credits—net.

(a) This account shall be credited and the Operating Taxes account shall be debited with investment tax credits generated from qualified expenditures related to regulated operations which the company defers rather than recognizes currently in income.

(b) This account shall be debited and the Operating Taxes account credited with a proportionate amount determined in relation to the period of time used for computing book depreciation on the property to which the tax credit relates.

§ 76.1180 Unamortized nonoperating investment tax credits—net.

(a) This account shall be credited and the Nonoperating Taxes account shall be debited with investment tax credits generated from qualified expenditures related to other operations which the company has elected to defer rather than recognize currently in income.

(b) This account shall be debited and the Nonoperating Taxes account credited with a proportionate amount determined in relation to the useful book life of the property to which the tax credit relates.

§ 76.1181 Net noncurrent deferred operating income taxes.

(a) This account shall include the balance of income tax expense related to noncurrent items from regulated operations which have been deferred to later periods as a result of comprehensive interperiod tax allocation related to timing differences that arise from regulated operations.

(b) This account shall be credited or debited, as appropriate, and the Operating Taxes account shall reflect the offset for the tax effect of revenues and expenses from regulated operations which have been included in the determination of taxable income, but which will not be included in the determination of book income or for the tax effect of revenues and expenses from regulated operations which have been

included in the determination of book income prior to the inclusion in the determination of taxable income.

(c) As regulated assets or liabilities which generated the prepaid income tax or deferred income tax are reclassified from long-term or noncurrent status to current status, the appropriate deferred income tax shall be reclassified from this account to the Net Current Deferred Operating Income Taxes account.

(d) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the tax timing difference.

(e) Subsidiary record categories shall be maintained in order that the company may separately report the amounts contained herein that are property related and those that are nonproperty related.

§ 76.1182 Net noncurrent deferred nonoperating income taxes.

(a) This account shall include the balance of income tax expense (Federal, state and local) that has been deferred to later periods as a result of comprehensive interperiod tax allocation related to nonoperating timing differences.

(b) This account shall be credited or debited, as appropriate, and the Nonoperating Taxes account, shall reflect the offset for the tax effect of revenues from other operations and extraordinary items and nonoperating expense which have been included in the determination of taxable income, but which will not be included in the determination of book income or for the tax effect of nonoperating expenses and extraordinary items and nonoperating income which have been included in the determination of book income prior to the inclusion in the determination of taxable income.

(c) As other assets or liabilities which generated the prepaid income tax or deferred income tax are reclassified from long-term or non-current status to current status, the appropriate deferred income tax shall be reclassified from this account to the Net Current Deferred Nonoperating Income Taxes account.

(d) This account shall also include the balance of the income tax effect (Federal, State and local) related to noncurrent extraordinary items which have been included in the determination of taxable income in a period different from when it is included in the determination of book income, that is, more than one year.

(e) This account shall be charged or credited with the contra amount recorded to the Extraordinary Items account.

(f) As the extraordinary item which generated the deferred income tax becomes current, the appropriate deferred income tax shall be reclassified from this account to the Net Current Deferred Nonoperating Income Taxes account.

(g) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the tax timing difference.

(h) Subsidiary record categories shall be maintained in order that the company may separately report the amounts contained herein that are property related and those that are nonproperty related.

§ 76.1183 Other deferred credits.

This account shall include the amount of all deferred credits not provided for elsewhere, such as amounts awaiting adjustment between accounts; and revenue, expense, and income items in suspense.

§ 76.1184 Capital stock.

(a) This account shall include the par value, stated amount, or in the case of no-par stock the amount received for capital stock issued and outstanding.

(b) Subsidiary records shall be maintained so as to show separately each class of stock.

(c) This account shall be charged with the book amount of any stock retired.

§ 76.1185 Additional paid-in capital.

(a) This account shall include the difference between the net proceeds (including discount, premium and stock issuance expense) received from the issuance of capital stock and the amount includable in the Capital Stock account, unless such difference results in a debit balance for that class of stock, in which case the amount shall be charged to the Retained Earnings account.

(b) This account shall also include gains arising from the retirement and cancellation of capital stock. Losses from the retirement and cancellation of capital stock shall be charged to this account to the extent that there exist credits in this account for the same class of stock; otherwise to the Retained Earnings account.

§ 76.1186 Treasury stock.

This account shall include the cost of the company's own capital stock which has been issued and subsequently reacquired but not retired or resold.

§ 76.1187 Other capital.

This account shall include amounts which are credits arising from the donation by stockholders of the company's capital stock, capital recorded upon the reorganization or recapitalization of the company and temporary declines in the value of marketable securities held for investment purposes. (See also the Investment in Affiliated Companies account.)

§ 76.1188 Retained earnings.

(a) This account shall include the undistributed balance of retained earnings derived from the operations of the company and from all other transactions not includable in the other accounts appropriate for inclusion of stockholders' equity.

(b) Subsidiary records shall be maintained wherein are recorded all entries to retained earnings during the year such that the detail of the entries may be disclosed to the Commission.

Revenue Accounts

§ 76.1189 Instructions for revenue accounts.

(a) *Purpose of revenue accounts.* The revenue accounts are intended to include the actual cash inflows (or equivalents) that have or will occur as a result of the company's ongoing major or central operations during the period. They will include the revenues which arise from furnishing regulating cable services such as basic cable services, cable programming services, equipment and installation, and nonregulated cable services such as pay per view, and pay per channel services.

(b) *Deductions from revenue.* Corrections of overcharges, authorized refunds of overcollections previously credited to revenue, authorized refunds and adjustments on account of failure in service, and other corrections shall be charged to the revenue account previously credited with the amounts involved.

(c) *Commissions.* Commissions paid to others or employees in place of compensation or salaries for services rendered shall be charged to the Customer Services account, and not to the revenue accounts.

(d) *Revenue recognition.* Credits shall be made to the appropriate revenue accounts when such revenue is actually earned. When the billing cycle encompasses more than one accounting period, adjustments are necessary to properly recognize the revenue applicable to the current accounting

period under report. Revenues recorded under the terms of two-tier contracts or other variable payment plans should be deferred, if necessary, and recognized ratably with expenses over the term of related contract. Any amounts deferred shall be credited to the Other Deferred Credits account.

(e) *Structure of revenue accounts.*

(1) The revenue section of the system of accounts shall be organized by revenue group summary account, account and subsidiary record category (if required).

(2) The revenue section of this system of accounts shall be comprised of five major groups—Basic Service Revenues, Cable Programming Service Revenues, Equipment and Installation Revenues, Nonregulated Cable Programming Service Revenues, Other Cable Revenues, Noncable Revenues, and Uncollectible Revenues.

(3) Summary accounts within revenue groups shall be used to describe aggregations of two or more accounts having a certain commonality.

§ 76.1190 Basic service tier revenues.

This account shall report all revenues derived from the provision basic cable service as defined by § 76.901(a). These revenues shall include:

(a) Revenues derived from subscriptions to basic cable;

(b) Revenues derived from advertising on channels carried on the basic cable service tier; and

(c) Other revenues derived from basic cable services.

§ 76.1191 Cable programming services revenues.

This account shall report all revenues derived from the provision cable programming services as defined by § 76.901(b). These revenues shall include:

(a) Revenues derived from subscriptions to cable programming services;

(b) Revenues derived from advertising on channels carried on the cable programming service tiers; and

(c) Other revenues derived from cable programming services.

§ 76.1192 Equipment and installation revenues.

This account shall include all revenues derived from the following activities:

(a) Customer service installation fees.

(b) Lease of basic converters.

(c) Lease of one-way addressable converters.

(d) Lease of two-way addressable converters.

(e) Lease of remotes.

§ 76.1193 Nonregulated cable programming services.

This account shall include all revenues from the provision of any cable service other than basic cable service and cable programming service, such as, per-channel or per-program premium services. These revenues shall include:

(a) Revenues derived from subscriptions to other cable programming services;

(b) Revenues derived from advertising on channels carried on other cable programming services; and

(c) Other revenues derived from other cable programming services.

§ 76.1194 Other cable revenues.

This account shall include all revenues that are derived from the provision of cable services that are not derived from basic cable services, cable programming services or nonregulated cable programming services. Other cable revenues include revenues from leased access, billing and collection services, studio equipment engineering and rental services, sale of equipment, and maintenance of equipment sold to customers.

§ 76.1195 Uncollectible revenue—cable services.

This account shall be charged with amounts concurrently credited to the Receivable Allowances—Cable Services account.

§ 76.1196 Uncollectible revenue—other.

This account shall be charged with amounts concurrently credited to the Other Accounts Receivable account or the Accounts Receivable Allowance—Other account, when such allowance is maintained.

Expense Accounts

§ 76.1197 Instructions for expense accounts.

(a) *Structure of the expense accounts.*

(1) The expense section of the system of accounts shall be organized by expense group summary account, and subsidiary record category (if required).

(2) The expense section of this system of accounts shall be comprised of four major expense groups—Plant Specific Operations, Plant Nonspecific Operations, Customer Operations and Corporate Operations. Expenses to be recorded in Plant Specific and Plant Nonspecific Operations Expense Groups generally reflect cost associated with the various kinds of equipment identified in the plant asset accounts. Expenses to be recorded in the Customer Operations and Corporate Operations accounts reflect the costs of, or all associated with, functions performed by people, irrespective of the organization in which any particular function is performed.

(3) Summary accounts within expense groups shall be used to describe aggregations of two or more accounts having a certain commonality.

(b) *Plant Specific Operations Expense.*

(1) The Plant Specific Operations Expense Accounts are used to record costs related to specific kinds of cable services plant.

(2) The Plant Specific Operations Expense accounts predominantly mirror the cable services plant in service detail accounts and are numbered consistently with them; the first two digits of the expense account being one, eight (18) and the remaining digits being the same as the last two numbers of the related plant account. In classifying Plant Specific Operations expenses, the text of the corresponding plant account should be consulted to ensure appropriateness.

(3) The Plant Specific Operations Expense accounts shall include the costs of inspecting, testing and reporting on the condition of cable plant to determine the need for repairs, replacements, rearrangements and changes; performing routine work to prevent trouble, replacing items of plant other than retirement units; rearranging and changing the location of plant not retired; repairing material for reuse; restoring the condition of plant damaged by storms, floods, fire or other casualties (other than the cost of replacing retirement units); inspecting after repairs have been made; and receiving training to perform these kinds of work. Also included are the costs of direct supervision (immediate or first-level) and office support of this work.

(4) In addition to the activities specified in paragraph (b)(3) of this section, the appropriate Plant Specific Operations Expense accounts shall include the cost of personnel whose principal job is the operation of plant equipment. However, when the operation of equipment is performed as part of other identifiable functions (such as the use of office equipment, capital tools or motor vehicles) the operators' cost shall be charged to accounts appropriate for those functions.

(c) *Plant Nonspecific Operations Expense.* The Plant Nonspecific Operations Expense accounts shall include expenses related to property held for future use, provisioning expenses, and depreciation and amortization expenses. Accounts in this group shall include the costs of performing activities described in narratives for individual accounts. These costs shall also include the costs

of supervision and office support of these activities.

(d) *Customer Operations Expense.* The Customer Operations Expense accounts shall include the cost of performing customer related marketing and services activities described in narratives for individual accounts. These costs shall also include the costs of supervision, office support and training for these activities.

(e) *Corporate Operations Expense.* The Corporate Operations Expense accounts shall include the costs of performing executive and planning activities and general and administrative activities described in narratives for individual accounts. These costs shall also include the costs of supervision, office support and training for these activities.

(f) *Expense matrix.* The expense accounts shall be maintained by the following subsidiary record categories, as appropriate to each account.

(1) *Salaries and wages.* This subsidiary record category shall include compensation to employees, such as; wages, salaries, commissions, bonuses, incentive awards and termination payments.

(2) *Benefits.* This subsidiary record category shall include payroll related benefits on behalf of employees such as the following:

(i) Pensions.

(ii) Savings plan contributions (company portion).

(iii) Worker's compensation required by law.

(iv) Life, hospital, medical, dental, and vision plan insurance.

(v) Social Security and other payroll taxes.

(3) *Rents.*

(i) This subsidiary record category shall include amounts paid for the use of real and personal operating property. Amounts paid for real property shall be included in Land and Buildings Expense account. This category includes payments for operating leases but does not include payments for capital leases.

(ii) This subsidiary record category is applicable only to the Plant Specific Operations Expense accounts. Incidental rents, e.g., short-term rental car expense, shall be categorized as Other Expenses (see paragraph (f)(4) of this section) under the account which reflects the function for which the incidental rent was incurred.

(4) *Other expenses.* This subsidiary record category shall include costs which cannot be classified to the other subsidiary record categories. Included are material and supplies, including provisioning (note also the Provisioning Expense account); contracted services; accident and damage payments, insurance premiums; traveling expenses and other miscellaneous costs.

(5) *Clearances.* This subsidiary record category shall include amounts transferred to Construction accounts (see § 76.1133(c)(2)(iii)), the Other Plant Specific Operations Expense account, and/or the Accumulated Depreciation account, as appropriate, from the Maintenance and Warehouse Equipment account.

(g) *Reimbursements.* Reimbursements of actual costs incurred in connection with joint operations or projects repairing plant due to damages by others, and obligations to make changes in cable plant (such as highway relocations), shall be credited to the accounts originally charged.

§ 76.1198 Property held for future use expense.

This account shall include expenses associated with property held for future use.

§ 76.1199 Land and building expense.

This expense shall include expenses associated with land and buildings (excluding amortization of leasehold improvements). This amount shall also include janitorial service, cleaning supplies, water, sewage, fuel and guard service, and electrical power.

§ 76.1200 Headend equipment expense.

This account shall be charged only with expenses incurred in connection with head end equipment.

§ 76.1201 Distribution system expense.

This account shall be charged only with expenses incurred in connection with the distribution system.

§ 76.1202 Drops expense.

This account shall be charged only with expenses incurred in connection with drops.

§ 76.1203 Production equipment expense.

This account shall be charged only with expenses incurred in connection with production equipment.

§ 76.1204 Customer premises equipment expense.

This account shall be charged only with expenses incurred in connection with customer premises equipment.

§ 76.1205 Maintenance and warehouse equipment expense.

This account shall be charged only with expenses incurred in connection with maintenance and warehouse equipment. These expenses shall include:

(a) Motor vehicle expenses such as the costs of fuel, lubrications, license and inspection fees, washing, repainting, and minor accessories. Also included are the costs of personnel whose principal job is operating motor vehicles, such as chauffeurs and shuttle bus drivers. The costs of users of motor vehicles whose principal job is not the operation of motor vehicles shall be charged to accounts appropriate for the activities performed. Credits shall be made to this account for amounts transferred to Construction and/or other Plant Specific Operations Expenses accounts. These amounts shall be computed on the basis of direct labor hours.

(b) Special purpose vehicles expenses such as the costs of fuel, licenses and inspection fees, washing, repainting, and minor accessories. The costs of operators of this equipment shall be charged to accounts appropriate for the activities performed. Credits shall be made to this account for amounts transferred to Construction and/or to other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

(c) Garage work and equipment expenses.

(d) Other work equipment expenses. Credits shall be made to this account for amounts transferred to Construction and/or to other Plant specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

§ 76.1206 Furniture and artworks expense.

This account shall include expenses associated with furniture and artworks.

§ 76.1207 Office equipment expense.

This account shall be charged only with costs incurred in connection with the office equipment itself. The costs of operators of this equipment shall be charged to accounts appropriate for the activities performed.

§ 76.1208 Basic cable programming expense.

This account shall be used for reporting purposes to summarize Accounts 1209 through 1213.

§ 76.1209 Basic cable satellite programming expense.

This account shall include all expenses associated with procuring satellite programming on the basic cable tier.

§ 76.1210 Retransmission consent expense.

This account shall include all expenses associated with retransmission consent on the basic tier.

§ 76.1211 Public, educational, governmental access expense.

This account shall include all expenses associated with public, educational, and governmental access.

§ 76.1212 Local origination expense.

This account shall include all expenses associated with local origination programming.

§ 76.1213 Other basic cable programming expense.

This account shall include all basic cable programming expenses that were not included in Accounts 1209 through 1212.

§ 76.1214 Cable programming service expense.

This account shall be used for reporting purposes to summarize Accounts 1215 through 1218.

§ 76.1215 Cable programming service satellite programming expense.

This account shall include all expenses associated with procuring satellite programming on the cable programming service tiers.

§ 76.1216 Cable programming service retransmission consent expense.

This account shall include all expenses associated with retransmission consent on the cable programming service tiers.

§ 76.1217 Cable programming service local origination expense.

This account shall include all expenses associated with local origination programming on the cable programming service tiers.

§ 76.1218 Other cable programming service expense.

This account shall include all cable programming service expenses that were not included in Accounts 1215 through 1218.

§ 76.1219 Accumulated depreciation and amortization expense.

This account shall summarize for reporting purposes the contents of Accounts 1220 through 1225.

§ 76.1220 Accumulated depreciation expenses—cable services plant in service.

This account shall include the depreciation expense of capitalized costs in Accounts 1139 through 1151, inclusive.

§ 76.1221 Accumulated depreciation expense—property held for future cable services use.

This account shall include the depreciation expense of capitalized costs included in the Property Held for Future Cable Services Use account.

§ 76.1222 Amortization expense—tangible.

This account shall include only the amortization of costs included in the Capital Leases account and the Leasehold Improvements account.

§ 76.1223 Amortization expense—intangible.

This account shall include the amortization of costs included in the Intangibles account.

§ 76.1224 Amortization expense—other.

(a) This account shall include only the amortization of costs included in the Cable Services Plant Adjustment account.

(b) This account shall also include lump-sum write offs of amounts of plant acquisition adjustment.

(c) Subsidiary records shall be maintained so as to show that character of the amounts contained in this account.

§ 76.1225 Other property, plant and equipment expenses.

This account shall include all expenses associated with the following:

(a) Property held for future cable use expenses; and

(b) Costs incurred in provisioning material and supplies, including office supplies. This includes receiving and stocking, filling requisitions from stock, monitoring and replenishing stock levels, delivery of material, storage, loading or unloading and administering the reuse of refurbishment of material. Also included are adjustments resulting from the annual or more frequent inventory of material and supplies. Credits shall be made to this account for amounts transferred to construction and/or to plant specific operations expense. These costs are to be cleared by adding to the cost of material and supplies a suitable loading charge.

§ 76.1226 Cable system operations expenses.

This account shall include the following expenses associated with operating the cable system:

(a) The cost of electrical power used to operate the cable system.

(b) Costs incurred in testing cable services facilities from a testing facility (test desk or other testing system) to determine the condition of plant on either a routine basis or prior to assignment of the facilities; receiving, recording and analyzing trouble reports; testing to determine the nature and location of reported trouble condition; and dispatching repair persons or otherwise initiating corrective action.

(c) Costs incurred in the general administration of plant operations. This includes supervising plant operations; planning, coordinating and monitoring plant operations; and performing staff work such as developing method and procedures, preparing and conducting training (except on-the-job training) and coordinating safety programs. Credits shall be made to this account for amounts transferred to Construction accounts. These amounts shall be computed on the basis of direct labor hours.

(d) Costs incurred in the general engineering of the cable services plant which are not directly chargeable to an undertaking or project. This includes developing input to the fundamental planning process, performing preliminary work or advance planning in connection with potential undertakings, and performing special studies of an engineering nature. Credits shall be made to this account for amounts transferred to Construction accounts. These amounts shall be computed on the basis of direct labor hours.

§ 76.1227 Marketing.

This account shall include the following expenses associated with establishing and servicing customer accounts:

(a) Costs incurred in performing administrative activities related to marketing products and services. This includes competitive analysis, product and service identification and specification, test market planning, demand forecasting, product life cycle analysis, pricing analysis, and identification and establishment of distribution channels.

(b) Costs incurred in selling products and services. This includes determination of individual customer needs, development and presentation of customer proposals, sales order preparation and handling, and preparation of sales records.

(c) Costs incurred in developing and implementing promotional strategies to stimulate the purchase of products and services. This excludes nonproduct-related advertising, such as corporate image, stock and bond issue and employment advertisements, which shall be included in the appropriate functional accounts.

§ 76.1228 Customer services.

This account shall include costs incurred in establishing and servicing customer accounts. This includes:

(a) Initiating customer service orders and records;

(b) Maintaining and billing customer accounts;

(c) Collecting and investigating customer accounts, including collecting

revenues, reporting receipts, administering collection treatment, and handling contacts with customers regarding adjustments of bills;

(d) Collecting and reporting pay station receipts; and

(e) Instructing customers in the use of products and services.

§ 76.1229 Executive and planning.

This account shall include the following expenses:

(a) Costs incurred in formulating corporate policy and in providing overall administration and management. Included are the pay, fees and expenses of boards of directors or similar policy boards and all board-designated officers of the company and their office staffs, e.g., secretaries and staff assistants.

(b) Costs incurred in developing and evaluating long-term courses of action for the future operations of the company. This includes performing corporate organization and integrated long-range planning, including management studies, options and contingency plans, and economic strategic analysis.

§ 76.1230 General and administrative.

This account shall include the following expenses:

(a) Costs incurred in providing accounting and financial services. Accounting services include payroll and disbursements, property accounting, capital recovery, regulatory accounting (revenue requirements, settlements and corollary cost accounting), non-customer billing, tax accounting, internal and external auditing, capital and operating budget analysis and control, and general accounting (accounting principles and procedures and journals, ledgers, and financial reports). Financial services include banking operations, cash management, benefit investment fund management (including actuarial services), securities management, debt trust administration, corporate financial planning and analysis, and internal cashier services.

(b) Costs incurred in maintaining relations with government, regulators, other companies and the general public. This includes:

(1) Reviewing existing or pending legislation;

(2) Preparing and presenting information for regulatory purposes;

(3) Performing public relations and non-product-related corporate image advertising activities;

(4) Administering relations, including negotiating contracts, but excluding sales contracts; and

(5) Administering investor relations.

(6) Costs incurred in performing personnel administration activities. This includes:

(i) Equal Employment Opportunity and Affirmative Action Programs;

(ii) Employee data for forecasting, planning and reporting;

(iii) General employment services;

(iv) Occupational medical services;

(v) Job analysis and salary programs;

(vi) Labor relations activities;

(vii) Personnel development and staffing services, including counseling, career planning, promotion and transfer programs;

(viii) Personnel policy development;

(ix) Employee communications;

(x) Benefit administration;

(xi) Employee activity programs;

(xii) Employee safety programs; and

(xiii) Nontechnical training course development and presentation.

(c) Expenses incurred in providing information management, including costs associated with planning, developing, testing, implementing and maintaining data bases and application systems for computers.

(d) Expenses incurred for the provision of legal services. This includes conducting and coordinating litigation, providing guidance on regulatory and labor matters, preparing, reviewing and filing patents and contracts and interpreting legislation. Also included are court costs, filing fees, and the costs of outside counsel, depositions, transcripts and witnesses.

(e) Expenses incurred in procuring material and supplies, including office supplies. This includes analyzing and evaluating suppliers' products, selecting appropriate suppliers, negotiating supply contracts, placing purchase orders, expediting and controlling orders placed for material, developing standards for material purchased and administering vendor or user claims.

(f) Expenses incurred in making planned search or critical investigation aimed at discovery of new knowledge. it also includes translating research findings into a plan or design for a new product or process or for a significant improvement to an existing product or process, whether intended for sale or use. This excludes making routine alterations to existing products, processes, and other ongoing operations even though those alterations may represent improvements.

(g) Costs incurred in performing other general administrative activities not directly charged to the user, and not provided for in other accounts. This includes providing general reference libraries, food services (e.g., cafeterias, lunch rooms and vending facilities), archives, general security investigation services, operating official private branch exchanges in the conduct of the business, and telecommunications and mail services. Also included are payments in settlement of accident and damage claims, insurance premiums for protection against losses and damages, direct benefit payments to or on behalf of retired and separated employees, accident and sickness disability payments, supplemental payments to employees while in governmental service, death payments, and other miscellaneous costs of a corporate nature. This account excludes the cost of office services, which are to be included in the accounts appropriate for the activities supported.

§ 76.1231 Provision for uncollectible notes receivable.

This account shall be charged with amounts concurrently credited to the Notes Receivable account, or to the Notes Receivable Allowance account, when such allowance is maintained.

§ 76.1232 Instructions for other income accounts.

The Other Income Accounts are designed to reflect both operating and nonoperating income items including taxes, extraordinary items and other income and expense items not properly included elsewhere.

§ 76.1233 Contents of accounts.

Other Operating Income and Expense accounts are intended to record the results of transactions, events or circumstances during the periods which are incidental or peripheral to the major or central operations of the company. They shall include all items of an operating nature as incidental work performed for others not provided for elsewhere. Whenever practicable the inflows and outflows associated with a transaction, event or circumstances shall be matched and the results shown as a net gain or loss.

§ 76.1234 Other operating income and expenses.

This account shall include the following operating income and expenses:

(a) Profits realized from custom work (plant construction) performed for others incident to the company's regulated cable services operations. The records supporting the entries in this account shall be maintained with sufficient particularity to identify separately the revenue and costs associated with each undertaking.

(b) A return on investment for the use of regulated property plant and equipment to provide nonregulated products and services.

(c) All gains and losses resulting from the exchange of foreign currency. Transaction (realized) gains or losses shall be measured based on the exchange rate in effect on the transaction date. Unrealized gains or losses shall be measured based on the exchange rate in effect at the balance sheet date.

(d) Gains or losses resulting from the disposition of land or artworks.

(e) Gains or losses resulting from transactions, events or circumstances which are of an operational nature, but occur irregularly or are peripheral to the major or central operations of the company and not provided for elsewhere.

§ 76.1235 Operating taxes.

(a) The Operating Tax account shall reflect the taxes arising from the central operations of the company.

(b) This account shall be charged and the Unamortized Operating Investment Tax Credits—Net account, shall be credited with investment tax credits generated from qualified expenditures related to regulated operations which the company defers rather than recognizes currently in income.

(c) This account shall be credited and the Unamortized Operating Investment Tax Credits—Net account shall be charged ratably with the amortization of each year's investment tax credits included in the Unamortized Operating Investment Tax Credits—Net account for investment services for ratemaking purposes. Such amortization shall be determined in relation to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.

(d) This account shall be charged and the Income Taxes—Accrued account, shall be credited for the amount of Federal Income Taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes should be accrued each month on an estimated basis and adjustments made as later data becomes available. Tax credits, other than investment tax credits, if normalized, shall be recorded consistent with the accounting for investment tax credits and shall be amortized to income as directed by this Commission. No entries shall be made to this account to reflect interperiod tax allocations.

(e) This account shall be charged and the Income Taxes—Accrued account, shall be credited for the amount of state and local income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes should be accrued each month on an estimated basis and adjustments made as later data becomes available. No entries shall be made to this account to reflect interperiod tax allocations.

(f) This account shall be charged and the Other Taxes—Accrued account, shall be credited for all taxes, other than Federal, state, and local income taxes and payroll related taxes, related to regulated operations applicable to current periods. Among the items includable in this account are property, gross receipts, franchise and capital stock taxes; this account shall also reflect subsequent adjustments to amounts previously charged.

(g) Special assessments for street and other improvements and special benefit taxes, such as water taxes and the like, shall be included in the operating expense accounts or investment accounts, as may be appropriate.

(h) Discounts allowed for prompt payment of taxes shall be credited to the account to which the taxes are chargeable.

(i) Interest on tax assessments which are not paid when due shall be included in the Interest and Related Items account.

(j) Taxes paid by the company under tax-free covenants on indebtedness shall be charged to the Nonoperating Income and Expense account.

(k) Sales and use taxes shall be accounted for, so far as practicable, as part of the cost of the items to which the taxes relate.

(l) Taxes on rented telecommunications plant which are borne by the lessee shall be credited by the owners to the Miscellaneous Revenue account, and shall be charged by the lessee to the appropriate Plant Specific Operations Expense account.

§ 76.1236 Nonoperating income and expense.

(a) The nonoperating income and expense accounts are intended to record the results of transactions, events and circumstances affecting the company during a period and which are not operational in nature. They shall include such items as nonoperating taxes, dividend income and interest income. Whenever practicable the inflows and outflows associated with a transaction or event shall be matched and the result shown as a net gain or loss.

(b) This account shall include dividends on investments in common and preferred stock, which is the property of the company, whether such stock is owned by the company and held in its treasury, or deposited in trust (except in sinking or other funds, or otherwise controlled. These accounts shall not include dividends or other returns on securities issued or assumed by the company and held by or for it, whether pledged as collateral, or held in its treasury, in special deposits, or in sinking or other funds. Dividends on stocks of other companies held in sinking or other funds shall be credited to this account. Dividends received and receivable from affiliated companies accounted for on the equity method shall be included in the Investments in Affiliated Companies account, as a reduction of the carrying value of the investments.

(c) This account shall include interest on securities, including notes and other evidences of indebtedness, which are the property of the company, whether such securities are owned by the company and held in its treasury, or deposited in trust (except in sinking or other funds, see paragraph (d) of this section) or otherwise controlled. It shall also include interest on bank balances, certificates of deposits, open accounts, and other analogous items. There shall be included in this account for each month the applicable amount requisite to extinguish, during the interval between the date of acquisition and date of maturity, the difference between the purchase price and the par value of securities owned, the income from which is includable in this account. Amounts thus credited or charged shall be concurrently included in the accounts in which the securities are carried. This account shall not include interest or other returns on securities issued or assumed by the company and held by or for it, whether pledged as collateral, or held in its treasury, in special deposits, or in sinking or other funds. Cash discounts on bills for material purchased also shall not be included in this account.

(d) This account shall include the income accrued on cash, securities issued by other companies, and other assets (not including securities issued or assumed by the company) held in sinking and other funds. There shall be included in this account for each month the applicable amount requisite to extinguish, during the interval between the date of acquisition and the date of maturity, the difference between the purchase price, and the par value of securities held in sinking or other funds. Amounts thus credited or charged shall be concurrently included in the accounts in which the securities are carried.

(e) This account shall be credited with such amounts as are charged to the cable services plant accounts for the purpose of recording an allowance for funds used for construction purposes.

(f) This account shall include gains or losses resulting from the disposition of gains or losses from the disposition of land or artworks; disposition of plant with traffic; and disposition of nonoperating cable services plant not previously used in the provision of cable services.

(g) This account shall include all other items of income and gains or losses, including:

(1) Fees collected in connection with the exchange of coupon bonds for registered bonds;

(2) Gains or losses realized on the sale of temporary cash investments or marketable equity securities;

(3) Uncollectible amounts previously credited to Accounts 7310 through 7350, inclusive;

(4) Net unrealized losses on investments in current marketable equity securities;

(5) Write-downs or write-offs of the book costs of investment in equity securities due to permanent impairment;

(6) Gains or losses of nonoperating nature arising from foreign currency exchange or translation;

(7) Gains or losses from the extinguishment of debt made to satisfy sinking fund requirements;

(8) Amortization of Goodwill;

(9) Company's share of the earnings or losses of affiliated companies accounted for on the equity method; and

(10) The net balance of the revenue from and the expenses (including depreciation, amortization and insurance) of property, plant, and equipment, the cost of which is includable in the Nonoperating Plant account.

(h) This account shall include the following costs, which are presumed to be exclude from the cost of service in setting rates:

(1) Lobbying includes expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances, or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises, or for the purpose of influencing the decisions of public officials. This also includes advertising, gifts, honoraria, and political contributions. This does not include such expenditures which are directly related to communications with and appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations;

(2) Contributions for charitable, social or community welfare purposes;

(3) Membership fees and dues in social, service and recreational or athletic clubs and organizations;

(4) Penalties and fines paid on account of violations of statutes. This account shall also include penalties and fines paid on account of violations of U.S. statutes including judgments arising from a violation of antitrust laws; and

(5) Abandoned construction projects.

§ 76.1237 Nonoperating taxes.

(a) The Nonoperating Tax accounts shall include taxes arising from activities which are not a part of the central operations of the entity.

(b) This account shall be charged and the Unamortized Nonoperating Investment Tax Credits—Net account, shall be credited with investment tax credits generated from qualified expenditures related to operations which the company has elected to defer rather than recognize currently in income.

(c) This account shall be credited and the Unamortized Nonoperating Investment Tax Credits—Net account shall be charged with the amortization of each year's investment tax credits included in such accounts relating to amortization of previously deferred investment tax credits of other property or regulated property, the amortization of which does not serve to reduce costs of service (but the unamortized balance does reduce rate base) for ratemaking purposes. Such amortization shall be determined with reference to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.

(d) This account shall be charged and the Income Taxes—Accrued account shall be credited for the amount of nonoperating Federal income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes shall be accrued each month on an estimated basis and adjustments made as later data becomes available. Companies that adopt the flow-through method of accounting for investment tax credits shall reduce the calculated provision in this account by the entire amount of the credit realized during the year. Tax credits, other than investment tax credits, if normalized, shall be recorded consistent with the accounting for investment tax credits. No entries shall be made to this account to reflect interperiod tax allocation.

(e) This account shall be charged and the Income Taxes—Accrued account should be credited for the amount of state and local income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes shall be accrued each month on an estimated basis and adjustments made as later data becomes available. No entries shall be made to this account to reflect interperiod tax allocation.

(f) This account shall be charged and the Other Taxes—Accrued account shall be credited for all nonoperating taxes other than Federal, state and local income taxes, and payroll related taxes for the current period. Among the items includable in this account are property, gross receipts, franchise and capital stock taxes. This account shall also reflect subsequent adjustments to amounts previously charged.

§ 76.1238 Interest and related items.

(a) This account shall include the current accruals of interest on all classes of debt the principal of which is includable in the Funded Debt Account. It shall also include the interest on funded debt the maturity of which has been extended by specific agreement. It shall not include charges for interest on funded debt issued or assumed by the company and held by or for it, whether pledged as collateral or held in its treasury, in special deposits or in sinking or other funds. Interest expressly provided for and included in the face amount of securities issued shall be charged at the time of issuance to the Other Prepayments accounts and cleared to this account as the term expires to which the interest applies. This account shall also include monthly amortization of balances in the Premium on Long-Term Debt account and the Discount on Long-Term Debt account.

(b) This account shall include the interest portion of each capital lease payment .

(c) This account shall include the monthly amortization of the balances in the Unamortized Debt Issuance Expense account.

(d) This account shall include all interest deductions not provided for elsewhere, including:

(1) Advances from affiliated companies;

(2) Advances from nonaffiliated companies and other liabilities

(3) Assessments for public improvements past due;

(4) Bond coupons, matured and unpaid;

(5) Claims and judgments;

(6) Customers' deposits;

(7) Funded debt mature, with respect to which a definite agreement as to extension has not been made;

(8) Notes payable on demand or maturing one year or less from date of issue;

(9) Open accounts;

(10) Tax assessments, past due; and

(11) Discount, premium, and issuance expense of notes maturing one year or less from date of issue.

§ 76.1239 Extraordinary items.

(a) This account is intended to segregate the effects of events or transactions that are extraordinary. Extraordinary events and transactions are distinguished by both their unusual nature and by the infrequency of their occurrence, taking into account the environment in which the company operates. This account shall also include the related income tax effect of the extraordinary items.

(b) This account shall be credited with nontypical, noncustomary and infrequently recurring gains which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items.

(c) This account shall be debited with nontypical, noncustomary and infrequently recurring losses which would significantly distort the current year's computed before such extraordinary items, if reported other than as extraordinary items.

(d) This account shall be charged or credited and the Income Taxes—Accrued account shall be credited or charged for all current income tax effects (Federal, state and local) of items included in paragraphs (b) and (c) of this section.

(e) This account shall be charged or credited, as appropriate, with a contra amount recorded to the Net Noncurrent Deferred Nonoperating Income Taxes account or the Net Current Deferred Nonoperating Income Taxes account for the income tax effects (Federal, state and local) of items included in paragraphs (b) and (c) of this section that have been deferred.

§ 76.1240 Nonregulated net income.

(a) This account shall be used by those companies who offer nonregulated activities that do not involve the joint or common use of assets or resources used in the provision of both regulated and nonregulated products and services, and which have not established a separate subsidiary for that purpose.

(b) All revenue and expenses (including taxes) incurred in these nonregulated activities shall be recorded on separated books of account for such operations.

§ 76.1241 Glossary of terms.

When used in this system of accounts:

Account means a specific element of a chart of accounts used to record, classify and accumulate similar financial transactions resulting from the operations of the entity. "Accounts" or "these accounts" refer to the accounts of this system of accounts.

Accounting system means the total set of interrelated principles, rules, requirements, definitions, accounts, records, procedures and mechanisms necessary to operate and evaluate the entity from a financial perspective. An accounting system generally consists of a chart of accounts, various parallel subsystems and subsidiary records. An accounting system is utilized to provide the necessary financial information to users to meet judiciary and other responsibilities.

Affiliated companies means companies that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the accounting company. See also Control

Amortization means the systematic recoveries, through ratable charges to expense, of the cost of assets.

Associated equipment means that equipment which functions with a specific type of plant or with two (2) or more types of plant, e.g., switching equipment, network power equipment, circuit equipment, common channel network signaling equipment or network operations equipment. Associated equipment shall be classified to the account appropriate for the type of equipment with which it is predominately used rather than on its own characteristics.

Book cost means the amount at which property is recorded in these accounts, without deduction of related allowances.

Company or *the company* means the accounting entity unless otherwise indicated in the context.

Control (including the terms *controlling, controlled by,* and *under common control with*) means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts affiliated companies, contract, or any other direct or indirect means.

Cost means the amount of money actually paid (or the current money value of any consideration other than money exchanged) for property or services, except as applied to cable services plants, franchises, and patent rights. See also Original Cost.

Cost of removal means the cost of demolishing, dismantling, removing, tearing down, of otherwise disposing of cable services plant and recovering the salvage, including the cost of transportation and handling incident thereto.

Depreciation means the loss not restored by current maintenance, incurred in connection with the consumption or prospective retirement of cable services plant in the course of service from causes which are known to be in current operation, against which the company is not protected by insurance, and the effect of which can be forecast with a reasonable approach to accuracy. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in technology, changes in demand and requirements of public authorities.

Intangible property means assets that have no physical existence but instead have value because of the rights which ownership confers.

Minor items means any part or element of such plant, which when removed, (with or without replacement) does not initiate retirement accounting, as applied to depreciable cable services plant.

Original cost or *cost* means the actual money cost of (or the current money value of any consideration other than money exchanged for) property at the time when it was first dedicated to use by a cable operator, whether the accounting company or by predecessors, as applied to cable services plant, rights of way and other intangible property. For the application of this definition of property acquired from predecessors see § 76.1600(b)(1). Note also the definition of Cost in this section.

Plant retired means plant which has been removed, sold, abandoned, destroyed, or otherwise withdrawn from service.

Retirement units means those items of plant which when removed (with or without replacement) cause the initiation of retirement accounting entries, as applied to depreciable cable services plant.

Salvage value means the amount received for property retired, if sold, or if retained for reuse, the amount at which the material recovered is chargeable to the Material and Supplies account or other appropriate account.

Subsidiary record means accumulation of detailed information

which is required by this Commission to be maintained in support of entries to the accounts.

Subsidiary record categories means those segregations of certain regulated costs, expenses and revenues which must be maintained and are subject to specific reporting requirements of this Commission.

Subsystems, parallel mechanisms means processes or procedures which augment the use of a chart of accounts in the financial operation of the entity. These subsystems operate on and/or process account and subsidiary record information for specific purposes.

Time of installation means the date which cable services plant is placed in service.

Time of retirement means the date at which cable services plant is retired from service.

Tangible property means assets characterized by physical existence, such as land, buildings, equipment, furniture, fixtures and tools.

[FR Doc. 94–9079 Filed 4–14–94; 8:45 am]
BILLING CODE 6712–01–M

UNITED STATES INFORMATION AGENCY

48 CFR Chapter 19

Regulation Reduction

AGENCY: United States Information Agency.

ACTION: Public review of regulations.

SUMMARY: The United States Information Agency will eliminate parts of the Code of Federal Regulations (CFR), Title 48, Chapter 19, according to the Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations. The Agency plans to eliminate the following regulations which are also published in the Federal Acquisition Regulation (FAR). The following parts will be removed from 48 CFR chapter 19:

Subchapter A, part 1901—subpart 1901.6, sections 1901.670 through 1901.670–5.

Subchapter A, part 1903—subparts 1903.1, 1903.2, and 1903.3, sections 1903.101 through 1903.301.

Subchapter A, part 1912—subpart 1912.70, section 1912.701.

Subchapter C, part 1913—subparts 1913.1, 1913.2, and 1913.4, sections 1913.106–70 through 1913.405.

Subchapter D, part 1919—subpart 1919.2, sections 1919.201 through 1919.201–70.

Subchapter D, part 1922—subparts 1922.3, 1922–4, and 1922.70, sections 1922.305 through 1922.7001.

Subchapter E, part 1927—subpart 1927.4, sections 1927.400 through 1927.405.

Subchapter E, part 1932—subpart 1932.1, section 1932.111.

Subchapter H, part 1952—subpart 1952.2, sections 1952.200 through 1952.212–70, sections 1952.222–70 through 1952.227–75 and sections 1952.232–70 through 1952.242–70.

DATES: Written comments must be sent by May 16, 1994.

ADDRESSES: Send comments to USIA, Office of Contracts, Policy and Procedures Office, 400 6th Street, SW., room 1725, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Brenda Dade, (202) 205–5404.

Dated: April 8, 1994.

Philip Rogers,

Director, Office of Contracts.

[FR Doc. 94–9089 Filed 4–14–94; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 86]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: The purpose of this notice is to announce the denial of a petition for rulemaking to amend Standard No. 209, *Seat Belt Assemblies*, "to eliminate the requirements in S4.1 (k) and (l) that replacement seat belt assemblies be accompanied by use and installation instructions." The petition is denied because the petitioner did not provide any information showing that there is not any safety need to provide these instructions.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel S. Cohen, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4911.

SUPPLEMENTARY INFORMATION: On May 28, 1993, the Association of International Automobile Manufacturers, Inc. (AIAM) submitted a petition for rulemaking to amend Standard No. 209, *Seat Belt Assemblies*, "to eliminate the requirements in S4.1 (k) and (l) that replacement seat belt assemblies be accompanied by use and installation instructions." In its petition, AIAM referred to petitions for inconsequential noncompliance from four manufacturers (Chrysler, Nissan, Subaru, and Toyota) relating to the requirements of S4.1(k) and (l). AIAM stated that it:

> Believes that the objectives of FMVSS 209 are satisfied without specifically requiring the provision of installation and use instructions with each replacement safety belt assembly, since current common replacement safety belt assembly practices and procedures, replacement safety belt assembly owner's manual information, and the design of the replacement safety belt assemblies, themselves, are sufficient to ensure correct installation and proper usage. The agency so found in the cases involving petitions for inconsequential noncompliance filed by Chrysler, Nissan, and Subaru cited above.

AIAM is incorrect in saying that the Chrysler petition for inconsequential noncompliance related to S4.1(k) and (l). That petition related to the requirement in S4.6(b) of Standard No. 209 that certain belts be labeled.

However, the agency has received and granted petitions for inconsequential noncompliance from Am-Safe, Nissan, Subaru, Suzuki, Toyota, and Volkswagen, all of which related to the requirements of S4.1(k) and (l). These petitions were granted because the petitioners demonstrated that the noncompliance was inconsequential due to other procedures or practices that provided the information in another format than that required by Standard No. 209. In general, these other procedures or practices relied on a determination by a mechanic or technician of physical differences unique to a particular design. These differences may have worked sufficiently well, given that there was no evidence that the belts had been incorrectly installed. However, a change in the standard to remove this requirement would substantially magnify the potential risk of improper installation, given that no evidence was provided that all seat belt and vehicle manufacturers have such a practice or procedure.

The grant of a petition for inconsequential noncompliance exempts the manufacturer from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*). An inconsequentiality proceeding is retrospective, and, in the case of the failure to provide installation instructions, the granting of petitions was based, in part, on the fact that there

was no evidence that any of the replacement belt assemblies had been installed incorrectly. A rulemaking proceeding is, by contrast, prospective, looking at whether all future seat belt assemblies should be excluded from the requirement to provide installation information. AIAM did not demonstrate that the installation information would get to the users in a reliable and effective manner absent the requirement that it be provided with the belt. Therefore, the agency finds that there is no reasonable possibility that the order requested would be issued at the conclusion of a rulemaking proceeding and is denying this petition.

Issued on April 11, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–9087 Filed 4–14–94; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Parts 571 and 572

[Docket No. 74–14; Notice 85]

RIN 2127–AE34

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This notice terminates rulemaking to amend Standard No. 208, *Occupant Crash Protection*, to require compliance with a *N*eck *I*njury *C*riterion (NIC) instead of the currently specified *H*ead *I*njury *C*riterion (HIC) in those compliance tests in which the test dummy's head does not contact any vehicle surface or component. Current agency estimates indicate that only 10 percent of the vehicle fleet would be affected by the time this rulemaking would go into effect and diminish to near zero within the next two years. The potential benefits would be sufficiently low that NHTSA believes agency efforts would be better directed in other areas. One of those areas would be research to develop a neck trauma criterion useful for all crash scenarios, including both tests in which the test dummy's head does not contact any vehicle surface or component and those in which the test dummy's head does contact a vehicle surface or component.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley H. Backaitis, Office of Vehicle Safety Standards, NRM–10, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4912.

SUPPLEMENTARY INFORMATION: On December 10, 1992, NHTSA published a notice of proposed rulemaking (NPRM) to change the injury criteria used to determine compliance with Standard No. 208, *Occupant Crash Protection* (57 FR 58444). The NPRM proposed to require compliance with a *N*eck *I*njury *C*riterion (NIC), based on tension forces in the neck, instead of the currently specified *H*ead *I*njury *C*riterion (HIC) in those compliance test crashes in which the test dummy's head does not contact any vehicle surface or component, including a deploying air bag. These crashes are referred to as "non-contact crashes" throughout the rest of this document. This proposal was based on evidence indicating that there was no risk of belted occupants in frontal collisions suffering a serious head injury in non-contact crashes, but they might be subject to a risk for neck injury.

The agency received 14 comments on the December 1992 NPRM. Three commenters opposed the proposal, while five commenters supported the proposal without further comment. Five additional commenters generally supported the proposal, but had various comments. These comments included the belief that both NIC and HIC should be measured, that neck injury assessment should include both contact and non-contact events, questions concerning the proposed level for NIC, questions concerning how contact would be determined, and leadtime issues. The remaining commenter addressed technical matters not directly related to the issue of whether NIC should be substituted for HIC in non-contact crashes.

After reviewing the comments, NHTSA has decided to terminate this rulemaking. Many commenters questioned the correlation of NIC as a tension force in the neck to actual injury probability. Further, air bags are being introduced in vehicles at a more rapid pace than anticipated when this rulemaking was initiated. Because of this, the number of non-contact crashes will diminish, and the effectiveness of a final rule would be lower than anticipated. Current estimates indicate that a final rule at the time it would go into effect would affect less than 10 percent of the new vehicle fleet, the agency's current estimate of the percent of the new vehicle fleet that would lack air bags in the first year a final rule would be implemented. Given these figures, the agency believes that its efforts will have a greater safety benefit if focused on other research and rulemaking efforts.

Terminating this rulemaking will allow the agency to focus its neck injury research on assessment of neck injury potential in both contact and non-contact crashes. Most of the commenters stressed the need to assess neck injuries in both types of crashes and urged the agency to expedite the development of appropriate injury criteria without further delay. While the agency has been researching neck injury since the early 1980s, these efforts have not yet yielded the answers necessary for a NIC covering all crash conditions. The agency will continue its neck injury research with the goal of adding a neck trauma criterion for all crash scenarios at a later date.

Issued on April 11, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–9085 Filed 4–14–94; 8:45 am]

BILLING CODE: 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 261, 262, 263, and 267

[Docket No. 940387–4087; ID 120293B]

RIN 0648–AD53

U.S. General Standards for Grades of Finfish Products

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS requests comments on the desirability of amending U.S. standards for grades of whole or dressed fish, frozen dressed whiting, frozen halibut steaks, frozen salmon steaks, fish fillets, cod fillets, flounder and sole fillets, haddock fillets, ocean perch and Pacific ocean perch fillets, and North American catfish. Industry members have requested, through written and verbal comments, that NMFS remove the species identification from the current standards. Comments have also been received regarding the dissimilarity among the standards in regard to format. NMFS is requesting written comments from industry members, users of these commodities, and the general public to evaluate the national level of interest in amending the current standards. Additionally, NMFS is requesting comments on the desirability of developing a single general standard for all species of whole and dressed fish, fish steaks, and fish fillets.

DATES: Comments should be received by May 2, 1994.

ADDRESSES: Comments should be sent to Thomas J. Moreau, Director, Technical Services Unit, Inspection Services Division, Office of Trade and Industry Services, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Mary A. Estrella or Laurie A. Silva at (508) 281–9285.

SUPPLEMENTARY INFORMATION: NMFS has received written and verbal comments from industry members questioning the necessity of including the scientific names of species in the standards. The comments indicate that it would be more equitable to discontinue the list of species allowed for grading in the standards. For example, the U.S. standards for grades of flounder and sole fillets list 12 species that can be graded using those standards. Currently, there are many more commercial species of flounder and sole not included in the list that cannot be graded using those standards. Although the U.S. general standard for grades of fish fillets can be used for those species, the comments suggest that the two standards do not grade the species of flounder and sole equivalently.

The standards contained in 50 CFR parts 261, 262, 263, and 267 were developed using various formats, grading systems, and criteria. For example, part 261, subpart A contains a U.S. Grade A, U.S. Grade B, and substandard. However, part 262, subpart A contains a U.S. Grade A, U.S. Grade B, U.S. Grade C, and substandard. Part 267 contains only U.S. Grade A and U.S. Grade B.

Another variation among the standards is in grading systems. Part 262, subpart A uses the attribute system. Part 262, subpart B uses defect points.

Grading criteria among the standards also differ. Part 261, subpart A, and part 263, subpart A, have two different tables of criteria for determining the grade of the sample unit and sample. Part 263, subpart B grading is expressed numerically on a scale starting at 100, with points deducted. In part 267, grading is expressed numerically on a scale starting at 0, with points added.

The revisions under consideration would decrease the number of standards currently in title 50 CFR from nine standards for grades to one, with three subparts with separate defect tables for the different product types (i.e., whole and dressed, steaks, and fillets). Additionally, they would increase the number of products eligible for grading under the voluntary seafood inspection program by developing a general standard for grading fish steaks.

NMFS estimates that it takes approximately 3 years to develop and promulgate a standard for grades. NMFS believes that the revisions under consideration would reduce the amount of time it would otherwise take to examine and revise each standard separately.

Therefore, NMFS is requesting written comments on the following questions:

1. Should the species (scientific name) references in the above mentioned U.S. Standards for Grades be removed?

2. What are the benefits or disadvantages to removing the species references from the above standards?

3. What guideline(s) should be used to identify the species of fish permitted for grading in each standard?

4. Should a consolidated U.S. General Standards for Grades of Fish Fillets be developed to include 50 CFR part 263, subparts A through E, and the fillets now eligible for grading under part 267?

5. Should 50 CFR part 261, subparts A and B; part 262, subparts B and C; part 263, subparts A through E; and part 267 be revised at the same time to develop a single general finfish standard with subparts for whole and dressed fish, fish steaks, and fish fillets?

Authority: 7 U.S.C. 1621–1629.

Dated: March 30, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–9060 Filed 4–14–94; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Part 651

[Docket No. 9403–80480; I.D. 020194A]

Northeast Multispecies Fishery; Possession Limit for Haddock

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes regulations to implement proposed Amendment 6 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). These regulations would impose a 500-lb (226.8-kg) possession limit for haddock year-round for all vessels permitted under the FMP and for all vessels in possession of haddock from or in the exclusive economic zone (EEZ), prohibit scallop dredge vessels from possessing or landing haddock from January through June; and extend the time period of the closure of Closed Area II to 6 months (from January through June), rather than 4 months (February through May) in 1995. The intended effect of this rule is to protect depleted haddock stocks.

DATES: Comments are invited through May 14, 1994.

ADDRESSES: Copies of proposed Amendment 6/Environmental Assessment (EA)/Regulatory Impact Review (RIR) supporting this action may be obtained from Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Susan Murphy (Fishery Policy Analyst, Northeast Region, NMFS), 508–281–9252.

SUPPLEMENTARY INFORMATION: The primary species in the Northeast multispecies (groundfish) fishery have declined to record or near-record low levels of stock abundance. To correct this, the New England Fishery Management Council (Council) developed Amendment 5 to the FMP, which was approved by NMFS on January 3, 1994, except for two measures (a 5,000-lb (2,268-kg) haddock possession limit and a winter flounder exemption) that were disapproved on September 30, 1993. A final rule to implement approved measures of Amendment 5 was published on March 1, 1994 (59 FR 9872).

Because of the very low abundance of spawning stock biomass for Georges Bank and Gulf of Maine stocks of haddock, and the occurrence of seasonal spawning congregations of haddock in the area known as Closed Area II on Georges Bank, an emergency rule was implemented to protect haddock, beginning January 3, 1994, through April 2, 1994 (59 FR 26, January 3, 1994), and recently extended through June 30, 1994 (59 FR 15656, April 4, 1994). The original emergency rule: (1) Imposed a 500-lb (226.8-kg) possession limit for haddock for all vessels permitted under the fishery, except sea scallop dredge vessels, which are prohibited from possessing or landing haddock; (2) closed Closed Area II to all vessels, except lobster pot vessels and scallop dredge vessels, from January through May; (3) expanded the size of Closed Area II by 20 minutes longitude to the west and 15 minutes latitude to the south (along its existing western and southern boundaries, intersecting with the Regulated Mesh Boundary line); (4) suspended the February through May closure of Closed Area I to all vessels

except those using sink gillnet gear; (5) prohibited the transfer of fish at sea; and (6) banned pair trawling in the multispecies fishery.

The final rule implementing Amendment 5, implemented indefinitely: (1) The expansion of the size of Closed Area II; (2) the closure of Area II from February through May in 1994 and 1995, and January through June, in 1996 and thereafter; (3) the suspension of the closure of Closed Area I to all vessels, except vessels using sink gillnet gear; (4) the prohibition on transfer of fish at sea; and (5) the ban on pair trawling. Therefore, proposed Amendment 6 and the current extension to the emergency rule do not contain these measures.

NMFS proposed Amendment 6 under authority of section 304(c)(1)(B) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), which authorizes NMFS to prepare and propose an amendment to an FMP (commonly referred to as a Secretarial amendment), if an amendment submitted by the Council (here, Amendment 5) has been partially disapproved and a revised amendment is not submitted by the Council. A notice of availability for Amendment 6 was published on February 7, 1994 (59 FR 5563), which invited comments through March 26, 1994.

The Council voted at its February 17 meeting to extend the emergency rule to protect haddock through June 30, 1994. As a result, the emergency rule has recently been extended through June 30 by publication in the **Federal Register**. The extension of the emergency rule maintained the 500-lb (226.8-kg) possession limit for haddock, and extended the time period for the closure of Closed Area II through June, rather than through May as contained in Amendment 5.

Also at the February meeting, the Council voted to begin the resubmission process for the disapproved 5,000-lb (2,268-kg) haddock possession limit with a 750-lb (340-kg) possession limit.

The Council resubmitted a 750-pound (340-kg) haddock possession limit on March 31, 1994. The resubmitted amendment has not yet been accepted for Secretarial review, and its approvability will be determined after public comments are received on the resubmitted amendment and its proposed rule. Also, due to the depleted condition of the haddock stocks, NMFS has determined that it would be inappropriate to allow the 500-lb (226.8-kg) haddock possession limit to lapse beyond the ending effective date of the emergency rule (June 30, 1994). Therefore, NMFS has determined that it is appropriate to propose Amendment 6 and publish proposed implementing regulations. However, if the Council's resubmitted haddock possession limit is approved and implemented by June 30, 1994, Amendment 6 to the FMP will be withdrawn.

Background

Of particular concern are the haddock stocks on both Georges Bank and in the Gulf of Maine, which are at all-time low levels of abundance. Haddock landings in 1993 were the lowest in recorded history. The stock condition and landings will continue to decline until such time as meaningful measures are implemented to eliminate the overfished condition of the stocks and reduce the exploitation rate to levels that will allow significant rebuilding to take place.

The 1993 spawning stock level for the Georges Bank stock is estimated to be 10,000 metric tons (mt), which is significantly lower than the 130,000 mt required to provide a maximum sustainable yield of 47,000 mt. The most recent assessment of the Georges Bank haddock stock, conducted by the NMFS Stock Assessment Workshop, determined that the fishing mortality rate in 1991 was 0.52. More recent information from a Canadian assessment indicates that the 1992 fishing mortality rate was 0.6 and was probably higher in 1993.

The overfishing definition for the Georges Bank haddock stock is 30 percent of maximum spawning potential, which corresponds to a fishing mortality rate of 0.4. If this fishing mortality rate were achieved, the stock would be maintained at its present low level, but rebuilding would not take place. Rebuilding will only occur when the fishing mortality rate is reduced well below the 0.4 fishing mortality level. Given the depleted condition of the stock, reducing fishing mortality as far below 0.4 as practicable would be the most appropriate risk-averse management approach to promote stock rebuilding.

The Regional Director presented a new analysis of the condition of the stocks to the Council at its November 23 Multispecies Oversight Committee meeting and at its December 8–9 Council meeting and, in response, the Council proposed to implement by emergency rule: A closure of the expanded Closed Area II (beginning January 1, 1994); a prohibition on pair trawling; a haddock possession limit between 500 lbs (226.8 kg) and 1,000 lbs (453.6 kg), at the discretion of the Regional Director, and a request that the Regional Director consider whether scallop dredges should be prohibited from the haddock spawning area during the closure of Area II.

NMFS concurred with the Council's recommendation and the Regional Director's determination that the haddock possession limit should be 500 lbs (226.8 kg) for the emergency rule. NMFS has initially determined that the same possession limit for haddock contained in the emergency rule is appropriate year-round, and Closed Area II should be closed beginning January each year, through June.

A 500-lb (226.8-kg) haddock possession limit is expected to reduce fishing mortality below 0.4 and foster stock recovery. Although some haddock taken as bycatch will be discarded under the 500-lb (226.8-kg) limit, the 500-lb (226.8-kg) limit is sufficiently low to discourage targeting and high-grading on haddock. The 500-lb (226.8-kg) limit should provide considerable conservation benefits and is expected to pose little biological impact while mitigating adverse effects on the fishing fleets.

Finally, a trip limit is expected to make enforcement of these haddock measures problematic. Compliance with the measures will also be closely monitored and, should enforceability become compromised, appropriate action could be taken by the Regional Director. Amendment 5 prohibits transfer of fish at sea, unless authorized by the Regional Director, requires regulated species to be stored separately from other fish, and requires all vessels to carry a standardized tote. Proposed Amendment 6 would require that haddock be stored separately from the rest of the catch, so the amount of haddock on board can be measured at sea.

The expansion of Closed Area II in time for 1995 will provide additional protection to the concentrations of haddock that occur in the area. The closure of Area II beginning in January rather than February, and ending at the end of June rather than at the end of May, should ensure that haddock beginning to concentrate in the area are provided the fullest protection.

In addition to the longer closure period for Closed Area II, NMFS has initially determined that, because scallop vessels fish in Closed Area II during the period when haddock are congregated to spawn, all scallop dredge vessels should be prohibited from landing or possessing haddock during the closed period to ensure that such vessels do not target these concentrations of haddock. While the Council requested that the Regional Director consider the question of

whether scallop dredges should be prohibited from the area during the closure, instead of a prohibition on landings, the information provided by the Northeast Fisheries Science Center of NMFS does not support precluding scallopers from the closed area. Therefore, the lesser action is proposed to reduce the impact on scallopers, yet provide some protection to spawning haddock.

Classification

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. Fishing vessels that would be subject to this rule rarely take more than 500 lbs (226.8 kg) of haddock per trip because of the severely depleted status of the stock. Based on the most recent catch statistics, 68 percent of the fishing trips landing groundfish landed no haddock, 84 percent involved less than 500 pounds. The allowable bycatch of 500 lbs (226.8 kg) is expected to discourage vessels from targeting haddock, promoting rebuilding of the stock that will result in long term benefits to the groundfish fleet.

For the purposes of Executive Order 12866, this proposed rule has been determined to be "not significant."

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: April 11, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is proposed to be amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. Section 651.9, is amended by adding paragraphs (a)(11) and (12) and (e)(33) and (34) to read as follows:

§ 651.9 Prohibitions.

(a) * * *

(11) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.27(b)(1).

(12) Land, or possess on board a vessel, more than 500 lbs (226.8 kg) of haddock, as specified in § 651.27(b)(2) or violate any of the other provisions specified in § 651.27(b)(2).

* * * * *

(e) * * *

(33) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.27(b)(1).

(34) Land, or possess on board a vessel, more than 500 lbs (226.8 kg) of haddock as specified in § 651.27(b)(2) or violate any of the other provisions specified in § 651.27(b)(2).

* * * * *

3. Section 651.21 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 651.21 Closed areas.

* * * * *

(b) * * *

(3) *Duration.* (i) No fishing vessel or person on a fishing vessel may fish or be in Closed Area II during the period of January through June, except as specified in paragraph (b)(4) of this section.

* * * * *

4. Section 651.27 is amended by adding paragraph (b) to read as follows:

§ 651.27 Possession limits.

* * * * *

(b) *Haddock possession limits*—(1) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a permit under this part may land, or possess on board a vessel, haddock, from January 1 through June 30.

(ii) No person operating a scallop dredge vessel may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(2) *Other vessels.* (i) No person owning or operating a vessel issued a permit under this part may land, or possess on board a vessel, more than 500 lbs (226.8 kg) of haddock.

(ii) No person may possess on board a vessel more than 500 lbs (226.8 kg) of haddock in, or harvested from, the EEZ.

(iii) Vessels subject to the haddock possession limit shall have on board the vessel at least one standard box or one standard tote.

(iv) The haddock stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the haddock in a standard box or standard tote if requested by an authorized officer.

(v) The haddock possession limit is equal to 500 lbs (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

[FR Doc. 94–9094 Filed 4–14–94; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 73
Friday, April 15, 1994

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

Agricultural Marketing Service

[No. LS–94–004]

Beef Promotion and Research; Board and State Beef Council Addresses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document updates the Notice published in the **Federal Register** on Monday, October 15, 1990 (55 FR 41730). This Notice provides the addresses of the Cattlemen's Beef Promotion and Research Board (Board) and the current addresses of the 44 Qualified State Beef Councils (QSBCs) which are authorized under the Cattlemen's Beef Promotion and Research Order (Order) to receive assessments.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch 202/720–1115.

SUPPLEMENTARY INFORMATION: Pursuant to the Beef Promotion and Research Act (Act) (7 U.S.C. 2901 et. seq.), the Order was published in the July 18, 1986, **Federal Register** (51 FR 26132). Regulations implementing the Order were published in the October 1, 1986, issue of the **Federal Register** (51 FR 35196).

The Order and the Regulations provide that, beginning October 1, 1986, cattle sold in the United States are subject to an assessment of $1 per head. Persons who collect assessments from producers under the Order and Regulations are required to remit those assessments to the QSBC in the State where they reside or to the Board if there is no QSBC located in their State.

Imported cattle, beef, and beef products are also subject to equivalent assessments; these are paid through the U.S. Customs Service.

The Act (7 U.S.C. 2901 et. seq.) required that a referendum be conducted by the Secretary within 22 months after the issuance of the Order to determine if the Order should be continued or suspended. Any person had the right to demand and receive from the Board a one-time refund on cattle sold during the period prior to the approval of the continuation of the order pursuant to the referendum. On May 10, 1988, the referendum was conducted and producers voted to continue the checkoff program. After the passage of the referendum, refunds were no longer available.

This Notice provides the current addresses of the Board and 44 QSBCs. Since the publication of the addresses in the **Federal Register** on October 15, 1990 (55 FR 41730), no additional State Beef Councils have been certified by the Board. However, some of the addresses have changed. QSBCs have different addresses for different purposes. Accordingly, this notice includes two columns for such addresses; one for inquires and general business and one for remitting assessments and accompanying reports. For inquires and general business, the address of the Board is Cattlemen's Beef Promotion and Research Board; P.O. Box 3316; Englewood, Colorado 80155. For remitting assessments and accompanying reports, the address of the Board is Cattlemen's Beef Promotion and Research Board; P.O. Box 27–275; Kansas City, Missouri 64180–0001.

ADDRESSES OF THE QUALIFIED STATE BEEF COUNCILS

Inquiries and general business	Remit assessments and accompanying reports to—
Alabama Cattlemen's Association, 600 Adams Ave. (36104), P.O. Box 2499, Montgomery, AL 36102–2499.	Alabama Cattlemen's Association, 600 Adams Ave. (36104), P.O. Box 2499, Montgomery, AL 36102–2499.
Arizona Beef Council, 1401 N. 24th Street, Phoenix, AZ 85008	Arizona Livestock Board, 1688 W. Adams Street, Room 333, Phoenix, AZ 85007.
Arkansas Beef Council, P.O. Box 31 (72203), 10720 Kanis Road, Little Rock, AR 72211.	Arkansas Revenue Div., Misc. Tax, Section, P.O. Box 896, Room 230, Little Rock, AR 72203.
California Beef Council, 551 Foster City Blvd., Suite A, Foster City, CA 94404.	California Dept. of Food & Agr., Marketing Branch, 1220 N Street, Room 210, Sacramento, CA 95814.
Colorado Beef Council, 6551 S. Revere Parkway, Suite 120, Englewood, CO 80111.	Colorado Beef Council, 6551 S. Revere Parkway, Suite 120, Englewood, CO 80111.
Delaware Beef Advisory Board, 2319 S. DuPont Hwy., Dover, DE 19901	Delaware Beef Advisory Board, c/o Delaware Dept. of Ag., 2320 S. DuPont Hwy., Dover, DE 19901.
Florida Beef Council, P.O. Box 1929 (327423–1929), 1818 North Bermuda, Kissimmee, FL 32741.	Florida Beef Council, P.O. Box 1929 (32742–1929) North, 1818 North Bermuda, Kissimmee, FL 32741.
Georgia Beef Board, 100 Cattlemen's Drive (31210), P.O. Box 11347, Macon, GA 31212.	Georgia Beef Board, 100 Cattlemens Drive (31210), P.O. Box 1134, Macon, GA 31212.
Hawaii Beef Industry Council, Seven Water Front Plaza, Suite 400, 500 Ala Moana Blvd., Honolulu, HI 96813.	Hawaii Beef Industry Council, Seven Water Front Plaza, Suite 400, 500 Ala Moana Blvd. Honolulu, HI 96813.
Idaho Beef Council, 212 S. Cole Road, Boise, ID 83709	State of Idaho, Brand Dept., 212 S. Cole Road Boise, ID 83709.
Illinois Beef Council, 993 Clocktower Drive, Springfield, IL 62704	Illinois Beef Council, 993 Clocktower Drive, Springfield, IL 62704.
Indiana Beef Council, 8770 Guion Road, Suite A, Indianapolis, IN 46268–3013.	Indiana Beef Council, 8770 Guion Road, Suite A, Indianapolis, IN 46268–3013.
Iowa Beef Industry Council, P.O. Box 451, 123 Airport Road, Ames, IA 50010.	Iowa Beef Industry Council, P.O. Box 451, 123 Airport Road, Ames, IA 50010.
Kansas Beef Council, 6031 S.W. 37th, Topeka, KS 66614	Kansas Beef Council, 6031 S.W. 37th, Topeka, KS 66614.

ADDRESSES OF THE QUALIFIED STATE BEEF COUNCILS—Continued

Inquiries and general business	Remit assessments and accompanying reports to—
Kentucky Beef Cattle Association, 733 Red Mile Road, Lexington, KY 40504.	Kentucky Beef Cattle Association, 733 Red Mile Road, Lexington, KY 40504.
Louisiana Beef Industry Council, 4921 I–10 Frontage Road, Port Allen, LA 70767.	Louisiana Beef Industry Council, 4921 I–10 Frontage Road, Port Allen, LA 7076.
Maine Beef Industry Council, Maine Dept. of Agriculture, Food and Rural Resource, State House Station 28, Augusta, ME 04333–0028.	Maine Beef Industry Council, Route 2, Box 185, Strong, ME 04983.
Maryland Beef Industry Council, University of Maryland, 1129 Animal Science Center, College Park, MD 20742.	Maryland Beef Industry Council, P.O. Box 259, Sykesville, MD 21784.
Michigan Beef Industry Commission, 2145 University Park Drive, Suite 300, Okemos, MI 48864.	Michigan Beef Industry Commission, 2145 University Park Drive, Suite 300, Okemos, MI 48864.
Minnesota Beef Council, 2950 Metro Drive, Suite 211, Minneapolis, MN 55420.	Minnesota Beef Council, 2950 Metro Drive, Suite 211, Minneapolis, MN 55420.
Mississippi Cattle Industry Board, 1202 Mississippi Street, Jackson, MS 65709.	Mississippi Cattle Industry Board, 1202 Mississippi Street Jackson, MS 65709.
Missouri Beef Industry Council, 2015 Missouri Blvd., Jefferson City, MO 65109.	Missouri Beef Industry Council, c/o Missouri Dept. of Agr., P.O. Box 630, Jefferson City, MO 65102.
Montana Beef Council, P.O. Box 5386, Helena, MT 59604–5386	Montana Dept. of Lvstk., Capitol Station, Helena, MT 59620.
Nebraska Beef Council, 2620 Highway 30 East, Kearney, NE 68847–9763.	Nebraska Beef Council, 2620 Highway 30 East, Kearney, NE 68847–9763.
Nevada Beef Council, P.O. Box 11100, 350 Capitol Hill Road (89510), Reno, NV 89502.	Nevada Beef Council, P.O. Box 11100, 350 Capitol Hill Road (89510), Reno, NV 89502.
New Mexico Beef Council, 1209 Mountain Road Place, NE., Suite C, Albuquerque, NM 87110.	New Mexico Beef Council, 1209 Mountain Road Place, N.E., Suite C, Albuquerque, NM 87110.
New York Beef Industry Council, 6351 Rome Lowell Road, Rome, NY 13440.	New York Beef Industry Council, 6351 Rome Lowell Road, Rome, NY 13440.
North Carolina Cattlemen's Association, 2228 N. Main Street, Fuquay-Varina, NC 27526.	North Carolina Dept. of Agr., P.O. Box 27647, Raleigh, NC 27611.
North Dakota Beef Commission, 4023 N. State Street, Bismarck, ND 58501.	North Dakota Beef Commission, 4023 N. State Street Bismarck, ND 58501.
Ohio Beef Council, P.O. Box 845, 283 S. State Street, Suite 103, Westerville, OH 43081.	Ohio Beef Council, P.O. Box 845, 283 S. State Street, Suite 103, Westerville, OH 43081.
Oklahoma Beef Industry Council, 5101 North Classen, Oklahoma City, OK 73118.	Oklahoma Beef Industry, 5101 North Classen Oklahoma City, OK 73118.
Oregon Beef Council, Oregon Square, 729 NE Oregon, Street, Suite 190, Portland, OR 97232.	Oregon Dept. of Agr., Lvstk. Div., 635 Capitol Street, NE., Salem, OR 97310.
Pennsylvania Beef Council, 4714 Orchard Street, Harrisburg, PA 17109	Pennsylvania Beef Council, 4714 Orchard Street, Harrisburg, PA 17109.
South Carolina Cattle and Beef Board, P.O. Box 11280, Columbia, SC 29211.	South Carolina Cattle and Beef Board, c/o S.C. Dept. of Agr., P.O. Box 11280, Columbia, SC 29211.
South Dakota Beef Industry Council, 106 W. Capitol Suite ı7, P.O. Box 1037, Pierre, SD 57501.	South Dakota Beef Industry Council, 106 W. Capitol, Suite ı7, P.O. Box 1037, Pierre, SD 57501.
Tennessee Beef Industry Council, 109 Holiday Court, Suite C–6, Franklin, TN 37064.	Tennessee Beef Industry Council, c/o Sovran Bank, P.O. Box 220, Franklin, TN 37064.
Texas Beef Industry Council, 8310 Capital of Texas Hwy. N, Suite 440, Austin, TX 78731.	Texas Beef Industry Council, P.O. Box 140766, Austin, TX 78714–0766.
Utah Beef Council, 150 S. 6th E. Suite 10B, Salt Lake City, UT 84102 ..	Utah Dept. Of Agr., 350 N. Redwood Road, Salt Lake City, UT 84116.
Vermont Beef Industry Council, P.O. Box 1103, Monshire Museum, Suite 200, Norwich, VT 05055.	Vermont Beef Industry Council, P.O. Box 7503, Monshire Museum, Suite 200 Norwich, VT 05055.
Virginia Cattle Industry Board, P.O. Box 176, U.S. Rt. 220, Daleville, VA 24083.	Virginia Cattle Industry Board, P.O. Box 176, U.S. Rt. 220, Daleville, VA 24083.
Washington State Beef Commission, Suite 105, Denny Bldg., 2200 Sixth Ave., Seattle, WA 98121.	Washington State Beef Commission, Suite 105, Denny Bldg., 2200 Sixth Ave, Seattle, WA 98121.
West Virginia Beef Industry Council, P.O. Box 668, 40 Chancery Street, Buckhannon, WV 26201.	West Virginia Beef Industry Council, P.O. Box 668, 40 Chancery Street, Buckhannon, WV 26201.
Wisconsin Beef Council, 630 Grand Canyon Drive, Madison, WI 53713 .	Wisconsin Beef Council, P.O. Box 770, Madison, WI 53701–0770.
Wyoming Beef Council, P.O. Box 1243 (82003), 113 E. 20th Street, Cheyenne, WY 82201.	Wyoming Livestock Board, P.O. Box 206, Cheyenne, WY 82001.

(Authority 7 U.S.C. 2901 et. seq.)

* * * * *

Dated: April 8, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–8916 Filed 4–14–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–022–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and a finding of no significant impact for the shipment of an unlicensed veterinary biological product for field testing. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that shipment of the unlicensed veterinary biological product for field testing will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the docket number of this notice when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Veterinary Biologics, BBEP, APHIS, USDA, room 571, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; telephone (301) 436–5390; fax (301) 436–8669.

SUPPLEMENTARY INFORMATION: A veterinary biological product regulated under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. In order to ship an unlicensed product for the purpose of conducting a proposed field test, a person must receive authorization from the Animal and Plant Health Inspection Service (APHIS).

In determining whether to authorize shipment for field testing of the unlicensed veterinary biological product referenced in this notice, APHIS conducted a risk analysis to assess the product's potential effects on the safety of animals, public health, and the environment. Based on that risk analysis, APHIS has prepared an environmental assessment. APHIS has concluded that shipment of the unlicensed veterinary biological product for field testing will not significantly affect the quality of the human environment. Based on this finding of no significant impact, we have determined that there is no need to prepare an environmental impact statement.

An environmental assessment and finding of no significant impact have been prepared for the shipment of the following unlicensed veterinary biological product for field testing:

Requester(s)	Product	Field test location(s)
Tufts University School of Veterinary Medicine; Rhone Merieux, Inc.; and the Centers for Disease Control and Prevention.	A live, gentically engineered, vaccinia-vectored rabies vaccine that expresses the rabies virus surface glycoprotein; and the vaccine is enclosed in raccoon baits.	Area astride the Cape Cod Canal, Barnstable County, MA.

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

Done in Washington, DC, this 11th day of April 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–9129 Filed 4–14–94; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 94–023–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of February 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of February 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 11th day of April 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-9130 Filed 4-14-94; 8:45 am]

BILLING CODE 3410-34-P

Cooperative State Research Service

Extension Service

National Sustainable Agriculture Advisory Council; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, the Cooperative State Research Service and Extension Service announce the following meeting:

Name: National; Sustainable Agriculture Advisory Council.

Date: June 2-June 4, 1994.

Time: 1 p.m. to 3 p.m.

Place: U.S. Department of Agriculture Administration Building, 12th and Independence Ave., SW., Washington, DC 20250.

Type of Meeting: Open to public. Persons may participate in the meeting as the time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below. A specific time for public comments will be scheduled for the morning of June 4, 1994.

Purpose: To serve as an annual meeting for the National Sustainable Agriculture Advisory Council, and to advise the Secretary of Agriculture with respect to initiatives and priorities related to sustainable agriculture.

Contact Person for Agenda and More Information: Dr. Alice J. Jones, Interim Director, Sustainable Agriculture Research and Education program, Cooperative State Research Service, U.S. Department of Agriculture, Room 342, Aerospace Center, 901 D St., SW., Washington, DC 20250, Telephone 202-401-4640.

Done at Washington, DC this 7th day of April, 1994.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

Leodrey Williams,

Acting Deputy Administrator, Extension Service.

[FR Doc. 94-9120 Filed 4-14-94; 8:45 am]

BILLING CODE 3410-22-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Oklahoma Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Glo Henley, Secretary of State, for additional farm products produced in that State as follows:

rosemary
thyme

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c) (2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c) (2); 7CFR §§ 2.18(e) (3), 2.56(a) (3), 55 FR 22795.

Dated: April 7, 1994.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 94-9127 Filed 4-14-94; 8:45 am]

BILLING CODE 3410-KD-P

Soil Conservation Service

Northeast Yellow River Watershed, Covington, Crenshaw, and Coffee Counties, Alabama

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; The Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department Agriculture, gives notice that an environmental impact statement is not being prepared for the Northeast Yellow River Watershed, Covington, Crenshaw, and Coffee Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, telephone (205) 887-4535.

SUPPLEMENTAL INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The projects purposes are land stabilization; reduced sedimentation to streams and Lake Jackson; and watershed protection. The planned works of improvement include 29 grade stabilization structures, treatment of 68 critically eroding areas, graveling 16 miles of unpaved roads, and accelerated technical assistance on eroding cropland.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting W.R. Thompson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood

Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Ernest V. Todd,

State Conservationist.

[FR Doc. 94–9068 Filed 4–14–94; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 11 a.m. and adjourn at 2:30 p.m. on Wednesday, May 18, 1994, at the Henry M. Jackson Federal Building, room 3080, 915 Second Avenue, Seattle, Washington 98174. The purpose of the meeting is to review current civil rights developments in the State and plan future project activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Bill Wassmuth or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–9066 Filed 4–14–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Logbook Family of Forms.

Agency Form Number: No NOAA number assigned.

OMB Approval Number: 0648–0271.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,803 hours.

Number of Respondents: 93 but there are about 70 responses per respondent.

Avg Hours Per Response: Depending on the requirement, ranges between 1 and 26 minutes.

Needs and Uses: The National Marine Fisheries Service has proposed regulations to implement a comprehensive data collection and regulatory program for all processing vessels greater than 125 feet and for harvesting vessels that deliver their catch to such vessels in the Northwest Region. The information will be used by fishery managers to base in–season and pre–season management decisions affecting Washington, Oregon, and California groundfish resources.

Affected Public: Businesses or other for–profit institutions.

Frequency: On occasion, weekly, monthly and quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: April 11, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–9173 Filed 4–14–94; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with March anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a) (1993), for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with March anniversary dates.

Initiation of Reviews

In accordance with 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than March 31, 1995.

Antidumping Duty proceedings	Period to be reviewed
Bangladesh:	
Shop Towels	
A–538–802	
Eagle Star Mills Ltd., Greyfab (Bangladesh) Ltd., Hashem Int., Khaled Textile Mills Ltd., Shabnam Textiles, Sonar Cotton Mills (Bangladesh) Ltd	03/01/93–02/28/94

Antidumping Duty proceedings	Period to be reviewed
Ecuador:	
Certain Fresh Cut Flowers	
A–331–602	
Agricola Flores La Antonia, Florisol Cia Ltda., Florestrade, S.A. Flores de Ibarra, S.A., Flores de Puembo, S.A., Flores Pichincha, S.A., Flores del Ecuador, Flores del Quinche, S.A., Guaisa Farms, Inlandes, Mundiflor, Velvet	03/01/93–02/28/94
Germany:	
Brass Sheet and Strip	
A–428–602	
Wieland-Werke AG	03/01/93–02/28/94
Certain Hot-Rolled Lead and Bismuth Carbon Steel Products	
A–428–811	
Saarstahl AG	09/28/92–02/28/94
Japan:	
Ferrite Cores (of the Type Used in Consumer Electronic Products)	
A–588–016	
Tomita Electronic Co., Ltd	03/01/93–02/28/94
The Republic of Korea:	
Steel Wire Rope	
A–580–811	
Man Ho Rope Manufacturing Co., Dong-Il Steel Manufacturing Co., Chun Kee Steel & Wire Rope Co., Kwangshin Rope, Saang Yong Steel Wire Co	09/30/92–02/28/94
Boo Kook Corp., Chung Woo Rope Co., Jin Yang Wire Rope Inc., Dae Keung Industrial Co., Ltd., Atlantic & Pacific, Sung Jin, Seo Jin Rope, Yeon Sin Metal, Dong Young Rope, Korope Co., Kwang Shin Ltd., Kusho Rope, Hanbo Rope, Seo Hae Ind., Sung San Special, T.S.K. (Korea) Co., Dong Il Metal, Dae Kyung Metal, Myung Jin Co	09/30/92–02/28/94
United Kingdom:	
Certain Hot-Rolled Lead and Bismuth Carbon Steel Products	
A–412–810	
United Engineering Steels Ltd	09/28/92–02/28/94
Thailand:	
Certain Circular Welded Carbon Steel Pipes and Tubes	
A–549–502	
Saha Thai Steel Pipe Co	03/01/93–02/28/94
Countervailing Duty Proceedings	
Germany:	
Certain Hot-Rolled Lead and Bismuth Carbon Steel Products	
C–428–812	09/17/92–12/31/93
Mexico:	
Certain Textile Mill Products	
C–201–405	01/01/93–12/31/93
Netherlands:	
Standard Chrysanthemums	
C–421–601	01/01/93–12/31/93
Pakistan:	
Cotton Shop Towels	
C–535–001	01/01/93–12/31/93
Peru:	
Certain Textile Mill Products*	
C–333–402	05/18/92–12/21/93
Sri Lanka:	
Certain Apparel	
C–542–401	05/18/92–12/31/93
United Kingdom:	
Certain Hot-Rolled Lead and Bismuth Carbon Steel Products	
C–412–811	09/17/92–12/31/93
Suspension Agreements	
Costa Rica:	
Certain Fresh Cut Flowers	
C–223–601	01/01/93–12/31/93
Thailand:	
Yarns Covered Under Certain Textile Mill Products	
C–549–401	05/18/92–12/31/93
Noncontinuous Noncellulosic Yarns	
C–549–401	01/01/93–12/31/93

*The request received was for a company-specific review under 19 CFR 355.22(a)(2). The Department is currently reviewing this request to ensure that they meet the requirements for an individual company review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended [19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: April 8, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–9174 Filed 4–14–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–301–401 and C–549–401]

Certain Textile Mill Products From Colombia and Thailand; Notice of Proposed Conversion

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Certain textile mill products from Colombia and Thailand: Notice of proposed conversion of the scope of the suspended investigation from the tariff schedules of the United States annotated to the harmonized tariff schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. The Department of Commerce (the Department) is now proposing to convert the Tariff Schedules of the United States Annotated (TSUSA) to the Harmonized Tariff Schedule (HTS) for the suspended countervailing duty investigations on certain textile mill products from Colombia and Thailand. Interested parties are invited to comment on this proposed conversion.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–0162.

Background

In 1985, the Department suspended the countervailing duty investigations on certain textile mill products and apparel from Colombia (C–301–401) (50 FR 9863; March 12, 1985) and certain textile mill products from Thailand (C–549–401) (50 FR 9832; March 12, 1985). The scope of these suspended investigations was originally defined solely in terms of the TSUSA item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the HTS, pursuant to section 1211 of the Omnibus Trade and Competitiveness Act of 1988. These suspended investigations were terminated in 1990, and the HTS conversions were never implemented. However, the CIT ordered that these suspended investigations be reinstated (except for apparel from Colombia) in its decision dated May 7, 1992 (*Belton Industries, Inc.* v. *United States*, slip op. No. 92–64). The CIT was upheld by the CAFC on September 7, 1993 (*Belton Industries, Inc.* v. *United States*, slip op. No. 6 F.3d 756). As a result, these suspended investigations were reinstated effective May 18, 1992 (see 58 FR 54552, October 22, 1993 and decision memorandum dated February 25, 1994). Therefore, the Department is now taking action to conform with the tariff classification system of the HTS.

The Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission, has analyzed the TSUSA-defined scope and identified those HTS numbers that reasonably correspond with the TSUSA-defined scope of the subject suspended investigations. The proposed conversions are found in Appendices 1 and 2 respectively.

Request for Public Comments

We invite interested parties to submit comments on the proposed conversions within 30 days of the date of the publication of this notice. All comments must be in writing (10 copies), and addressed to the attention of the Director, Office of Agreements Compliance, International Trade Administration, IA Central Record Unit, room B–099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: April 9, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Appendix 1.—Proposed HTS List for Certain Textile Mill Products From Colombia

5111.1120	5205.2300	5406.1000.20	6002.2010
5111.1910	5205.2400	5406.1000.40	[1] 6002.4300
5111.2005	5205.2500	5406.1000.90	6002.4300.10
5111.2010	[2] 5205.3200	5406.2000	6002.4300.20
5111.3005	5205.3300	5509.2200	6002.4300.80
5111.3010	5205.4400	5509.2200.10	6302.6000
5111.9040	5205.4500	5509.2200.90	6302.6000.10
5111.9050	5206.1100	5509.5160	6302.6000.20
5112.1110	5206.1200	5511.1000	6302.6000.30
5112.1920	5206.1300	5511.1000.30	6302.9100
5112.2010	5206.1400	5511.1000.60	6302.9100.05
5112.2020	5206.1500	5511.2000	6302.9100.15
5112.3010	5206.4100	5511.3000	6302.9100.25
5112.3020	5206.4200	5801.2100	6302.9100.35
5112.9040	5206.4300	5801.2200	6302.9100.45
5112.9050	5206.4400	5804.2100	6302.9100.50
5205.1110	5206.4500	5804.2900	6302.9100.60
5205.1210	5207.1000	5809.2900.10	6306.1100
5205.1310	5207.9000	5809.2900.20	6306.2100
5205.1410	5406.1000	5809.2900.90	

[1] Coverage limited to fabrics of polyester.
[2] Coverage limited to yarn exceeding 33nm per single yarn.

Appendix 2.—Proposed HTS List for Certain Textile Mill Products From Thailand

5204.1100	5208.1260	5210.1180.20	5511.1000	5514.1100.30
5204.1900	5208.1260.20	5210.1180.90	5511.1000.30	5514.1100.50
5204.2000	5208.1260.40	5211.1100	5511.1000.60	5514.1100.90
5206.2100	5208.1260.60	5211.1100.20	5511.2000	5601.1010
5206.2200	5208.1260.90	5211.1100.30	5511.3000	5601.2100

APPENDIX 2.—PROPOSED HTS LIST FOR CERTAIN TEXTILE MILL PRODUCTS FROM THAILAND—Continued

5206.2300	5208.1280	5211.1100.50	5513.1100	5601.2100.10
5206.2400	5208.1280.20	5211.1100.90	5513.1100.20	5601.2100.90
5206.2500	5208.1280.90	5401.1000	5513.1100.40	5701.9020
5206.4100	5209.1100	5401.2000	5513.1100.60	5701.9020.10
5206.4200	5209.1100.20	5402.3130	5513.1100.90	5701.9020.20
5206.4300	5209.1100.30	5402.3160	5513.1900	5701.9020.30
5206.4400	5209.1100.50	5402.3230	5513.1900.10	5701.9020.90
5206.4500	5209.1100.90	5402.3260	5513.1900.20	5703.1000
5207.1000	5209.1200	5402.3360	5513.1900.30	5703.2010
5207.9000	5209.1200.20	5406.1000	5513.1900.40	6302.4020
5208.1120	5209.1200.40	5406.1000.20	5513.1900.50	6302.4020.10
5208.1120.20	5209.1900	5406.1000.40	5513.1900.60	6302.4020.20
5208.1120.40	5209.1900.20	5406.1000.90	5513.1900.90	6302.5110
5208.1120.90	5209.1900.40	5406.2000	5513.2100	6302.5120
5208.1140	5209.1900.60	5508.1000	5513.2100.20	6302.5130
5208.1140.20	5209.1900.90	5508.2000	5513.2100.40	6302.5140
5208.1140.40	5210.1140	5509.2100	5513.2100.60	6307.1020
5208.1140.60	5210.1140.20	5509.2200	5513.2100.90	6307.1020.05
5208.1140.90	5210.1140.40	5509.2200.10	5513.2300	6307.1020.15
5208.1180	5210.1140.90	5509.2200.90	5513.2300.20	6307.1020.20
5208.1180.20	5210.1160	5509.3200	5513.2300.40	6307.1020.27
5208.1180.90	5210.1160.20	5509.5130	5513.2300.90	6307.1020.28
5208.1240	5210.1160.40	5509.5160	5513.3100	6307.1020.30
5208.1240.20	5210.1160.60	5509.6940	5514.1100	.....
5208.1240.40	5210.1160.90	5510.1200	5514.1100.20	.....
5208.1240.90	5210.1180	5510.9040	.....	.....

[FR Doc. 94–9175 Filed 4–14–94; 8:45 am]
BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 041294A]

DEPARTMENT OF DEFENSE

Advanced Research Projects Agency; Marine Mammals

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce and Advanced Research Projects Agency (ARPA), Defense.

ACTION: Notice of intent to prepare an environmental impact statement and request for comment.

SUMMARY: The NMFS and the ARPA intend to prepare an environmental impact statement (EIS), according to the National Environmental Policy Act, on an application for a scientific research permit to allow harassment of marine mammals and sea turtles by a low frequency sound source, and to monitor the effects thereof.

DATES: Comments are requested by May 6, 1994.

ADDRESSES: Comments should be addressed to: William W. Fox, Jr., Ph.D., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, (301) 713–2289.

SUPPLEMENTARY INFORMATION: An application for a scientific research permit has been submitted by Scripps Institute of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate (ATOC) Program, 9500 Gilman Drive, La Jolla, CA 92093–022. The applicant is requesting authorization to take (i.e., by harassment) several species of cetaceans, including humpback whales, Hawaiian monk seals, and sea turtles in Hawaiian waters, during a study designed to assess the effects of low frequency sound associated with the ATOC program on marine mammals and sea turtles. The proposed research is a pilot project which is intended to provide information which can be used in assessing the potential environmental effects of continuing the ATOC program in a broader context. If a decision is made to continue funding for the broader ATOC program, any potential environmental effects will be assessed in a separate environmental analysis.

The proposed research was proposed to be conducted in Hawaiian waters from April 1994 through December 1995. The sound source will be located 14 km north of Kaihu Point, Kauai, at a depth of 850–900 m. The maximum duty cycle will be 8%, with a transmission bandwidth of 35 Hz at a level of 195 dB (re 1 μPa at 1m), and with a spectrum level for the center frequency (75 Hz) at 182 dB. The effects of these transmissions on marine mammals and sea turtles will be monitored through a variety of methods.

The subject permit is requested under the authority of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361 et seq.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222). NMFS and ARPA invite interested parties to participate in determining the scope of significant issues to be addressed in the EIS. Significant issues currently under consideration by NMFS and ARPA are: the potential effects of the proposed low frequency sound source on marine mammals, sea turtles, and other marine resources, including fish; alternatives with respect to site selection; and, as a related issue, the purpose of the ATOC program, and an evaluation thereof as compared to other possible alternatives for assessing global warming. NMFS and ARPA will also consider as part of the scoping process, comments received at public hearings held in Maryland on March 22, 1994, and in Hawaii on April 14 and 15, 1994. Upon completion of a draft EIS on the proposed application, NMFS and ARPA will solicit public comments on it, as well.

Dated: April 12, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service, Department of Commerce.

Ralph W. Alewine, III,

Advanced Research Projects Agency, Department of Defense.

[FR Doc. 94–9154 Filed 4–14–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 030194C]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Approval of a fishery management plan amendment.

SUMMARY: NMFS announces approval of Amendment 32 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This amendment establishes a plan to rebuild stocks of the rockfish Pacific ocean perch (POP) (*Sebastes alutus*) in the Gulf of Alaska (GOA). This action is necessary to improve the conservation and management of POP and is intended to further the goals and objectives of the FMP.

EFFECTIVE DATE: March 31, 1994.

ADDRESSES: Copies of Amendment 32, the environmental assessment (EA), and the economic analyses prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, NMFS, Alaska Region, 907–586–7228.

SUPPLEMENTARY INFORMATION: POP is a highly valued groundfish that has been commercially harvested in the GOA since the early 1960's. Annual harvest amounts of this species peaked in 1965 when foreign trawl operations took an estimated 350,000 metric tons (mt). Since then, harvests of POP have declined drastically and the 1993 domestic catch of POP totaled just over 2,000 mt. The current spawner biomass is estimated to be 15–20 percent of the level observed during the 1960's.

The North Pacific Fishery Management Council (Council) believes that increasing the biomass of POP is necessary to achieve optimum yield in the POP fishery. During 1992, the Council requested the development of an FMP amendment that would establish a plan to rebuild POP stocks. In spite of increasingly conservative management, these stocks remain below optimum levels. At its September 1993 meeting, the Council reviewed the resultant EA and approved Amendment 32 for review by the Secretary of Commerce (Secretary) under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

A Notice of Availability of Amendment 32, which described the proposed action and solicited comments from the public until March 7, 1994, was published in the **Federal Register** (59 FR 295, January 4, 1994). Due to a miscalculation in the comment period deadline of March 7, 1994, the Office of the **Federal Register** subsequently published a correction in the **Federal Register** (59 FR 4978, February 2, 1994) that adjusted the comment period deadline to February 28, 1994, the end of the 60-day comment period provided for FMP amendments under section 304(a)(1)(C) of the Magnuson Act.

NMFS received a request to extend the 60-day comment period to allow time for consideration of preliminary results of the NMFS 1993 Triennial Trawl Survey of GOA groundfish resources, including POP. NMFS agreed that 1993 survey information on POP stocks should be considered prior to the final decision by the Secretary and extended the comment period through March 11, 1994 (59 FR 10612, March 7, 1994). Three letters of comments were received through March 11 and are summarized and responded to in the "Response to Comments" section of this preamble. After review under the Magnuson Act, the Secretary determined that Amendment 32 is consistent with the Magnuson Act and other applicable laws and approved Amendment 32 on March 31, 1994. Additional information on the POP rebuilding strategy set forth under Amendment 32 is contained in the January 4, 1994, Notice of Availability (59 FR 295).

Implementation of the Amendment

No regulatory changes are necessary to implement this FMP amendment. POP stocks will be considered to be rebuilt when the total biomass of mature females is equal to or greater than B_{MSY} (currently estimated at 150,000 mt). Annual total allowable catch (TAC) amounts for POP established for the GOA regulatory areas will be based on procedures set forth under Amendment 32 and will be specified annually under existing regulations at § 672.20(a)(2).

Response to Comments

Three letters of comments were received within the comment period that ended March 11, 1994. Two letters were supportive of the POP stock rebuilding strategy proposed under Amendment 32 and one letter opposed it. A summary of comments and NMFS's response follow.

Comment 1. The proposed Rockfish Rebuilding Plan is supported because it provides a good framework within which the Council can manage the POP stocks.

Response: NMFS concurs and has approved the amendment.

Comment 2. The results of the 1993 Triennial Trawl Survey in the GOA are encouraging. The new survey data and age structure data in NMFS stock assessment models should show the POP stock much closer to the target biomass of 150,000 mt. Under Amendment 32, the optimal target biomass should be reached even sooner than projected.

Response: Preliminary analysis of data collected during the 1993 Triennial Trawl Survey of the GOA groundfish resource indicates an increase in POP biomass relative to 1990 survey results. NMFS notes that the length-frequency samples collected during the 1993 survey show a relatively unimodal size composition with no obvious evidence of new recruitment which would account for the biomass increase from 1990. NMFS is cautious about placing too much emphasis on the results of the 1993 survey as the only indication of a strong recovery of the POP resource in the GOA, given the apparent lack of significant recruitment since 1990, the difficulties in assessing the biomass of rockfish resources, and the large uncertainty associated with estimating the biomass of POP (plus or minus 45 percent based on the 1993 trawl survey data). Additional data will need to be collected and assessed before definitive statements about the apparent recovery of the POP resource can be supported.

Comment 3. The POP stock rebuilding strategy proposed under Amendment 32 is inappropriate given the NMFS 1993 Triennial Trawl Survey data, which support vastly increased biomass estimates relative to those available to the Council when it adopted Amendment 32. Using data from the 1993 Triennial Survey and a 95 percent confidence interval, NMFS preliminarily estimates the POP biomass to be within the 255,000 mt to 666,000 mt range. This biomass estimate exceeds the target biomass of 150,000 mt and indicates that the costly rebuilding strategies proposed under Amendment 32 are unnecessary.

Response: Increasing the biomass of POP is necessary to achieve optimum yield in the POP fishery. The Council justified the lower POP harvests and

resultant foregone revenues under the POP stock rebuilding strategy set forth under Amendment 32 as being necessary to rebuild stock biomass to the desired target level (B_{MSY} = 150,000 mt mature females) within a reasonable period of time (14 years).

Although the results of the 1993 Triennial Survey appear promising, NMFS does not recommend that resource abundance trends be projected from the results of a single survey (see the response to Comment 2). As a point of clarification, the preliminary biomass estimate from the 1993 survey data (255–666 thousand mt) is calculated for all POP in the GOA, not just the component of the POP resource comprised of mature females. Additional analyses will need to be completed to estimate the biomass of mature females based on data collected during the 1993 Triennial Trawl Survey and to assess the status of this component of the POP resource relative to the target B_{MSY}. NMFS, in consultation with the Council and its Scientific and Statistical Committee, will continue to assess the status of the POP stocks and will adjust the management of the resource consistent with the intent of Council's rebuilding policy set forth under Amendment 32.

Comment 4. Rather than pursue unnecessary and costly POP stock rebuilding strategies under Amendment 32, a more appropriate action would be to foster better understanding of POP population dynamics through resource funded annual survey programs, similar to the pilot project conducted during the summer of 1993.

Response: NMFS acknowledges that greater understanding of POP population dynamics generally would provide better stock assessments and biomass projections for this fishery resource. As a result, NMFS will continue to consider research projects that are designed to collect additional data on GOA fishery resources in addition to the triennial trawl surveys. However, NMFS believes that the POP stock rebuilding strategy set forth under Amendment 32 is a prudent conservation policy that should be pursued until analyses of data collected through either the NMFS triennial surveys or other research indicate that the target abundance level recommended by the Council has been reached.

Dated: April 11, 1994.

David S. Crestin,

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

[FR Doc. 94–9093 Filed 4–14–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 16, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities, military resale commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Sling, Small Arm
1005–01–083–8113
NPA: Wichita Industries and Services for the Blind, Inc. Wichita, Kansas

Adhesive Tape, Surgical

6510–01–370–4099
6510–00–926–8882
6510–00–926–8883
6510–01–370–4100
6510–01–368–2659
6510–01–368–2660
6510–01–285–3896
6510–01–284–5110
6510–01–107–0223
6510–01–060–1639
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina

Military Resale Commodities

Pad, Replacement, Handle Scrubber
M.R. 540
M.R. 545
M.R. 546
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas

Services

Administrative Services
Interagency Cooperative Administrative Support Unit (CASU)
230 South Dearborn Street and other locations
Chicago, Illinois
NPA: Ada S. McKinley Community Services, Chicago, Illinois

Janitorial/Grounds Maintenance
Buffumville Lake
Hodges Village Dam
Oxford, Massachusetts
NPA: Worcester Area Association for Retarded Citizens, Inc., Worcester, Massachusetts

Deletion

The following military resale commodity has been proposed for deletion from the Procurement List:

Scrubber, Kitchen
M.R. 542

Beverly L. Milkman,
Executive Director.

[FR Doc. 94–9177 Filed 4–14–94; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 16, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 17, 1993 and February 18, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 48637 and 59 FR 8170) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Cup, Disposable
7350–00–082–5741
7350–00–145–6126
7350–00–721–9003
7350–00–926–1661
Jersey, Reversible
8415–00–245–2052
8415–00–245–2054
8415–00–245–2065
8415–00–245–2073

Services

Grounds Maintenance, U.S. Army Reserve Center, 4500 S. Lancaster Road, Dallas, Texas
Grounds Maintenance, U.S. Army Reserve Center, 920 S. Sam Houston, Huntsville, Texas
Grounds Maintenance, Naval Weapons Station; Japanese Gardens, Wright, Circle Picnic Area, Building 2006, Yorktown, Virginia
Janitorial/Custodial, Building 255, Robins Air Force Base, Georgia

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 94–9178 Filed 4–14–94; 8:45 am]
BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Regulatory Coordination Advisory Committee; Second Renewal

The Commodity Futures Trading Commission has determined to renew for a period of two years its advisory committee designated as the Commission's "Regulatory Coordination Advisory Committee." As required by section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, 14(a)(2)(A), and 41 CFR section 101–6.1007 and 101.6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration, and the Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as amended.

This Committee was originally created by the Commodity Futures Trading Commission to report and make recommendations to the Commission on subjects relating to regulatory coordination. The Committee's scope is being broadened to reflect its additional objectives of providing advice and recommendations to the Commission on streamlining regulations and operations, cutting operating costs and improving efficiency of operations as outlined in the Vice President's National Performance Review Report. The Committee meets publicly to discuss reports and recommendations on these subjects. It also considers regulatory modifications and other proposals that are intended to address the needs of users of the commodity futures markets, including the financial and agricultural futures markets.

A number of working groups have been formed to examine various areas in greater detail. These include working groups on managed funds, clearance and settlement, international issues, and speculative limits. The reports and findings of these working groups are discussed at the meetings of the full advisory committee.

Acting Chairman Barbara Pedersen Holum serves as Chairman and Designated Federal Official of the Regulatory Coordination Advisory Committee. The Advisory Committee's other members include a broad cross-section of users of financial markets and other affected and interested persons from both the private and public sectors including: institutional market participants, agricultural and financial services companies, broker-dealers, futures commission merchants; commodity pool operators and commodity trading advisors; members of the academic community; and former regulatory and public officials. This cross-section provides a blend of both industry users and persons with a more general knowledge of the industry.

Interested persons may obtain information or make comments by writing to the commodity Futures

Trading Commission, 2033 K Street NW., Washington, DC 20581.

Issued in Washington, DC this 8th day of April, 1994 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–9102 Filed 4–14–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent for March AFB Disposal and Reuse EIS Scoping Meeting

The United States Air Force (Air Force) will conduct a public scoping meeting to provide a forum for public officials and the community to provide information and comments concerning the disposal and reuse of portions of March AFB, CA. The meeting will be held on April 20, 1994 at 7 p.m. at the Moreno Valley Senior Center, 25075 Fir Avenue, Moreno Valley, California.

The purpose of this meeting is to: (1) Identify the environmental issues and concerns that should be analyzed to support base disposal and reuse; (2) solicit comments on the proposed action; and (3) solicit potential disposal and reuse alternatives for consideration in developing the Environmental Impact Statement (EIS). In soliciting disposal and reuse alternatives, the Air Force will consider all reasonable alternatives offered by any federal, state or local government agency, and any federally-sponsored or private entity or individual. The resulting EIS will be considered in making disposal decisions that will be documented in the Air Force's Final Disposal Plan and Record of Decision for March AFB.

To ensure sufficient time to adequately consider public comments concerning environmental issues and disposal alternatives to be included in the EIS, the Air Force recommends that comments and reuse proposals be presented at the upcoming meeting or forwarded to the address below by August 1, 1994. The Air Force will, however, accept additional comments at any time during the environmental impact analysis process.

Please direct written comments or requests for further information concerning the base disposal and reuse EIS to: Lt Col Gary P. Baumgartel, HQ AFCEE/EC, 8106 Chennault Road, Brooks AFB TX 78235–5318, (210) 536–3869.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–9082 Filed 4–14–94; 8:45am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Mobility Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 4–5 May 1994 at The Pentagon, Washington, DC; Langley AFB, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–9062 Filed 4–14–94; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Supportability Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 17–19 May 1994 at Oklahoma City, OK and Holloman, San Antonio, TX from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–9063 Filed 4–14–94; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Mobility Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 24–25 May 1994 at San Antonio, Texas from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–9064 Filed 4–14–94; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Training Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 10–11 May 1994 at NASA Ames, Palo Alto, CA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–9065 Filed 4–14–94; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement: Meetings

AGENCY: Department of Education.

ACTION: Notice of public meetings.

SUMMARY: This notice sets forth the schedule for a series of forthcoming public meetings. The Office of Educational Research and Improvement (OERI) will support and participate in these meetings with respect to its reauthorization and how, within the context of its reauthorization, it can be most responsive to public needs.

DATE, TIME, AND LOCATION: These meetings will be held in five

metropolitan areas. The schedule and location of the meetings are as follows:

- April 22, 1994—Tampa/St. Petersburg, FL
- May 5, 1994—Austin, TX
- May 18, 1994—Seattle, WA
- May 20, 1994—Chicago, IL
- May 24, 1994—Portland, ME

FOR FURTHER INFORMATION CONTACT: For additional information about the specific site, address, and time of each of the meetings listed above, contact Laurence Peters, Senior Policy Advisor to the Assistant Secretary, 555 New Jersey Avenue, NW., suite 600, Washington DC, 20208–3350. Telephone: 202–219–2050. FAX: 202–219–1466. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: As part of the U. S. Department of Education, the mission of OERI is to generate new knowledge about education and share this knowledge to improve educational practice. To fulfill this mission, OERI carries out the following specific responsibilities: Collecting and interpreting data; assessing student achievement; supporting basic and applied research; linking research to effective practice; advancing innovative school improvement projects; creating a national education dissemination system; and using electronic networking and new technologies to support the dissemination of information. In summary, OERI looks for answers to questions about every aspect of teaching and learning and sponsors programs to improve American education. OERI meets these responsibilities by awarding contracts as well as discretionary grants and cooperative agreements.

In carrying out its responsibilities, OERI is committed to supporting Executive Order 12862, Setting Customer Service Standards, which provides that the Federal Government be "customer driven" and that "[p]utting people first means ensuring that the Federal Government provides the highest quality service possible to the American people." To deliver the "highest quality service," OERI must understand its customers' needs and interests and how it can be most responsive to these needs and interests. OERI must also take into account its reauthorizing legislation, Public Law 103–227, which emphasizes OERI's obligation to consider its end users' needs when developing products or planning activities. This legislation also calls for the restructuring of OERI into a collection of interconnected, topic-centered institutes to expand fundamental knowledge and understanding of education, promote excellence and equity in education, and monitor the state of education.

These institutes will involve building a mission-oriented organization to concentrate resources on the following priority research and development needs: Student achievement, curriculum, and assessment; education of at-risk students; educational governance, finance, policy-making, and management; early childhood development and education; and postsecondary education, libraries, and lifelong education. In addition, OERI will establish successful reform assistance and dissemination practices in order to ensure that teachers, parents, administrators and policymakers have ready access to the best information and methods available as a result of educational research and development.

The Assistant Secretary for OERI will attend these meetings: (1) To solicit comments from customers about key education issues and problems that OERI should consider and address as it carries out its mission; and (2) to listen to and gather information from potential OERI customers in order to make OERI products and services more responsive to customer needs. Potential customers include school officials, parents, teachers, and students. The meetings are open to the public. They will focus on a description of OERI's new mission and plans, and a public discussion of major issues and problems facing American education.

Dated: April 11, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–9088 Filed 4–14–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Floodplain Involvement for the Strategic Petroleum Reserve Bayou Choctaw Facility, Iberville Parish, LA

AGENCY: Office of the Strategic Petroleum Reserve, DOE.

ACTION: Notice.

SUMMARY: DOE hereby provides notice that the proposed installation of a crude oil degasification unit at the existing SPR storage facility at Bayou Choctaw, Louisiana would be located in a 100-year floodplain. The degasification unit would be used to remove excess gas from the stored petroleum to allow for safe distribution of the oil in the event of a drawdown.

DATES: Written comments should be postmarked by May 2, 1994.

ADDRESSES: Written comments should be directed to Mr. Hal Delaplane, Strategic Petroleum Reserve (FE–423), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, Telephone (202) 586–4730, Fax (202) 586–7919.

FOR FURTHER INFORMATION INCLUDING LOCATION MAPS, CONTACT: For general information on the DOE environmental assessment process, further information on general DOE floodplain environmental review requirements, or the status of a review under the National Environmental Policy Act (NEPA), please contact Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 11988, Floodplain Management, and 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements, notice is given that DOE proposes to install a crude oil degasification unit at the existing SPR storage facility at Bayou Choctaw, Louisiana, which is located in a 100-year floodplain. Bayou Choctaw is one of four SPR storage facilities for which degasification is planned, but it is the only one that is located in a floodplain. The other facilities are: Bryan Mound, Texas, West Hackberry, Louisiana, and Big Hill, Texas.

The Bayou Choctaw storage facility, which is located in Iberville Parish, Louisiana, approximately 5 miles west of the Mississippi River and 13 miles southwest of Baton Rouge, is situated within the 100-year floodplain. This location is designated Zone A (areas of 100-year flood; base flood elevation and flood hazard factors not determined) by the National Flood Insurance Program. Should a 100-year flood occur, the water surface elevation at the proposed oil degasification unit location would be approximately ten feet above mean sea level. The proposed construction of the oil degasification unit therefore would be located in the 100-year floodplain, although construction would be on a previously disturbed area within the fence line of the existing storage facility. Wetlands would not be involved. In accordance with DOE regulations for compliance with floodplain environmental review requirements (10 CFR 1022.12), DOE will prepare a floodplain assessment for this proposed

action. The floodplain assessment will be incorporated in the environmental assessment (EA) prepared in accordance with the National Environmental Policy Act of 1969. A floodplain statement of findings will be included in any finding of no significant impact that is issued following completion of the EA.

Issued in Washington, DC on April 7, 1994.

Jack S. Siegel,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 94–9166 Filed 4–14–94; 8:45 am]

BILLING CODE 6450–01–P

Chicago Field Office, Golden Field Office

Cooperative Agreement Award to Babcock & Wilcox

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to enter into a cooperative agreement with Babcock & Wilcox for high-solids black liquor firing in pulp and paper industry kraft recovery boilers.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: B.H. Peterman, Contract Specialist, at (303) 275–4719. The Contracting Officer is J.W. Meeker.

SUPPLEMENTARY INFORMATION: DOE has evaluated, in accordance with § 600.14 of the Federal Assistance Regulations, the unsolicited proposal entitled "High-Solids Black Liquor Firing in Pulp and Paper Industry Kraft Recovery Boilers" dated October 20, 1992, submitted by Babcock & Wilcox on its own initiative. DOE recommends that the unsolicited proposal be accepted for support without further competition in accordance with § 600.14 of the Federal Assistance Regulations. Successful application of this technology for combustion of high-solids black liquor is expected to increase black liquor handling capacity, pulp mill productivity, and steam production per unit of black liquor burned. At the same capital cost, operating cost, and pollutant emissions are expected to be reduced. Because this project is aimed at upgrading existing recovery boilers rather than requiring total boiler replacement, results will be implemented near term.

The project will run for six years and involve multiple phases beginning with design and construction of a Recovery Furnace Simulator for developing technologies related to high-solids combustion and ending with modification of a black liquor recovery boiler at a pulp mill to achieve high-solids combustion on a commercial scale. The modification will be monitored under continuous operation conditions to determine operational compatibility, reliability, and cost effectiveness.

DOE has performed a review in accordance with 10 CFR 600.14(f) and has determined that the proposed project represents a unique approach which would not be eligible for financial assistance under a recent, current or planned solicitation, and a competitive solicitation would be inappropriate.

Issued in Chicago, Illinois, on March 29, 1994.

Alan E. Smith,

Director, IMSD.

[FR Doc. 94–9167 Filed 4–14–94; 8:45 am]

BILLING CODE 6450–01–M

Nevada Operations Office

Implementation of Noncompetitive Financial Assistance

AGENCY: Nevada Operations Office (DOE/NV), Department of Energy.

ACTION: Implementation of noncompetitive financial assistance.

SUMMARY: DOE/NV announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it intends to award a grant on a noncompetitive basis to Fisk University for Mercuric Iodide research and development.

This work is to accomplish a public purpose by supporting a Historically Black College or University, specifically to enhance and expand the base of expertise in the areas of Mercuric Iodide research through increased knowledge and capability in this research area. This transaction will help to ensure a reliable, minority resource base to support National Scientific and Technical Programs. Competition for support would have a significant adverse effect on the continuity and completion of the materials research work currently being done at Fisk University due to time delays. No other university in the United States has as much experience with mercuric iodide as Fish University has had since 1985. Fisk University has been a key contributor to further the understanding of mercuric iodide and other materials being considered for room temperature radiation detectors.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Doug Shipley, P.O. Box 98518, Las Vegas, NV 89193–8518.

SUPPLEMENTARY INFORMATION: The work will include, but not necessarily be limited to, the following areas:

1. Conduct thermal, spectroscopic, and optical measurements on detector materials and samples.
2. Conduct zone refining of materials to establish optimum refining parameters and produce purified material.
3. Continue development of surface reflection spectoroscopy as a method to measure crystal surface temperatures, with emphasis on investigating the potential of using optical multichannel analysis.
4. Conduct optical measurements on crystals in growth ampoules.
5. Provide crystal growth, purification, fabrication, and characterization support for detector materials other than Mercuric Iodide.
6. Provide quarterly written reports and one final report due at the end of the project period to DOE/NV.

The project period for the grant is from May 1, 1994, to April 30, 1995. The total estimated cost of this award is $80,000.

Issued in Las Vegas, Nevada, on March 31, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94–9168 Filed 4–14–94; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Proposed Tenaska Washington II Generation Project Record of Decision

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of decision for BPA to purchase electrical power from the proposed Tenaska Washington II Generation Project.

SUMMARY: BPA has decided to purchase electrical power to be generated by a privately-owned gas-fired combustion turbine (CT) plant in the Frederickson Industrial Area, Pierce County, Washington. The proposed Tenaska Washington II Generation Project (Tenaska Project) would produce 240 average megawatts (aMW) of electrical energy and would be developed and operated by Tenaska Washington

Partners II, L.P. (Tenaska), a developer of generation resources. BPA expects the Tenaska Project to be in commercial operation by July 1996.

BPA has statutory responsibilities to supply electrical power to its utility, industrial and other customers in the Pacific Northwest. The Tenaska Project is needed to meet electrical power supply obligations of these customers. The Tenaska Project would also meet a number of other system requirements. Included among these is firming otherwise non-firm hydroelectric power so that it can be sold as higher value firm power. The Tenaska Project offers an energy resource which can provide BPA the flexibility to operate an increasingly constrained hydro system. The Tenaska Project would also help alleviate potential power system stability problems in the Puget Sound area (Puget Sound Area Electric Reliability Plan (PSAERP) Final Environmental Impact Statement, DOE/EIS—0160, April 1992).

BPA's purposes for this action are to: (1) Meet contractual obligations to supply requested, cost-effective electric power to BPA customers, having considered potential environmental impacts and mitigation measures in its decision; (2) assure consistency with BPA's statutory responsibilities, including the 1980 Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), which requires consideration of the Pacific Northwest Power Planning Council's Conservation and Electric Power Plan (Power Plan) and Fish and Wildlife Program; and (3) develop a competitive, long-term resource acquisition program based on experience gained from the pilot acquisition program that led to the Tenaska Project proposal.

To reach the decision to purchase BPA prepared the Proposed Tenaska Project Final Environmental Impact Statement (FEIS)(DOE/EIS–0194, January 1994). The FEIS was tiered to the Resource Programs Environmental Impact Statement which considered the environmental tradeoffs among the resource types available to meet BPA's need.

The FEIS evaluated all three components of the proposed Tenaska Project: (1) The power plant, (2) the electrical transmission interconnection with BPA's South Tacoma Switching Station, and (3) the modifications to convert the Switching Station to a Substation. In addition to identifying and analyzing the environmental impacts of the proposed project at the proposed project site, the FEIS also evaluated a No Action alternative. By contract, the proposed project is required to meet all Federal, state, and local requirements. The FEIS fulfills the requirements of National Environmental Policy Act (NEPA) and the State of Washington's legislative equivalent, the State Environmental Policy Act (SEPA). In the case of the Tenaska Project, the state lead agency, Pierce County Department of Planning and Land Services, has satisfied the requirements of SEPA in part by reviewing and adopting BPA's EIS effective March 4, 1994. BPA has determined that this acquisition is consistent with the Northwest Power Planning Council's Power Plan. This determination was affirmed by the Northwest Power Planning Council in its determination of July 28, 1993.

Environmentally Preferred Alternative: The Environmentally Preferred Alternative is the No Action alternative. Although pursuit of the No Action alternative would avoid environmental impacts resulting from construction and operation of this proposed project, it would not meet BPA's needs. It should be noted that this site will likely be developed for industrial use because the proposed site is an industrial park.

Preferred Alternative: The Preferred Alternative is the Proposed Action. Adoption of the Proposed Action will meet BPA's needs.

Mitigation Action Plan: A Mitigation Action Plan (MAP), developed from the FEIS analysis, is attached. It addresses the protection of soils, water quality, air quality, biological resources, historical and cultural resources, and public health and safety. Environmental agreements with local agencies have been made. Other mitigation agreements will be completed prior to construction.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine S. Pierce, NEPA Compliance Officer for the Office of Energy Resources—RAE, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, telephone (503) 230–3962. Copies of the Proposed Tenaska Washington II Generation Project FEIS, the comments we received on this EIS, this Record of Decision and Mitigation Action Plan, the Record of Decision for the 6(c) process, and the 1990 and 1992 Resource Programs, are available from BPA's Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212. Copies of the documents may also be obtained by calling BPA's Public Involvement Office at (503) 230–3478 or BPA's nationwide toll-free document request line, 1–800–622–4520. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, Suite 243, 1500 NE Irving Street, Portland, Oregon 97232, (503) 230–4552.

Mr. Robert N. Laffel, Eugene District Manager, Alvey Substation, 86000 Franklin, Eugene, Oregon 97405, (503) 465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Crescent Court Building, Suite 500, 707 West Main, Spokane, Washington 99201, (509) 353–2518.

Ms. Carol Fleischman, Spokane District Manager, Crescent Court Building, Suite 500, 707 West Main, Spokane, Washington 99201, (509) 353–3279.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, (406) 329–3060.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109–1030, (206) 553–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 1520 Kelly Place, Walla Walla, Washington 99362, (509) 527–6226.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 523–2706.

Mr. James R. Normandeau, Boise District Manager, Room 450, 304 North Eighth Street, Boise, Idaho 83702, (208) 334–9137.

For information on DOE NEPA activities, contact Carol M. Borgstrom, Director, Office of NEPA Oversight, E–H 25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585, telephone (202) 586–4000 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

BPA is a self-financing Federal power marketing agency with statutory responsibilities to supply electrical power to utility, industrial, and other customers in the Pacific Northwest. Consistent with the 1991 Northwest Conservation and Electric Power Plan (Power Plan) and the Northwest Power Act, under Sections 6(a)(1) and 6(a)(2), BPA has initiated a dynamic resource acquisition program to acquire new conservation and generating resources. BPA is using four approaches: billing credits, competitive acquisition, contingency options, and unsolicited proposals to acquire energy for the region. The acquisition of electrical energy from the proposed Tenaska Project represents a portion of a larger plan to meet BPA's customers' current and future needs for electricity.

BPA periodically prepares a Resource Program that explains how BPA proposes to meet its expected load obligations. Within each Resource Program, alternatives are examined which are composed of different combinations of resource types from BPA's resource stack. BPA's planning model relies on this resource stack in simulating resource acquisitions and

serves as a basis for BPA's resource planning decisions.

In developing a Resource Program, BPA prepares load forecasts jointly with the Northwest Power Planning Council. A range of forecasts is prepared to reflect uncertainties about future load growth. A range of load/resource balances is prepared by comparing the capability of the existing Federal system resources to the range of projected Federal system loads over the next 20 years. In a parallel process, BPA and the Northwest Power Planning Council develop new resource supply forecasts to plan acquisition of cost-effective resources as needed to meet load growth.

The 1990 Resource Program identified actions BPA would take to develop new resources to meet the power requirements of its customers. The types of actions to acquire new resources included billing credit acquisition, conservation acquisition, competitive bid from "all sources," hydro efficiency improvements, geothermal pilot project, and a Resource Contingency Plan. As outlined in the 1990 Resource Program, the primary reasons BPA selected this combination of resource actions are to: manage risk appropriately; provide flexibility and diversity; reflect existing and potential capability to develop new resources; and maintain budget and rate impacts within bounds. In October 1992, BPA issued the 1992 Resource Program. This program recommended the development of new resources in addition to those outlined in the 1990 Resource Program.

Guided by the recommendations in BPA's Resource Program, BPA commenced a pilot resource acquisition process to test various approaches for acquiring a diverse portfolio of cost-effective, reliable, and environmentally sound resources. The Competitive Resource Acquisition Pilot Program was one of several methods that BPA tested to acquire energy resources. The primary objective of the pilot program was to provide BPA with the ability to systematically solicit, evaluate, and select cost-effective resource proposals that are offered for purchase. A secondary objective was for BPA to assess the benefits and costs of using a competitive process for developing cost-effective new energy supplies. BPA issued a Request for Proposals in 1991 for 300 aMW of firm energy. In response to this solicitation, BPA received 102 resource proposals totaling 5,209 aMW of generation and 116 aMW of conservation. BPA evaluated the proposals based on system cost, project feasibility (including location) and environmental criteria. Based on the evaluation, BPA selected three generation projects and all cost-effective conservation projects for further consideration and review towards satisfying this 300 aMW target. The Project is one of the generation projects chosen in this process.

On September 11, 1992, a Notice of Intent to Prepare an Environmental Impact Statement was published in the **Federal Register**. Announcement letters were mailed out, newspaper advertisements printed, and newsletters circulated for the September 29, 1992, public scoping meeting. Issues raised during the public scoping process were addressed in the EIS. An EIS Implementation Plan was developed from comments and questions submitted during the scoping period. The Implementation Plan was approved by the DOE for preparation of the Draft EIS. Copies of the DEIS were mailed out for review, and a Notice of Availability was published by the Environmental Protection Agency (EPA) in the **Federal Register** on August 20, 1993. In addition to written comments, a public meeting was held on September 8, 1993, to receive oral and written comments from the interested public. These comments were also considered in the development of the FEIS. The FEIS was published and distributed in February 1994. The EPA's Notice of Availability was printed in the **Federal Register** on February 25, 1994.

Notice of this Record of Decision will be distributed to the known interested and affected public, and the Record of Decision will be published in a subsequent **Federal Register** Notice.

II. Alternatives

A. No Action

Under the No Action alternative, BPA would not proceed with the conversion of the South Tacoma Switching Station nor acquire the energy output from the proposed Tenaska Project, thereby foregoing the opportunity to reduce BPA's projected energy deficit and additional benefits with this particular project. In that event, it is unlikely that the proposed project would be implemented without a commitment from another party to acquire the energy output.

B. The Proposed Action

The proposed action is the purchase by BPA of electrical power which will be generated at a privately-owned gas-fired combustion turbine plant in the Frederickson Industrial Area, Pierce County, Washington. The proposed Tenaska Project would generate 240 aMW of electrical energy and would be built and operated by Tenaska. The proposed action also includes transmission (underground) by Tenaska and conversion of a switching station to a substation by BPA. Electricity generated at the proposed power plant would be supplied to BPA's South Tacoma Substation facility for distribution through the regional power grid.

C. Other Actions

Because the proposed action will not satisfy BPA's total need for electrical energy, implementing the proposed action will not foreclose consideration of other potential BPA resource actions.

Resource types potentially available to meet future load growth include:

- Conservation (commercial, residential, and industrial sectors);
- Renewables (hydropower, geothermal, biomass, wind, and solar power);
- Cogeneration;
- Combustion turbines;
- Nuclear power; and
- Coal and clean coal.

These resource types were competitively evaluated in BPA's Resource Programs Final Environmental Impact Statement.

III. Decision Factors and Issues

Both the Proposed Action and the No Action Alternatives were evaluated against the purpose of and need for action for the Tenaska EIS (see the Summary of this Record of Decision). The other actions which could be taken to meet BPA's need will be evaluated independently (see page 6 of this Record of Decision). Only the Proposed Action would satisfy BPA's need for electrical power. The No Action Alternative would not meet this need.

Environmentally Preferred Alternative: The Environmentally Preferred Alternative is the No Action alternative. Although pursuit of the No Action alternative would avoid environmental impacts resulting from construction and operation of this proposed project, it would not meet BPA's needs. It should be noted that this site will likely be developed for industrial use because the proposed site is an industrial park.

Preferred Alternative: The Preferred Alternative is the Proposed Action. Adoption of the Proposed Action will meet BPA's needs.

Meeting BPA's Contractual Obligations: The Proposed Action would help assure BPA can meet its contractual obligations to supply requested, cost-effective electric power to its customers, having considered potential environmental impacts and

mitigation measures. The No Action Alternative would not reduce potential energy deficits.

Consistency With BPA's Statutory Responsibilities: The Proposed Action is consistent with BPA's statutory responsibilities, including the Northwest Power Act (which requires consideration of the Northwest Power Planning Council's Plan and its Fish and Wildlife Program). BPA determined that this acquisition is consistent with the priorities established in the Council's Plan and the Northwest Power Planning Council supported this determination.

Developing a Competitive Long-Term Acquisition Program: The development of a competitive, long-term acquisition program will be based partly on the experience gained from the pilot acquisition program that led to the proposed Tenaska Project. Pursuing the Proposed Action is consistent with the objectives of the Competitive Resource Acquisition Pilot Program. It will provide BPA the ability to systematically evaluate and select resource proposals and to assess using a competitive process to develop new cost-effective energy supplies.

In addition, the Proposed Action is consistent with the preferred alternative identified in BPA's April 1993 Record of Decision on the Resource Programs EIS. Under the preferred alternative, BPA would rely heavily on combustion turbines for meeting future power needs. The Resource Programs Environmental Impact Statement discussed operating characteristics of combustion turbines, including their ability to firm non-firm hydropower and to provide added flexibility to the BPA system operating in conjunction with the hydro system. The Proposed Action is consistent with these abilities. The Proposed Action would also help alleviate power system stability problems in the Puget Sound Area which were discussed in BPA's PSAERP EIS. The PSAERP assumed that a minimum of 400 MW of new resources would be built in Puget Sound Area by 2003. The Tenaska Project would be part of this 400 MW.

As BPA embarked on its competitive acquisition process for additional conservation and generation resources, the underlying need for acquisition of new resources was the avoidance of electricity deficits caused by growing customer loads. In the time period since the DEIS was issued for comment, BPA has become involved in a major effort (Competitiveness Project) to reassess its role, and therefore, its need for resources. That process is still very much in development. However, preliminary indications suggest that BPA's load growth may not be as great as was predicted in the 1990 and 1992 Resource Programs. BPA has examined the Tenaska Project in light of these tentative conclusions and finds that even if preliminary projections become reality, the Tenaska Project would still be needed and justified to meet load.

IV. Environmental Consultations, Review, and Permit Requirements

BPA reviewed the status of all Tenaska Project permits and licenses; engaged in consultations with Tenaska and appropriate federal, state and local agencies and interested parties to ensure the Project satisfies federal, state, and local environmental plans and programs and environmental mitigation plans; and ensured that all environmental consultations and review requirements were addressed. Development of the Tenaska Project would be consistent with environmental policies established by NEPA and by the Washington SEPA (SCL 1980).

The following is a discussion of the findings by environmental topic:

1. Threatened and Endangered Species and Critical Habitat

A response letter from the U.S. Fish and Wildlife Service to a request for information on state or Federally-listed rare, threatened, or endangered species indicated that there are none in the vicinity of the proposed power plant. No protected species were observed during the field surveys.

Five sensitive species: The western bluebird, western gray squirrel, mountain quail, Tacoma western pocket gopher, and the white-top aster (*Aster curtus*) could be potentially impacted by the proposed project; however, only the white-top aster was observed during the field surveys. Anticipated impact to these species is determined to be minor. Specific measures to address the propagation of the white-top aster are contained within the MAP.

2. Fish and Wildlife Conservation

The proposed Tenaska Project is consistent with the Power Plan, including its fish and wildlife components. The site is located in an upland area with disturbed wildlife habitat. Water resources that promote fish and wildlife habitat have not been identified at the proposed Tenaska Project site. Industrial facilities, scattered residential units and undeveloped areas surround the site. Upland weedy fields make up 85 percent of the site and are rated as moderate habitat for wildlife but rated as low habitat value for vegetation. Wooded areas, which comprise 15 percent of the site, are rated as moderate habit for wildlife and vegetation.

3. Heritage Conservation

No cultural resources were identified or discovered by the archival search or the field survey. A copy of the cultural resources survey report has been sent to the Washington State Historic Preservation Office.

4. State, Area-Wide, and Local Plan and Program Consistency

a. Land Use

The proposed Tenaska Project would alter land use at the site from vacant to industrial use. The site is located within the Frederickson Industrial Area, which is zoned for heavy industrial use, and the Project is consistent with land use designations.

b. Pacific Northwest Electric Power Planning and Conservation Act

The Northwest Power Planning Council was established by the Northwest Power Act. The goal of the Council's 1991 Power Plan is to "assure the Pacific Northwest of an adequate, efficient, economical and reliable power supply" (Council, 1991). One of the Council's authorities is a review of the Administrator's determination under section 6(c) review, as directed by the Northwest Power Act. 16 U.S.C. 839d(c)(1)–839d(c)(5). Section 6(c) requires both the BPA Administrator and the Council to determine that a project of at least 50 aMW and five years duration is consistent with the Power Plan. BPA has conducted a formal review pursuant to section 6(c). The BPA Administrator determined on May 28, 1993 that the proposal to acquire up to 240 aMW of firm energy from the Tenaska Project is consistent with the Power Plan. The Council found on July 28, 1993 by unanimous vote that the proposal is consistent with the Power Plan.

c. Notice to the Federal Aviation Administration

No structures exceeding 30 meters (100 feet) above ground are planned at the Tenaska Project. No notice to the Federal Aviation Administration is required as no structures to be constructed at the Project are equal to or greater than 61 meters (200 feet) in height. Two airports are in proximity (one 4.8 kilometers (3 miles) due east and the other 5.1 kilometers (3.2 miles) due west) of the proposed facility. A small private airstrip is located approximately 1,219 meters (4,000 feet) south of the proposed plant site. Aircraft approaching for landing or takeoff

would be sufficiently above ground over the proposed facility site to be unaffected by hot gas emission from the power plant stack. Aircraft approaching and taking off from McChord Air Base (approximately 9.6 kilometers (six miles) northwest) would not be affected by the proposed power plant's facilities and no regulation would apply.

d. Construction-Related Permits

The Pierce County Department of Permits and Land Services regulates development activities via Ordinance No. 90–132, Site Development Regulations. The application for Site Development Permit for the proposed Tenaska Project was submitted to the Department of Permits and Land Services for review on January 11, 1994.

5. Coastal Zone Management Program Consistency

The proposed Tenaska Project is not located in the coastal zone, nor will it affect the coastal zone.

6. Floodplains

The Tenaska Project site is not within a floodplain or area which is susceptible to flooding.

7. Wetlands

Wetlands do not occur at the project site and therefore, construction activities do not require permits for alteration of wetlands under section 404 of the Clean Water Act nor under the Washington Shoreland Management Act.

8. Farmland

The Farmlands Protection Policy Act directs Federal Agencies to identify and quantify adverse impacts of Federal programs on farmlands. The Tenaska Project site is currently vacant and zoned for heavy industrial use. The Soil Conservation Service indicated that no prime or unique farmland exists at the site.

9. Recreation Resources

No public recreation occurs at the proposed Tenaska Project site as it is privately owned and zoned for heavy industrial use. It is unlikely that the proposed Project would interfere with the present use of any recreation resource in the vicinity.

Separate from the EIS process, the National Park Service recently provided comments to the Puget Sound Air Pollution Control Agency (PSAPCA) addressing the Park Service's concerns about impacts on Mount Rainier National Park resources from existing levels of ozone and nitrogen deposition. The Park Service noted the potential emissions from the Tenaska Project could add to the nitrogen oxides deposition. These concerns were considered by PSAPCA with respect to the issuance of the amendment to Tenaska Project's air quality permit and were adequately addressed in their permitting process. The U.S. Forest Service recently provided comments to PSAPCA addressing the Forest Service's concerns about the potential acidification and loss of water clarity in an alpine lake (Summit Lake) within the Class II Clearwater Wilderness (located on the northwest corner of Mount Rainier). The Forest Service noted the potential emissions from the Tenaska Project could add to the SO_2 and NO_x deposition. These concerns were considered by PSAPCA with respect to the issuance of the amendment to Tenaska Project's air quality permit and were adequately addressed in their permitting process.

10. Global Warming

Several greenhouse gases would be emitted by the proposed Tenaska Project. These may include Federally regulated criteria air pollutants such as nitrogen oxides (NO_x), sulfur dioxide (SO_2), particulate matter (PM_{10}), carbon monoxide (CO), and volatile organic compounds (VOCs). Emission levels of these gases by the proposed Tenaska Project would be below the Puget Sound Air Pollution Control Agency's threshold standards for both emissions and ambient air quality.

11. Permit for Structures in Navigable Waters

The proposed Tenaska Project does not include work or structures that are in, on, or over any navigable waters of the United States as defined in the Rivers and Harbors Act of 1899. 33 U.S.C. 403.

12. Permit for Discharges into Waters of the United States

The proposed Tenaska Project is located in an upland area and there is no proposed discharge of dredged or fill materials into waters of the United States.

13. Permit for Right-Of-Way on Public Lands

The proposed Tenaska Project would be located on private land.

14. Energy Conservation at Federal Facilities

The proposed Tenaska Project does not include the operation, maintenance, or retrofit of an existing Federal building, or the construction or lease of a new Federal building.

15. Pollution Control

Tenaska has identified procedures to be used during the project construction and operation to achieve compliance with Federal, state, and local regulations and ordinances. These regulations and ordinances concern the following: procurement of goods and services from the EPA listed facilities, clean air standards, water quality standards, solid waste disposal, hazardous waste handling and disposal, drinking water standards, noise abatement, pesticide control, asbestos, Toxic Substance Control Act, Comprehensive Environmental Response Compensation and Liability Act, and radon.

The Tenaska Project would lie in an area that is designated as a nonattainment area with respect to ambient air quality standards for carbon monoxide and ozone. The PSAPCA has established significant impact threshold criteria for new pollutant sources in areas that are out-of-compliance with ambient air quality standards. The proposed Tenaska Project would be in compliance for emissions of carbon monoxide and volatile organic compounds, as well as in compliance with all other applicable air pollutant emission and ambient air quality standards.

Operation of the proposed Project would produce noise. The predicted noise level at the nearest residence would be 46 decibels (dBA) compared to an applicable standard of 50 dBA. The maximum predicted noise level at the neighboring property line in an industrial area would be 66 dBA compared to an applicable standard of 70 dBA. Noise levels would be in compliance with local, state and federal requirements.

Process, sanitary, and cooling system wastewaters would be routed to the Pierce County sewage system. The wastewater stream from the proposed Tenaska Project would be lightly polluted from cooling tower blowdown, which contains salts and possible traces of chemicals used to control algal growth in the cooling towers. This discharge would not affect Pierce County's ability to meet its wastewater discharge standards.

Water supply needs would be met with the existing available resources from Tacoma Public Utilities. Water supply to the area would likely be expanded, as industrial growth occurs, with the construction of an additional trunk line from a local reservoir and possibly from local wells.

The Clover-Chamber Creek Basin aquifer system was recently designated as a sole-source aquifer by the EPA. The

water quality of the aquifer will be preserved by the implementation of the Preparedness and Prevention Measures, a Contingency Plan, and a Spill Prevention Control Countermeasure Plan in compliance with Tacoma-Pierce County Health Department regulatory requirements.

V. Mitigation

The proposed Tenaska Project already includes many features designed to reduce environmental impacts. By incorporating environmental protection features into the Project design and operation plan, some impacts would be prevented. The discussion of these design features can be found in the Tenaska FEIS under Section 5.14, "Project Design Features for Reducing Environmental Impacts" and summarized in Table 4.7–1 of the attached MAP.

All practicable means to avoid, minimize, or mitigate environmental impacts have been adopted. Please see the attached MAP for details.

In addition to the requirements of the state and local reviewing agencies which are based on existing regulations other than SEPA, the Pierce County Environmental Official has determined that other mitigating measures will be necessary to ensure that the proposal will not have a significant impact on the environment. These mitigating measures are required under the Substantive Authority of SEPA in accordance with the guidelines contained in section 17.08.170 of the Pierce County Code and are enumerated below.

Ground Water Mitigation Measures

1. Hazardous materials tank containment structures shall meet all local, state, and federal (if applicable) standards for construction.

2. The applicants shall submit and comply with a Spill Prevention Control and Countermeasure Plan and a Hazardous Materials Management Plan.

3. The storm water system design must meet the water quality standards, requirements, and best management policies specified in the Washington State Department of Ecology's Storm Water Management Manual for the Puget Sound Basin.

4. Prior to the arrival of hazardous materials on-site, a ground water monitoring well is to be installed down-gradient of the facility (as the site allows) and a sampling program will be developed to include *annual* sampling of the monitoring well for hazardous materials present on the site. The sampling program and its results shall be submitted to the Tacoma-Pierce County Health Department.

VI. Monitoring and Enforcement

The MAP for the Tenaska Project states the mitigation measures necessary to reduce the environmental impacts identified in the FEIS.

Tenaska will provide a monthly report to BPA during the pre-construction and construction phases, on the progress made on mitigation actions which have been identified, as plans and agreements are put in place and fully implemented. Tenaska will provide a report, on a frequency and schedule to be mutually agreed to by Tenaska and BPA, on the progress made on mitigation actions to be addressed during the Tenaska Project operations phase.

VII. Decision

Upon consideration of the entire record, BPA has decided to purchase electrical power from the proposed Tenaska Project.

Issued in Portland, Oregon on March 29, 1994.

Randall W. Hardy,

Administrator.

[FR Doc. 94–9169 Filed 4–14–94; 8:45 am]

BILLING CODE 6450–01–P–M

Federal Energy Regulatory Commission

[Project No. 2283–ME]

Central Maine Power Co.; Notice of Intention to Prepare an Environmental Impact Statement for the Lower Androscoggin River, Conduct Project Site Visits, and Hold Public Scoping Meetings

April 11, 1994.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the continued operation of the Gulf Island—Deer Rips Project on the Androscoggin River, Maine.

The Staff has determined that issuance of a new license for the Gulf Island—Deer Rips Project would constitute a major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 and the Commission's regulations. Therefore, the Staff intends to prepare an environmental impact statement (EIS) on the lower Androscoggin River before any licensing decision by the Commission. The preparation of the EIS will continue to be supported by a vigorous and ongoing scoping process to ensure the identification and analysis of all pertinent issues.

The purpose of the scoping process is to identify significant issues related to the proposed action and the continued operation of the project in the basin and to determine what issues should be covered in the EIS. The Staff has prepared a scoping document, entitled "Scoping Document I," which is being circulated to appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations, and other interested parties. This scoping document provides a brief description of the proposed action, the potential alternatives, the geographic and temporal scope of a cumulative effects analysis, and a preliminary schedule for preparing the EIS. Copies of the scoping document will also be available at the scoping meetings.

The EIS will consider both site specific and cumulative environmental effects of the proposed action and reasonable alternatives, and will include an economic, financial and engineering analysis. A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the Commission staff and considered in a final EIS.

Project Site Visits

The applicant and Commission staff will conduct project site visits of the Lewiston Falls (FERC No. 2302), Brunswick (FERC No. 2284), and Gulf Island—Deer Rips Projects. Commission staff will also conduct project site visits of the Worumbo (FERC No. 3428) and Pejebscot (FERC No. 4784) Projects. The site visit for the Lewiston Falls Project will begin at 8:30 a.m. May 11, 1994, at the Lewiston Falls Powerhouse. The site visits for the Worumbo, Pejebscot, and Brunswick Projects will start at approximately 10:30 a.m., 1 p.m., and 2:30 p.m., respectively, at the Worumbo, Pejescot, and Brunswick Powerhouses. The site visit for the Gulf Island—Deer Rips Project will begin at 9 a.m. May 12, 1994, at the Gulf Island Powerhouse. All interested individuals, organizations, and agencies are invited to attend. All participants are responsible for their own transportation to the starting point. For more details, interested parties should contact Mr. Dave Dominie of Central Maine Power Company at (207) 626–9600, extension 2727 prior to the site visit date.

Scoping Meetings

The Commission staff will conduct one evening scoping meeting and one morning scoping meeting. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of

environmental issues that should be analyzed in the EIS.

The evening public scoping meeting will be held on May 11, 1994, from 7 p.m. to 10 p.m. (or later) at the Quality Inn, 1777 Washington Street, Auburn, Maine.

The morning scoping meeting will be held on May 13, 1994, from 9 a.m. to 12 p.m., Noon, at the Quality Inn, 1777 Washington Street, Auburn, Maine.

Objectives

At the scoping meetings, the Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Meeting Procedures

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the Commission proceeding on the Gulf Island—Deer Rips Project under consideration. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer staff verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until May 30, 1994. All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner.

All correspondence should clearly show the following captions on the first page: Gulf Island—Deer Rips Project, FERC No. 2283.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the application to any member of the Commission staff outside of the established process for developing the record as stated in the record of the proceeding.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceder (as defined in 18 CFR 385.2010) to serve documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information, please contact Robert Bell, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 825 North Capitol Street, NE., Washington, DC, 20426 (Telephone 202 219–2806), or Allan Creamer (Telephone 202 219–0365).

Lois D. Cashell,

Secretary.

[FR Doc. 94–9069 Filed 4–14–94; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4710–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 28, 1994 Through April 01, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 08, 1994.

Draft EISs

ERP No. D–FHW–D40267–WV Rating EO2, WV–9 Improvements, from Charles Town Bypass (U.S. 340) to the Virginia Line, Funding and COE Section 404 Permit, Shenandoah River, Jefferson Co., WV and Loudoun Co., VA.

Summary: EPA expressed objections regarding the insufficient evaluation of secondary and cumulative impacts. The impacts to prime farmland, stream resources, and the potential for secondary development are of concern to EPA.

Final EISs

ERP No. F–COE–G11025–00 Roving Sands Joint Training Exercise Program and White Sands Missile Range, Implementation, 11th Air Defense Artillery Brigade, Site Specific, Fort Bliss, EL Paso County, TX and Otero and Dona Ana Counties, NM.

Summary: EPA had no objections to the proposed project as described in the FEIS.

ERP No. F–FHW–D40260–PA Mon/Fayette Transportation Project, Improvements, I–70 in Fallowfield Township to PA–51 in Jefferson Borough, Funding, COE Section 404 Permit and NPDES Permit, Mon Valley. Washington and Allegheny Counties, PA.

Summary: EPA concerns have been resolved. EPA had no objections to the project as now proposed.

ERP No. F–USA–L11019–WA Fort Lewis and Yakima Training Center, Stationing of Mechanized or Armored Combat Forces, COE Section 10 and 404 Permits, Pierce, Thurston, Yakima and Kittitas Counties, WA.

Summary: EPA expressed environmental concerns due to air conformity requirements, water quality degradation, riparian and wetland impacts and monitoring measures. EPA requested clarification of these issues in the ROD.

ERP No. FS–AFS–L65155–00 Northern Spotted Owl Management Plan, Updated Information concerning Late-Successional and Old Growth Forest Related Species within the Range of the Northern Spotted Owl, OR, WA and CA.

Summary: EPA concerns in the draft SEIS comment letter have been satisfied. However, ultimate success depends on implementation of future activities such as provincial and watershed analysis, site-specific project NEPA analyses, monitoring and coordination with nonfederal landowners.

Dated: April 12, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–9164 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4710–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed April 4, 1994 Through April 8, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940120, Draft Supplement, COE, WI, Wisconsin River Flood Protection, Updated Information concerning the Portage Canal Lock, General Design Memorandum and Flood Control Study, St. Paul District, Columbia County, WI, *Due:* May 30, 1994, *Contract:* Robert Whiting (612) 290–5264.

EIS No. 940121, Draft EIS, AFS, ID, Tailholt Administration Research Study, Timber Harvesting and Road Construction, Payette National Forest, Krassel Ranger District, Valley County, ID, *Due:* May 30, 1994, *Contact:* Rudy Verschoor (208) 634–0417.

EIS No. 940122, Final EIS, FHW, NC, US 23/I–26 Corridor Transportation Improvements, NC–197/Barnardsville Road to North Carolina-Tennessee State Line, Funding, COE section 404 Permit and EPA National Pollutant Discharge Elimination System Permit, Buncombe and Madison Counties, NC, *Due:* May 16, 1994, *Contact:* Nicolas L. Graf (919) 856–4366.

EIS No. 940123, Draft EIS, AFS, NM, Santa Fe Ski Area Master Development Plan, Upgrading and Expansion, Special-Use-Permit, Santa Fe National Forest, Espanola Ranger District, Santa Fe County, NM, *Due:* August 1, 1994, *Contact:* Robert Remillard (505) 667–5120.

EIS No. 940124, Draft EIS, AFS, CO, Telluride Ski Area Expansion Project, Implementation, Special-Use-Permit and COE section 404 Permit, Grand Mesa Uncompahgre and Gunnion National Forests, Norwood Ranger District, San Miguel County, CO, *Due:* June 1, 1994, *Contact:* Jeff Burch (303) 874–7691.

EIS No. 940125, Final EIS, FHW, IA, US 20 Relocation, US 65 south of Iowa Falls to existing US 20 at the Grundy/Black Hawk County Line, Funding and COE section 404 Permit, Hardin and Grundy Counties, IA, *Due:* May 16, 1994, *Contact:* H.A. Willard (515) 233–1664.

EIS No. 940126, Final EIS, AFS, NM,. La Mange Timber Sales, Implementation, Carson National Forest, EL Rito Ranger District, Rio Arriba County, NM, *Due:* May 16, 1994, *Contact:* Graciela Terrazas (505) 581–4554.

EIS No. 940127, Final EIS, COE, LA, Gulf of Mexico Waters Oyster Shell Dredging Project, COE section 10 and 404 Permits, East Cote Blanche and Atchafalaya Bays, Terrebonne and St. Mary Parishes, LA, *Due:* May 16, 1994, *Contact:* Robert Bosenberg (504) 862–2522.

EIS No. 940128, Draft EIS, JUS, TX, AZ, NM, CA, Joint Task Force (JTF)—Continuation of Six Support Services Program, Implementation, Programmatic EIS, TX, NM, AZ, CA, U.S./Mexico Border and Texas Gulf Coast, *Due:* May 30, 1994, *Contract:* Eric Verwers (817) 334–3246.

EIS No. 940129, Draft EIS, DOD, Ballistic Missile Defense (BMD) Program, Implementation, also includes the Theater Missile Defense (TMD) and National Missile Defense (NMD) Initiatives, Programmatic EIS, United States, *Due:* May 31, 1994, *Contact:* Tracy A. Bailey (800) 636–2636.

EIS No. 940130, Final EIS, AFS, OR, Ochoco National Forest and Crooked River National Grassland Revised Land and Resource Management Plan for Standards and Guidelines Regarding Oil and Gas Leasing, Implementation, Grant, Crook, Wheeler, Jefferson and Harney Counties, OR, *Due:* May 16, 1994, *Contact:* Deborah S. Tout (503) 447–9506.

EIS No. 940131, Draft EIS, FHW, CA, CA–58 Mojave Freeway Project, Construction from 0.1 mile east of the Cache Creek Bridge to 5.0 miles east of the town of Mojave, Funding, COE section 404 Permit and Right-of-Way Acquisition, Kern County, CA, *Due:* May 30, 1994, *Contact:* Leonard E. Brown (916) 551–1307.

EIS No. 940132, Draft EIS, DOE, WA, ID, WY, NV, OR, MT, CA, AZ, Delivery of the Canadian Entitlement by the United States Entity, In accordance with the Columbia River Treaty, Implementation, WA, OR, ID, WI, WY, CA, NV, AZ and British Columbia, *Due:* May 30, 1994, *Contact:* Carol M. Borgstrom (800) 622–4520.

EIS No. 940133, Draft Supplement, UMT, UT, I–15/State Street Corridor Highway and Transit Improvements, Funding, Updated Information, Salt Lake County, UT, *Due:* May 30, 1994, *Contact:* Louis F. Mraz (303) 844–3242.

EIS No. 940134, Final EIS, COE, OH, Cleveland Harbor Navigation Channels Maintenance, Confined Disposal Facility (Site 10B 15 Year) Construction and Use, Lake Erie, Cuyahoga River, Cuyahoga County, OH, *Due:* May 16, 1994, *Contact:* Tod Smith (716) 879–4173.

Dated: April 12, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–9165 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–U–M

[PP 6G3350/T656; FRL 4767–9]

Carbon Disulfide; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the nematicide, insecticide, and fungicide carbon disulfide in or on certain raw agricultural commodities at 0.1 part per million (ppm) resulting from soil applications of sodium tetrathiocarbonate.

DATES: These temporary tolerances expire December 15, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5540.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 27, 1992 (57 FR 22232, stating that temporary tolerances have been renewed for residues of the nematicide, insecticide, and fungicide carbon disulfide in or on the raw agricultural commodities almonds, almond hulls, apricots, peaches, plums (fresh prunes), prunes, and tomatoes at 0.1 part per million (ppm) resulting from soil applications of sodium tetrathiocarbonate. Under title 40 CFR section 180.467, permanent tolerances have been established which would cover any residues from testing on oranges and grapefruit under Experimental Use Permit 612-EUP-1. These tolerances are renewed in response to pesticide petition (PP) 6G3350, submitted by Unocal Agriproducts, c/o Eliot I. Harrison, Delta Analytical Corp., 7910 Woodmont Ave., Suite 1000, Bethesda, Md 20814.

The company has requested a 2–year renewal of temporary tolerances for residues of the pesticide to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 612-EUP-1, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that renewal of the temporary tolerances will protect the

public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Unocal Agriproducts must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 15, 1995. Residues not in excess of these amounts remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects.

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 1, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–9163 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34055; FRL 4768–5]

Notice of Receipt of Requests for Amendments to Delete uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on July 14, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register.** Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the nine pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before July 14, 1994 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Delete From Label
000264–00263	FLOREL Brand Plant Growth Regulator	For increasing pickling cucumber fruit set and yield
000264–00322	Temik 10G Brand Aldicarb for Ornamentals	Greenhouses and treatment of ornamentals grown as potted plants
000352–00378	DuPont Velpar Herbicide	Ditchbanks, berms of ditches, drainage system uses
000352–00392	DuPont Velpar L Herbicide	Ditchbanks, berms of ditches, drainage system uses
000432–00559	SBP-1382 Transparent Emulsion Spray	Corridors, offices, foyers, lavatories, garages, utility rooms, basements, packaging & processing plants, milk handling areas of milk plants, milk storage rooms, egg processing plants, supermarkets, restaurants, bottling plants, canneries, flour and feed mills, bakeries, cargo planes, trucks, boxcars, ship cargo holds
003125–00338	Guthion 3 Flowable Insecticide	Alfalfa grown for seed
004581–00292	Penncap-M Microencapsulated Insecticide	Cabbage
010182–00208	Dyfonate 2-G Granular Insecticide	Beans (snap & lima), beets, broccoli, corn, brussel sprouts, cauliflower, cabbage, potatoes (white & sweet), radishes, tomatoes, strawberries
037100–00001	Casoron W-50	All terrestrial food & non-food crops

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000264	Rhone-Poulenc Ag Co., 2 T.W. Alexander Dr., Research Triangle Park, NC 27709.
000352	E.I. duPont de Nemours & Co., Inc., Ag Products, P.O. Box 80038, Wilmington, DE 19880.
000432	Roussel Uclaf Corp., 95 Chestnut Ridge Road, Montvale, NJ 07645.
003125	Miles Inc., P.O. Box 4913, 8400 Hawthorn Road, Kansas City, MO 64120.
004581	Elf Atochem North America, Inc., Agrichemicals Div., 21st Floor, 2000 Market St., Philadelphia, PA 19013.
010182	Zenaca Inc., Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE 19897.
037100	Solvay Duphar B.V., c/o Arthur Tomerlin, 3525 W. Lake Mary Blvd., Lake Mary, FL 32746.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: April 7, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–9159 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180932; FRL 4771–7]

Receipt of Application for Emergency Exemption to use Fomesafen; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arkansas State Plant Board (hereafter referred to as the "Applicant") for use of the pesticide Fomesafen (EPA Reg. No. 10182–83) to control broadleaf weeds on up to 1,000 acres of snap beans in Arkansas. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180932," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the herbicide, fomesafen, available as Reflex 2LC (EPA Reg. No. 10182–83) from Zeneca Inc., to control broadleaf weeds. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, infestations of broadleaf weeds have caused serious yield reductions in snap bean fields in Arkansas. Cultural practices and the use of registered alternative herbicides have proven ineffective in controlling a variety of broadleaf weed species. Bean crop yields have significantly declined and the incidence of weed contamination in the final product has increased steadily since the loss of the herbicide Premerge (dinoseb) in 1987.

Under the proposed exemption a maximum of two ground applications could be applied. Maximum use of fomesafen would not exceed 1.5 pints of formulated product/A (0.375 lb. a.i./A per year). A maximum of 188 gallons of formulated product (375 lbs. a.i.) could be applied in 1994 on up to 1,000 acres of spring and fall crop snap beans. Applications would be made between April 31 and September 10, 1994.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of fomesafen on snap beans have been requested and granted for the past 3 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arkansas State Plant Board.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: April 1, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–9160 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180934; FRL 4774–4]

Receipt of Application for Emergency Exemption to use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Environmental Protection Agency (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827–78–9) to treat up to 2,000 acres of tomatoes to control the sweet potato whitefly (*Bemesia tabaci*), and the greenhouse whitefly (*Trialeurodes vaporariorum*). The Applicant proposes the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180934," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on tomatoes to control the sweet potato whitefly and the greenhouse whitefly. Information in accordance with 40 CFR part 166 was submitted as part of this request. Whiteflies have been a problem in the "desert-cropping systems" in California and Arizona for some time, but in 1990, a new strain was discovered, which appears to be much more prolific than the standard strain, and resistant to many insecticides. Whiteflies are common on many wild and cultivated crops such as tomatoes, cotton, cucurbits and solanaceae. The Applicant states that this new strain caused devastation to many crops in 1991 in California's Imperial Valley, with crop losses over $120 million. Whiteflies cause direct damage to the tomato plant through feeding activities and the production of honeydew which enhances sooty mold development.

Whiteflies are also considered responsible for the introduction and distribution of at least one geminivirus (which can lead to extreme yield losses), and also cause a physiological disorder resulting in irregular ripening of fruit. The Applicant claims that adequate control of these pests are not being achieved with the currently registered compounds. The Applicant claims that without control of this pest, growers could expect up to 30–40 percent yield losses, making it economically unfeasible to grow tomatoes. The Applicant estimates that losses could average over $1,300 per acre.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.375 lb. (dry) active ingredient (24 fluid oz. of product) per acre with a maximum of one application per crop season on a maximum of 2,000 acres of tomatoes. It is possible to produce two tomato crops per calendar year on a given acre, and therefore, the acreage could potentially receive two applications of imidacloprid per calendar year. However, the Applicant proposes that no more than 0.5 lb. a.i. (32 fl. oz. product) be applied per acre per calendar year. Therefore, use under this exemption could potentially amount to a maximum total of 1,000 lbs. of active ingredient, or 500 gal. of product. This is the first time that the Applicant has applied for the use of imidacloprid on tomatoes. However, the Applicant requested, and was granted, specific exemptions for the use of fenpropathrin in 1993, and bifenthrin in 1992 and 1991, for whitefly control in tomatoes.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Environmental Protection Agency.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: April 7, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–9162 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

[PP 3G4198/T657; FRL 4768–1]

Monsanto Co., Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the hybridizing agent Genesis® and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by Monsanto Company.

DATES: These temporary tolerances expire March 4, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division

(7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5540.

SUPPLEMENTARY INFORMATION: Monsanto Company, The Agricultural Group, Suite 1100, 700 14th St., N.W., Washington, DC 20005, has requested in pesticide petition (PP) 3G4198, the establishment of temporary tolerances for the combined residues of the hybridizing agent Genesis® (Mon 21250) [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on the raw agricultural commodities wheat grain at 250 parts per million (ppm), wheat straw at 50 ppm, and wheat forage at 15 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 524-EUP-80, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 4, 1995. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 1, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–9157 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180935; FRL 4774–5]

Receipt of Application for Emergency Exemption to use Propazine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Colorado Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide propazine (CAS 139–40–2) to treat up to 272,000 acres of sorghum to control various weeds. The Applicant proposes the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180935," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of propazine on sorghum to control pigweed. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Sorghum is grown as a rotational crop with cotton and wheat, in order to comply with the soil conservation requirements. Propazine, which was formerly registered for use on sorghum, was voluntarily canceled by the former Registrant, who did not wish to support its re-registration. The Applicant claims that this has left many sorghum growers with no pre-emergent herbicides that will adequately control certain broadleaf weeds, especially pigweed. The Applicant states that other available herbicides have serious limitations on their use, making them unsuitable for control of pigweed in sorghum. The Applicant claims that significant economic losses will occur without the availability of propazine.

Although the original Registrant of propazine has decided not to support

this chemical through re-registration, another company has committed to support the data requirements for this use. Propazine was once registered for this use, but has now been voluntarily canceled and is therefore considered to be a new chemical.

The Applicant proposes to apply propazine at a maximum rate of 2.3 lbs. a.i. (4.6 pt. of product) per acre, by ground or air, to a maximum of 272,000 acres of sorghum, with one application allowed per crop growing season. Therefore, use under this exemption could potentially amount to a maximum total of 625,600 lbs. of active ingredient (156,400 gal. of product). This is the first time that Colorado has applied for this use of propazine on sorghum. A request for an exemption for this use was also received earlier this year from Oklahoma and is currently under EPA review. New Mexico and Texas were recently issued exemptions for this use for this growing season, and Texas was issued an exemption for this use for last growing season.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Colorado Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: April 7, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–9161 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64020; FRL 4771–5]

Voluntary Cancellation of the Registrations of Simazine for Use in Swimming Pools, Hot Tubs, and Whirlpool Baths

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Requests to Cancel and Cancellation Orders.

SUMMARY: This notice, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136d(f)(1), announces EPA's receipt of requests from nine registrants for the voluntary cancellation of fourteen registrations for products that contain simazine for use as an algaecide in swimming pools, hot tubs, and whirlpool baths. EPA accepts and grants these requests for voluntary cancellation, effective on April 15, 1994. Also, pursuant to section 4(i)(5)(D) of FIFRA, EPA is cancelling the registrations of two EZ-Clor Systems products and one N. Jonas Company product for failure to pay their annual registration maintenance fees for those products. The effective date for these section 4(i) cancellations is on April 15, 1994. Existing stocks of all the products subject to the cancellation orders in this notice may not be sold, distributed, or used effective on April 15, 1994, except for (1) sale or distribution up through the channels of trade to the former registrant of that product, or (2) for lawful disposal.

DATES: The cancellations shall be effective on April 15, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review Branch, Special Review and Reregistration Division (7508W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8029.

SUPPLEMENTARY INFORMATION:

I. Risks Posed by Simazine in Swimming Pools and Related Uses

Simazine, which is used primarily as an agricultural herbicide, is also used as an algaecide in swimming pools, hot tubs, and whirlpools. These pool-related uses account for less than 2 percent of total simazine usage. In 1989, EPA classified simazine as a Group C possible human carcinogen, and in August of 1993, EPA conducted a risk assessment of simazine swimming pool algaecide products. The risk assessment revealed unacceptable cancer and non-cancer health risks to children and adults exposed to water treated with simazine algaecides.

EPA's risk assessment is based on laboratory animal studies. These studies indicate that short-term exposure to simazine may result in weight loss and reduced red blood cell count (anemia), which are reversible effects when exposure is terminated. The studies also show that exposure to simazine poses a potential risk of cancer.

II. Cancellations Pursuant to Voluntary Cancellation Requests

Under section 6(f)(1) of FIFRA, a registrant may request at any time that EPA cancel a pesticide registration (7 U.S.C. 136d(f)(1)). EPA must publish in the **Federal Register** a notice of receipt of the request and allow public comment. The Administrator may waive the comment period prior to issuing an order if the registrant requests a waiver of the comment period, or if the continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The three registrants of technical simazine -- Ciba-Geigy, Drexel Chemical, and Oxon-Italia -- are not supporting the swimming pool/hot tub/whirlpool bath simazine uses. None of Drexel Chemical's products are registered for aquatic use, and Ciba-Geigy and Oxon-Italia ceased supporting all aquatic uses prior to EPA's risk assessment. The aquatic-use cancellation for Ciba-Geigy, the supplier of technical simazine for the swimming pool and related products, became effective on October 9, 1992.

After EPA completed its assessment of the risks of simazine in swimming pools, it notified registrants of the cancer and non-cancer risks associated with simazine pool use. In view of these risks, nine of the thirteen end-use registrants agreed to request voluntary cancellation with no allowance for the formulation, sale, distribution, or use of existing product stocks. They also agreed to waive the comment period typically associated with such requests for voluntary cancellation. Because the nine companies voluntarily requested cancellation and asked for a waiver of the comment period, EPA orders the cancellations to become effective on April 15, 1994.

III. Cancellation For Maintenance Fee Nonpayment

Section 4(i)(5)(A) of FIFRA, requires each registrant of a pesticide to pay an annual maintenance fee to keep its pesticide registrations in effect (7 U.S.C. 136a(5)(A)). On January 15, 1994, the fees were due for the following simazine algaecide products: 3432–52 (N. Jonas Co., registrant), and 8791–14 and 8791–41 (EZ-Clor Systems, registrant). Both registrants responded to EPA's request for fee payment by indicating that they would voluntarily cancel their product registrations in lieu of paying the annual maintenance fee. This notice therefore

serves as the final cancellation order for those products.

IV. Existing Stocks

For purposes of this order, existing stocks are defined as those stocks of simazine products for use in swimming pools, hot tubs, and whirlpool baths that were in the United States and were packaged, labeled, and released for shipment prior to April 15, 1994.

EPA has an established policy for determinations concerning the sale, distribution, and use of existing stocks of cancelled pesticides (June 26, 1991 (56 FR 29362)). That policy states that in cases where EPA has identified a significant risk concern and the registration is cancelled, EPA will make existing stocks determinations on a case-by-case basis. In most cases EPA will not permit the continued sale, distribution, or use of a cancelled product raising risk concerns unless it can be demonstrated that the benefits exceed the risks. EPA reserves the right to amend this existing stocks provision, should conditions warrant such amendment.

EPA has determined that it will not allow further distribution, sale, or use of existing stocks of any registered product subject to this notice by any person, except for (1) sale or distribution up through the chain of distribution to the former registrant of that product, or (2) for lawful disposal. It is the responsibility of the basic registrants to notify any and all supplementally registered distributors of their product(s) that this cancellation order also applies to their supplementally registered products. Registrants may be held liable for violations committed by their distributors.

The swimming pool-related uses of simazine pose significant cancer and non-cancer risk. Moreover, information submitted to EPA does not demonstrate that the benefits of continued sale, distribution, and use of existing stocks outweigh these risks. The benefits resulting from the use of existing stocks appear negligible, in that there are more than 250 non-simazine algaecide products available for pool-related uses. The amount of formulated simazine product in the channels of trade appears to be relatively small: registrants have indicated to EPA that there are 66,000 pounds of granular product and 53,800 gallons of liquid product in their possession or in the channels of trade. Of that existing-stocks amount, 31,300 pounds is unformulated Ciba-Geigy simazine product that Ciba-Geigy has agreed to buy back from the registrants. Finally, EPA has taken steps that should have reduced the amount of stocks currently in the hands of registrants, retailers, and distributors. In December of 1993, EPA notified registrants of the risks associated with the products and asked them to stop formulating, selling, and distributing their products.

As a result of the cancellation order and existing stocks determination, a product subject to this Notice may only be sold or distributed if it is both: (1) packaged, labeled, and released for shipment prior to April 15, 1994, and (2) sold or distributed (a) up through the chain of distribution to the former registrant of the product, or (b) for lawful disposal.

V. Registrations Subject to Cancellation Order

The registrations subject to this cancellation order are listed below in Table 1.

TABLE 1. — REGISTRATIONS SUBJECT TO THIS CANCELLATION ORDER

EPA Reg. No.	Product Name	Company Name
3432–52*.	S-90 Algaecide	N. Jonas & Co.
7364–23.	Algimycin 400	Great Lakes Biochemical Co., Inc.
7364–39.	GLB Algimycin 600	Great Lakes Biochemical Co., Inc.
8791–14*.	EZ-Clor Algi-Kleer	EZ-Clor Systems
8791–41*.	Poly-Kleer 4000 Algaecide	EZ-Clor Systems
8959–35.	Wintertrine Winterizer	Applied Biochemists
9610–12.	Algamaster II Algaecide	Poolmaster, Inc.
11411–13.	Leslie's Algae Out	Leslie's Swimming Pool Supplies, Inc.
11411–14.	Leslie's Algae Control II	Leslie's Swimming Pool Supplies, Inc.
12014–58.	Poolcare Simazine Alga Stop	A & V, Inc.
42177–43.	Olympic Poly-Algazine 30-35	York Chemical Corp.
42177–56.	Olympic Algazine 90	York Chemical Corp.
45309–39.	Swim Free 400 Algaecide	Aqua Clear Industries
45309–40.	Swim Free Dry Granular Winterizer	Aqua Clear Industries
45309–45.	Swim Free Granular Algaecide	Aqua Clear Industries
54614–3.	Super Algyzine	Western Purity Biochemical, Inc.
58307–3.	Poolzine 90	Quantum Biochemical Co., Inc.

*Cancelled through non-payment of annual registration maintenance fees.

VI. Cancellation Order

I approve the cancellation of the above 17 products, as well as the determination that from the date of this notice, all sale, distribution, and use of the existing stocks of these products is prohibited. Accordingly, this cancellation order shall become effective on April 15, 1994. Effective on April 15, 1994, a product subject to this notice may only be sold or distributed if it is both: (1) packaged, labeled, and released for shipment prior to April 15, 1994, and (2) sold or distributed (a) up through the chain of distribution to the former registrant of the product, or (b) for lawful disposal.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: April 5, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–9158 Filed 4–14–94; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–59335A; FRL–4775–5]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as

TME–94–8. The test marketing conditions are described below.

EFFECTIVE DATE: April 8, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, D.C. 20460, (202) 260–7800.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-94-8. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-94-8.

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. During manufacturing and use of the substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who may be dermally exposed to the substance shall use:

a. Gloves determined by the Company to be impervious to the substance under the conditions of exposure, including the duration of exposure. The Company shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the TME substance and associated chemical substances;

b. Clothing which covers any other exposed areas of the arms, legs, and torso; and

c. Chemical safety goggles or equivalent eye protection.

3. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement:

WARNING: Contact with skin may be harmful. Chemicals similar in structure to (insert appropriate name) have been found to cause irritation to membranes, corrosion and acute toxicity. To protect yourself, you must wear protective gloves, clothing, and goggles.

4. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance producedand the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the labels affixed to containers of the substance or formulations containing the substance.

d. Copies of the bill of lading that accompanies each shipment of the substance.

e. Copies of any determination under paragraph 2.a. above that the protective gloves used by the Company are impervious to the substance.

TME–94–8

Date of Receipt: February 22, 1994.

Notice of Receipt: April 8, 1994 (59 FR 16812).

Applicant: Confidential.

Chemical: (G) Alkylamine salt.

Use: (G) Dispersion aid.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential. Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified human health concerns for irritation to membranes, corrosion and acute toxicity based on test data on a similar substance submitted with the test market exemption notice. However, the health concerns were mitigated by requiring workers who may be dermally exposed to the TME substance to wear gloves, goggles and protective clothing. Therefore, the test market activities will not present any unreasonable risk of injury to human health.

EPA also identified environmental concerns for the TME substance. Based on test data on analogous aliphatic amine compounds, EPA expects toxicity to aquatic organisms to occur at a concentration of 1 part-per-million TME substance in surface waters. However, results of a Probablistic Dilution Model (PDM) indicated that the TME substance would not present an unreasonable risk to the aquatic environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemption.

Dated: April 8, 1994.

Charles M. Auer,

Director, Chemical Control Division, Pollution Prevention and Toxics.

[FR Doc. 94–9155 Filed 4–14–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Financial Institutions For Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Updated listing of financial institutions in liquidation.

SUMMARY: The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning section 219(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1825(b)(2)) and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). The following is a list of financial institutions which have been placed in liquidation since publication of the last updated list on December 13, 1993 (58 FR 65183).

FEDERAL DEPOSIT INSURANCE CORPORATION ACTIVE INSTITUTIONS IN LIQUIDATION ALPHA LISTING (NAME)

Institution name/city/state	Date closed/region	Ref. No.
Mechanics National Bank, Paramount, CA.	04/01/94, .. Western SC	4606

Dated: April 11, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–9091 Filed 4–14–94; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted To OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Criminal Referral Reporting.

Form Number: FDIC 6710/06.

OMB Number: 3064–0077.

Expiration Date of Current OMB Clearance: June 30, 1994.

Frequency of Response: On occasion.

Respondents: Insured state nonmember banks.

Number of Respondents: 6,500.

Number of Responses Per Respondent: 1.

Total Annual Responses: 6,500.

Average Number of Hours Per Response: 0.6.

Total Annual Burden Hours: 3,900.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0077, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before June 14, 1994.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Insured state nonmember banks must report apparent violations of the U.S. code affecting the banks' assets and affairs to the appropriate investigatory and prosecuting authorities, and to the FDIC, on a prescribed form (Form FDIC 6710/06).

Dated: April 11, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–9092 Filed 4–14–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1020–DR]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1020–DR), dated March 31, 1994, and related determinations.

EFFECTIVE DATE: March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 31, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Georgia, resulting from tornadoes, flooding, and severe storms on March 27, 1994, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint J. Rolando Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

Bartow, Floyd, Habersham, Lumpkin, Pickens, and White Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94–9083 Filed 4–14–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL HOUSING FINANCE BOARD

[No. 94–N01]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members will be

reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the first quarter (1994–95 cycle) review, under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: Due Date For Member Community Support Statements for Members Selected in First Quarter Review: May 31, 1994.

Due Date For Public Comments on Members Selected in First Quarter Review: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2825, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board intends to review the entire FHLBank System membership once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. In selecting members, the Finance Board will follow the chronological sequence of the members' Community Reinvestment Act Evaluations post-July 1, 1990, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter. However, the Finance Board will postpone review of new members until they have been in the System for one full year.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members To Be Reviewed in First Quarter, Grouped by FHLBank District

Member	City	State
Federal Home Loan Bank of Boston—District 1, Post Office Box 9106, Boston, Massachusetts 02205–9106		
The Bank of Darien	Darien	CT
First FS&LA of East Hartford	East Hartford	CT
Enfield FS&LA	Enfield	CT
Northeast Savings, F.A	Hartford	CT
The Bank of New Haven	New Haven	CT
Cargill Bank of Connecticut	Putnam	CT
First Federal Bank, A Federal Savings Bank	Waterbury	CT
Heritage Bank	Watertown	CT
First FSB of Boston	Boston	MA
1st Trade Union Savings Bank, FSB	Boston	MA
Greater Boston Bank, A Co-op Bank	Brighton	MA
Foxboro FS&LA	Foxboro	MA
Georgetown Savings Bank	Georgetown	MA
Marblehead Savings Bank	Marblehead	MA
Scituate Federal Savings Bank	Scituate	MA
Middlesex Federal Savings, FA	Somerville	MA
The Federal Savings Bank	Waltham	MA
Augusta Federal Savings Bank	Augusta	ME
First National Bank of Bar Harbor Bar	Harbor	ME
First FS&LA of Bath	Bath	ME
Brunswick Federal Savings, FA	Brunswick	ME
Camden National Bank	Camden	ME
Aroostook County FS&LA	Caribou	ME
Skowhegan Savings Bank	Skowhegan	ME
Waterville S&LA	Waterville	ME
Federal Savings Bank	Dover	NH
NFS Savings Bank, FSB	Nashua	NH
Plaistow Cooperative Bank, FSB	Plaistow	NH
Portsmouth Savings Bank	Portsmouth	NH
Salem Co-operative Bank	Salem	NH
Old Stone Federal Savings Bank	Providence	RI
First Brandon National Bank	Brandon	VT
First Vermont Bank and Trust Company	Brattleboro	VT
Vermont National Bank	Brattleboro	VT
Howard Bank	Burlington	VT
The Merchants Bank	Burlington	VT
Lyndonville Savings Bank & Trust Company	Lyndonville	VT
National Bank of Middlebury	Middlebury	VT
Franklin-Lamoille Bank	St. Albans	VT
Vermont Federal Bank, FSB	Williston	VT
Woodstock National Bank	Woodstock	VT
Federal Home Loan Bank of New York—District 2, One World Trade Center, 103rd Floor, New York, New York 10048		
Axia Federal Savings Bank	Avenel	NJ
Young Men's S&LA	Bridgeton	NJ
Central Jersey Savings Bank, SLA	East Brunswick	NJ
Crestmont FS & LA	Edison Township	NJ
Dollar Savings Bank, SLA	Newark	NJ
Amboy National Bank	Old Bridge	NJ

Member	City	State
Carteret Savings Bank	Parsippany	NJ
First Savings Bank, SLA	Perth Amboy	NJ
Lakeland Savings Bank	Succasunna	NJ
Albany Savings Bank, FSB	Albany	NY
Amsterdam FS&LA	Amsterdam	NY
Bayside Federal Savings Bank	Bayside	NY
Bay Ridge Federal Savings Bank	Brooklyn	NY
Brooklyn Federal Savings Bank	Brooklyn	NY
Canandaigua National Bank & Trust Company	Canandaigua	NY
Canisteo S & LA	Canisteo	NY
Canton FS & LA	Canton	NY
Home Federal Savings Bank	Douglaston	NY
Chemung Canal Trust Company	Elmira	NY
Elmira Savings and Loan, F.A	Elmira	NY
Gloversville FS&LA	Gloversville	NY
Long Island Commercial Bank	Islandia	NY
Long Island Savings Bank, FSB	Melville	NY
Abacus Federal Savings Bank	New York	NY
Commercial Bank of New York	New York	NY
The Dime Savings Bank of New York, FSB	New York	NY
Wilber National Bank	Oneonta	NY
Union State Bank	Orangeburg	NY
Keeseville National Bank	Plattsburgh	NY
Federal Home Loan Bank of Pittsburgh—District 3,625 West Ridge Pike, Suite B–107, Conshohocken, Pennsylvania 19428		
Laurel Savings Association	Allison Park	PA
Altoona First Savings Bank	Altoona	PA
Peoples Home Savings Bank	Beaver Falls	PA
Reeves Bank	Beaver Falls	PA
Columbia County Farmers NB	Bloomsburg	PA
Founders Bank	Bryn Mawr	PA
The Bryn Mawr Trust Company	Bryn Mawr	PA
Community Bank, NA	Carmichaels	PA
Armstrong County Building & Loan Association	Ford City	PA
National Bank of the Commonwealth	Indiana	PA
Summit Bank	Johnstown	PA
Fedone Savings Bank, FA	Kane	PA
First National Bank of Leesport	Leesport	PA
Mifflin County Savings Bank	Lewistown	PA
First Federal Savings Bank	Monessan	PA
Parkvale Savings Bank	Monroeville	PA
Dollar Savings Association	New Castle	PA
First Bank of Philadelphia	Philadelphia	PA
United Valley Bank	Philadelphia	PA
North Side Deposit Bank	Pittsburgh	PA
Troy Hill FS & LA	Pittsburgh	PA
United-American Savings Bank	Pittsburgh	PA
West View Savings Bank	Pittsburgh	PA
Berks County Bank	Reading	PA
First National Bank of Slippery Rock	Slippery Rock	PA
First National Bank of Bradford County	Towanda	PA
Northwest Savings Bank, PaSA	Warren	PA
First Federal SLA of Greene County	Waynesburg	PA
First Capitol Bank	York	PA
Huntington FS & LA	Huntington	WV
First National Bank of Keystone	Keystone	WV
One Valley Bank of Morgantown, Inc	Morgantown	WV
Doolin Security Savings Bank, FSB	New Martinsville	WV
United National Bank of Parkersburg	Parkersburg	WV
Firstbank Shinnston	Shinnston	WV
First FS&LA of Sistersville	Sistersville	WV
Federal Home Loan Bank of Atlanta—District 4, Post Office Box 105565, Atlanta, Georgia 30348		
The Exchange Bank of Alabama	Altoona	AL
First Federal Savings Bank	Bessemer	AL
Citizens Federal Savings Bank	Birmingham	AL
First FS&LA of Chilton County	Clanton	AL
First FS & LA of Cullman	Cullman	AL
Bank First, a FSB	Decatur	AL
Security Federal Savings Bank	Jasper	AL
First Montgomery Bank	Montgomery	AL
Farmers National Bank of Opelika	Opelika	AL

Member	City	State
First National Bank of Opelika	Opelika	AL
Valley FSB	Sheffield	AL
Slocomb National Bank	Slocomb	AL
Comerica Bank and Trust, FSB	Boca Raton	FL
Bankunited, FSB	Coral Gables	FL
Coral Gables FS&LA	Coral Gables	FL
Unibank	Coral Gables	FL
Crystal River Bank	Crystal River	FL
Society First Federal Savings Bank	Fort Myers	FL
Harbor FS & LA	Fort Pierce	FL
First FS & LA	Lake Wales	FL
First FS & LA of Florida	Lakeland	FL
American Savings of Florida, FSB	Miami	FL
Citizens Federal Bank, FSB	Miami	FL
Metro Savings Bank, FSB	Orlando	FL
Republic Security Bank, FSB	Palm Beach Gardens	FL
Florida First Federal Savings Bank	Panama City	FL
Anchor Savings Bank	St. Petersburg	FL
Treasure Coast Bank, a FSB	Stuart	FL
Beneficial Savings Bank, FSB	Tampa	FL
Bank of Winter Park	Winter Park	FL
Homebanc Federal Savings Bank	Atlanta	GA
Mutual FS & LA of Atlanta	Atlanta	GA
Georgia Bank & Trust Company of Augusta	Augusta	GA
First Bank of Brunswick	Brunswick	GA
Etowah Bank	Canton	GA
Carrollton Federal Bank, FSB	Carrollton	GA
First Federal Savings Bank	La Grange	GA
Gwinnet Federal Bank, FSB	Lawrenceville	GA
Security National Bank	Macon	GA
Family Federal Savings Bank	Pelham	GA
Annapolis Federal Savings Bank	Annapolis	MD
Severn Savings Bank, FSB	Annapolis	MD
Harbor FS & LA	Baltimore	MD
Loyola Federal Savings Bank	Baltimore	MD
Rosedale FS & LA	Baltimore	MD
Saint Casimir's Savings Bank	Baltimore	MD
Home Federal Savings Bank	Hagerstown	MD
Asheville Savings Bank, S.S.B	Asheville	NC
First FS & LA	Charlotte	NC
Home FS & LA	Charlotte	NC
SouthTrust Bank of Central Carolina	Concord	NC
First FS&LA	Durham	NC
High Point Bank and Trust Company	High Point	NC
Old Stone Bank of North Carolina	High Point	NC
Old North State Bank	King	NC
American Commercial Savings Bank, Inc., SSB	Monroe	NC
Roanoke Valley Savings Bank, SSB	Roanoke Rapids	NC
Wake Forest FS & LA	Wake Forest	NC
Palmetto Federal Savings Bank	Aiken	SC
First FS & LA of Anderson	Anderson	SC
First FS & LA of Charleston	Charleston	SC
Southern NB of South Carolina	Columbia	SC
Peoples FS & LA	Conway	SC
American Federal Bank, FSB	Greenville	SC
Plantation Federal Savings Bank, Inc	Pawleys Island	SC
First FS & LA of Spartanburg	Spartanburg	SC
Bedford Federal Savings Bank	Bedford	VA
Charter Federal Savings Bank	Bristol	VA
Washington Federal Savings Bank	Herndon	VA
First Federal Savings Bank	Lynchburg	VA
Black Diamond Savings Bank, FSB	Norton	VA
Shore Savings Bank, F.S.B	Onley	VA
Virginia First Savings, FSB	Petersburg	VA
Seaboard Savings Bank, FSB	Virginia Beach	VA

Federal Home Loan Bank of Cincinnati—District 5, Post Office Box 598, Cincinnati, Ohio 45201

First FS & LA of Ashland	Ashland	KY
Carrollton FS & LA	Carrollton	KY
First Kentucky Federal Savings Bank	Central City	KY
First National Bank of Central City	Central City	KY
Peoples Bank of Northern Kentucky, Inc	Crestview Hills	KY
Bank of Magnolia	Hodgenville	KY

Member	City	State
Citizens National Bank of Lebanon	Lebanon	KY
First FS & LA	Leitchfield	KY
Peoples Security Bank	Louisa	KY
Commonwealth Bank & Trust Company	Louisville	KY
Exchange Bank of Kentucky	Mount Sterling	KY
Montgomery and Traders Bank and Trust Company	Mount Sterling	KY
Kentucky Enterprise Bank, FSB	Newport	KY
Jessamine First FS & LA	Nicholasville	KY
Family FSB of Paintsville	Paintsville	KY
First Federal Savings Bank	Pineville	KY
First Bank & Trust Company of Princeton	Princeton	KY
Bullitt County Bank	Shepardsville	KY
Bullitt Federal Savings & Loan Association	Shepardsville	KY
First Southern National Bank of Garrard County	Stanford	KY
First Southern National Bank of Wayne County	Stanford	KY
Liberty National Bank	Ada	OH
Industrial Savings and Loan Association	Bellevue	OH
Bridgeport Savings and Loan Association	Bridgeport	OH
Brookville Building and Savings Association	Brookville	OH
Guernsey Bank, a FSB	Cambridge	OH
Heritage Savings Bank	Cincinnati	OH
Home Federal Savings Bank, Northern Ohio	Cleveland	OH
Commerce National Bank of Columbus	Columbus	OH
Valley Savings and Loan Company	Cuyahoga Falls	OH
First FS & LA	Galion	OH
Greenville FS & LA	Greenville	OH
Hicksville Building Loan and Savings Company	Hicksville	OH
First FS & LA	Ironton	OH
Lawrence Federal Savings Bank	Ironton	OH
Home Savings Bank	Kent	OH
Mechanics Savings Bank	Mansfield	OH
Peoples FS & LA	Massillon	OH
Metropolitan Savings Bank of Cleveland	Mayfield Heights	OH
Miami Savings and Loan Company	Miamitown	OH
First Federal Savings & Loan Association	Newark	OH
Geauga Savings Bank	Newbury	OH
Security Dollar Bank	Niles	OH
The Cleves-North Bend Building & Loan Company	North Bend	OH
American Savings Bank	Portsmouth	OH
Citizens Banking Company	Sandusky	OH
Peoples Federal Savings & Loan Association	Sidney	OH
Monroe Federal Savings & Loan Association	Tipp City	OH
Van Wert Federal Savings Bank	Van Wert	OH
The Home Savings & Loan Assoc	Wapakoneta	OH
Adams County Building and Loan Company	West Union	OH
First FSB of Youngstown	Youngstown	OH
Bank of Bartlett	Bartlett	TN
Bank of Bolivar	Bolivar	TN
First Fidelity Savings Bank, FSB	Crossville	TN
First Citizens National Bank of Dyersburg	Dyersburg	TN
Savetrust Federal Savings Bank	Dyersburg	TN
Chester County Bank	Henderson	TN
First Citizens Bank of Hohenwald	Hohenwald	TN
Progressive Savings Bank, FSB	Jamestown	TN
Home Federal Bank of Tennessee, FSB	Knoxville	TN
Wilson Bank and Trust	Lebanon	TN
First Central Bank	Lenoir City	TN
American Savings Bank	Livingston	TN
First Federal Bank, FSB	Memphis	TN
First Federal Bank	Nashville	TN
Community Bank of West Tennessee	Selmer	TN
Trans Financial Bank of Tennessee, FSB	Tullahoma	TN
Federal Home Loan Bank of Indianapolis—District 6, P.O. Box 60, Indianapolis, IN 46205–0060		
Peoples Federal Savings Bank	Aurora	IN
Farmers & Mechanics FS&LA	Bloomfield	IN
The First State Bank	Bourbon	IN
Columbus Bank and Trust Company	Columbus	IN
English State Bank	English	IN
Evansville Federal Savings Bank	Evansville	IN
Union Federal Savings Bank	Evansville	IN
The Farmers Bancorp	Frankfort	IN
First Citizens Bank and Trust Company	Greencastle	IN

Member	City	State
First FS&LA of Greensburg	Greensburg	IN
Greensburg Savings and Loan Assoc	Greensburg	IN
City Savings Bank	Hartford City	IN
First Federal Savings Bank of Marion	Marion	IN
Michigan City Savings & Loan Association	Michigan City	IN
People's Bank and Trust Company	Mount Vernon	IN
Mutual Federal Savings Bank	Muncie	IN
Lincoln Federal Savings Bank	Plainfield	IN
Peoples Federal Savings Assoc	Richmond	IN
Parke State Bank	Rockville	IN
Scottsburg Building & Loan Assoc	Scottsburg	IN
Home Federal Savings Bank	Seymour	IN
Owen Federal Savings Bank	Spencer	IN
First Farmers State Bank	Sullivan	IN
Community Bank	Summitville	IN
Terre Haute First National Bank	Terre Haute	IN
First FS&LA of Washington	Washington	IN
Hastings City Bank	Hastings	MI
Kalamazoo County State Bank	Schoolcraft	MI
Northwestern Savings Bank & Trust	Traverse City	MI
Federal Home Loan Bank of Chicago—District 7, 111 East Wacker Drive, Suite 700, Chicago, Illinois 60601		
Greene County National Bank in Carrollton	Carrollton	IL
Gage Park Savings & Loan Association	Chicago	IL
Labe Federal Savings & Loan Association	Chicago	IL
Liberty Bank for Savings	Chicago	IL
Lincoln Park Savings Bank	Chicago	IL
New Asia Bank	Chicago	IL
West Town Savings Bank	Cicero	IL
Home FS&LA of Collinsville	Collinsville	IL
York State Bank	Elmhurst	IL
First National Bank of Galena	Galena	IL
Gurnee National Bank	Gurnee	IL
Hinsdale Federal Bank for Savings	Hinsdale	IL
Eureka Savings Bank	La Salle	IL
Lawrenceville FS&LA	Lawrenceville	IL
Lisle Savings & Loan Association	Lisle	IL
Milford B&LA	Milford	IL
Southeast National Bank of Moline	Moline	IL
Superior Bank, FSB	Oak Brook	IL
Bank of Pecatonica	Pecatonica	IL
First FS&LA of Pekin	Pekin	IL
River Valley Savings Bank, FSB	Peoria	IL
Rochelle Savings & Loan Association	Rochelle	IL
First FS & LA of Shelbyville	Shelbyville	IL
Tampico National Bank	Tampico	IL
First Federal Bank, FSB	Waukegan	IL
Boscobel State Bank	Boscobel	WI
National Exchange Bank & Trust	Fond du Lac	WI
First Northern Savings Bank, SA	Green Bay	WI
Advantage Bank, F.S.B	Kenosha	WI
The Home Savings Bank	Madison	WI
Badger Bank, S.S.B	Milwaukee	WI
Paper City Savings Association	Nekoosa	WI
Farmers and Merchants Bank	Reedsburg	WI
Dairy State Bank	Rice Lake	WI
Spencer State Bank	Spencer	WI
West Bend Savings Bank	West Bend	WI
Federal Home Loan Bank of Des Moines—District 8, 907 Walnut Street, Des Moines, Iowa 50309		
American State Bank	Ames	IA
Ashton State Bank	Ashton	IA
Hawkeye Federal Savings Bank	Boone	IA
Page County Federal Savings & Loan Association	Clarinda	IA
State FS&LA of Des Moines	Des Moines	IA
Fidelity Bank and Trust	Dyersville	IA
First American State Bank	Fort Dodge	IA
Hampton State Bank	Hampton	IA
Farmers State Bank	Jesup	IA
First Community Bank, A FSB	Keokuk	IA
Marshalltown Savings Bank, FSB	Marshalltown	IA
Mid-Iowa Savings Bank, FSB	Newton	IA

Member	City	State
Northwest FSB	Spencer	IA
First Federal SB of the Midwest	Storm Lake	IA
First State Bank of Bigfork	Bigfork	MN
St. Louis Bank for Savings, FSB	Duluth	MN
First FS & LA	Hastings	MN
Lake Elmo Bank	Lake Elmo	MN
TCF Bank Minnesota, FSB	Minneapolis	MN
Valley State Bank of Oslo	Oslo	MN
Northwoods Bank of Minnesota	Park Rapids	MN
Pelican Valley State Bank	Pelican Rapids	MN
First National Bank of Plainview	Plainview	MN
Princeton Bank	Princeton	MN
Farmers State Bank of Russell	Russell	MN
Citizens Independent Bank	St. Louis Park	MN
Queen City FS & LA	Virginia	MN
Missouri Federal Savings Bank	Cameron	MO
Capital Bank of Cape Girardeau County	Cape Girardeau	MO
Southwest Missouri Bank	Carthage	MO
Capital Bank of Columbia	Columbia	MO
The Village Bank of St. Louis County	Ellisville	MO
North American Savings Bank, FSB	Grandview	MO
First FS & LA of Kansas City	Kansas City	MO
Sentinel FS & LA of Kansas City	Kansas City	MO
Marceline Home Savings & Loan Association	Marceline	MO
Neosho Savings and Loan Assoc.	Neosho	MO
Home Savings and Loan Association of Norborne	Norborne	MO
Central FS & LA of Rolla	Rolla	MO
Capital Bank of Sikeston	Sikeston	MO
Guaranty FS & LA	Springfield	MO
Midwest FS & LA	St. Joseph	MO
Bismarck National Bank	Bismarck	ND
American State Bank & Trust of Dickinson	Dickinson	ND
Liberty National Bank & Trust Company	Dickinson	ND
First Federal Bank, A FSB	Beresford	SD
First Savings Bank, FSB	Beresford	SD

Federal Home Loan Bank of Dallas—District 9, 5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038

First National Bank of Sharp County	Ash Flat	AR
First FS & LA	Camden	AR
Mercantile Bank	Hardy	AR
Farmers Bank and Trust Company	Magnolia	AR
Bank of Malvern	Malvern	AR
Pocahontas FS & LA	Pocahontas	AR
Abbeville Building & Loan Assoc	Abbeville	LA
Beauregard Federal Savings Bank	DeRidder	LA
First FS&LA of Lake Charles	Lake Charles	LA
Minden Building & Loan Association	Minden	LA
Fifth District S & LA	New Orleans	LA
Union Savings & Loan Association	New Orleans	LA
Southland Federal Savings Bank	Opelousas	LA
Magnolia Federal Bank For Savings	Hattiesburg	MS
Grand Bank for Savings, FSB	Leakesville	MS
Inter-City Federal Savings Bank	Louisville	MS
Merchants and Farmers Bank	Macon	MS
First National Bank of Artesia	Artesia	NM
Dona Ana Savings Bank, FSB	Las Cruces	NM
Franklin Federal Bancorp, A FSB	Austin	TX
Hill Country Bank	Austin	TX
Horizon Savings Association	Austin	TX
First American Savings Banc, A SA	Bedford	TX
Homestead Savings Association	College Station	TX
First State Bank	Columbus	TX
First Bank of Conroe, N.A	Conroe	TX
First Commerce Bank	Corpus Christi	TX
Cuero FS & LA	Cuero	TX
Citizens State Bank of Dalhart	Dalhart	TX
Dalhart FS & LA	Dalhart	TX
Texas Bank and Trust, N.A	Dallas	TX
Texas Central Bank, N.A	Dallas	TX
Sun World Savings Bank, FSB	El Paso	TX
Houston Community Bank, N.A	Houston	TX
Security Bank, N.A	Houston	TX
Southern National Bank of Texas	Houston	TX

Member	City	State
Fayette Savings Association	LaGrange	TX
First National Bank	Mount Vernon	TX
Pilot Point National Bank	Pilot Point	TX
Valley-Hi National Bank of San Antonio	San Antonio	TX
Terrell FS&LA	Terrell	TX
Texarkana National Bank	Texarkana	TX
American National Bank	Witchita Falls	TX
Federal Home Loan Bank of Topeka—District 10, Post Office Box 176, Topeka, Kansas 66601		
San Luis Valley FS&LA of Alamosa	Alamosa	CO
Pitkin County Bank and Trust Co	Aspen	CO
Delta Federal Savings, F.S.B	Delta	CO
Frontier Bank of Denver	Denver	CO
Vectra Bank—Denver	Denver	CO
Alpine Bank, Eagle	Eagle	CO
Charter Bank and Trust	Englewood	CO
Gunnison S&LA	Gunnison	CO
First Federal Savings Bank of Colorado	Lakewood	CO
Rio Grande Savings & Loan Association	Monte Vista	CO
The Minnequa Bank of Pueblo	Pueblo	CO
Alpine Bank, Snowmass Village	Snowmass Village	CO
Colorado Community First Bank Northwest	Steamboat Springs	CO
Golden Belt Bank, FSA	Ellis	KS
Southwestern S&LA of Hugoton	Hugoton	KS
Central Bank and Trust Company	Hutchison	KS
Argentine Federal Savings	Kansas City	KS
First National Bank of Kingman	Kingman	KS
First FS&LA of Lincoln	Lincoln	NE
Nehawka Bank	Nehawka	NE
Conservative Savings Bank, FSB	Omaha	NE
Bank of Papillion	Papillion	NE
First National Bank & Trust Company	Ardmore	OK
Citizens Bank of Edmond	Edmond	OK
The First State Bank	Keyes	OK
First Commercial Bank, SSB	Lawton	OK
Capital National Bank	Oklahoma City	OK
Lakeside State Bank	Oologah	OK
Heartland FS & LA	Ponca City	OK
Local America Bank of Tulsa, A FSB	Tulsa	OK
State Bank & Trust, N.A	Tulsa	OK
Valley National Bank	Tulsa	OK
American National Bank of Woodward	Woodward	OK
Federal Home Loan Bank of San Francisco—District 11, 307 East Chapman Avenue, Orange, California 92666		
First Arizona S & LA	Scottsdale	AZ
First Bank of Beverly Hills, SSB	Beverly Hills	CA
Broadway FS&LA of Los Angeles	Los Angeles	CA
California Federal Bank, FSB	Los Angeles	CA
Coast Federal Bank, FSB	Los Angeles	CA
East-West Federal Bank, FSB	Los Angeles	CA
Family Savings Bank, FSB	Los Angeles	CA
Cornerstone Bank, FSB	Mission Viejo	CA
Monterey County Bank	Monterey	CA
Citibank, Federal Savings Bank	Oakland	CA
Bank of Petaluma	Petaluma	CA
El Dorado Savings Bank	Placerville	CA
Commerce Security Bank	Sacramento	CA
Girard Savings Bank, FSB	San Diego	CA
California Savings & Loan, A F.A	San Francisco	CA
First Nationwide Bank, A FSB	San Francisco	CA
Bay View Federal Bank, A FSB	San Mateo	CA
First FS&LA of San Rafael	San Rafael	CA
First Federal Bank of California, FSB	Santa Monica	CA
First FS&LA of San Gabriel Valley	West Covina	CA
Federal Home Loan Bank of Seattle—District 12, 1501 4th Avenue, Seattle, Washington 98101–1693		
American Savings Bank, FSB	Honolulu	HI
Bank of American Idaho, N.A	Boise	ID
Ireland Bank	Malad City	ID
Big Sky Western Bank	Big Sky	MT
First National Bank of Eureka	Eureka	MT

Member	City	State
Heritage Bank, FSB	Great Falls	MT
American Federal Savings Bank	Helena	MT
Western Federal Savings Bank of Montana	Missoula	MT
Bank of Astoria	Astoria	OR
Security Bank	Coos Bay	OR
Bank of Salem	Salem	OR
Columbia River Banking Company	The Dalles	OR
Barnes Banking Company	Kaysville	UT
First Security Bank of Utah, N.A	Salt Lake City	UT
Capital City Bank	South Salt Lake	UT
Timberland Savings Bank, SSB	Hoquiam	WA
North Sound Bank	Poulsbo	WA
First Savings Bank of Renton	Renton	WA
Evergreen Bank	Seattle	WA
Buffalo FS&LA	Buffalo	WY
Hilltop National Bank	Casper	WY

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBanks no later than May 31, 1994.

All public comments concerning the Community Support performance of selected members must be submitted to the members' FHLBanks no later than May 31, 1994.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

Dated: April 11, 1994.

By the Federal Housing Finance Board.

Nicolas P. Retsinas,

HUD—Secretary, Designee to the Board.

[FR Doc. 94–9039 Filed 4–14–94; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal maritime Commission's implementing regulations at 46 CFR part 540, as amended: Carnival Cruise Lines, Inc., 3655 NW. 87th Ave., Miami, FL 33178–2428.

Vessel: Fascination.

Dated: April 11, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–9080 Filed 4–14–94; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 94–08]

Great White Fleet, Ltd. v. Southeastern Paper Products Export, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Great White Fleet, Ltd. ("Complainant") against Southeastern Paper Products Export, Inc. ("Respondent") was served April 11, 1994. Complainant alleges that Respondent violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by refusing to pay lawful freight charges on two shipments of tissue paper from Gulfport, Mississippi to Puerto Limon, Coast Rica and making a post-shipment proposal to apply tariff rates only to subsequent shipments. Complainant requests that the proceeding be conducted pursuant to the shortened procedure contained in Subpart K of the Commission's rules, 46 CFR 502.181 *et seq.*

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by April 10, 1995, and the final decisions of the Commission shall be issued by August 8, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 94–9180 Filed 4–14–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of

1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 545
Name: Jahrett Shipping, Inc.
Address: 15 Fletcher Ave., Valley Stream, NY 11580
Date Revoked: March 24, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2727
Name: Gunter Wegner dba Pacat International
Address: 606 Parkway 575, Bldg. 600, Woodstock, GA 30188
Date Revoked: March 25, 1994
Reason: Surrendered license voluntarily.

License Number: 2137
Name: Sun Belt Forwarding Company
Address: 5202 Cairnleigh Dr., Houston, TX 77084
Date Revoked: March 31, 1994
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94-9116 Filed 4-14-94; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 94-09]

Bill Sherwood; Corporate World International, Inc., and Corporate World Relocation International, Inc.; Order of Investigation and Hearing

Bill Sherwood is President and sole owner of Corporate World International, Inc. and Corporate World Relocation International, Inc.[1] It appears that subsequent to February, 1989, Bill Sherwood and Corporate World handled over 2000 shipments of household goods in the foreign commerce of the United States. It also appears that Mr. Sherwood and Corporate World booked or otherwise arranged space for the shipments with ocean common carriers and processed corresponding shipping documents, such as bills of lading and export declarations.

Section 19(a) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1718(a), prohibits any person from acting as an ocean freight forwarder unless that person holds a license issued by the Federal Maritime Commission ("Commission"). An ocean freight forwarder is defined in section 3(19) of the 1984 Act, 46 U.S.C. app. 1702(19), as a person in the United States that—

(A) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(B) Processes the documentation or performs related activities incident to those shipments.

Neither Mr. Sherwood nor Corporate World was licensed by the Commission as an ocean freight forwarder. Therefore, Mr. Sherwood and Corporate World may have acted in the capacity of an unlicensed ocean freight forwarder in violation of section 19(a) of the 1984 Act.

In addition, Corporate World charged and collected transportation charges for shipments, and appeared as shipper on bills of lading. Therefore, it appears that Mr. Sherwood and Corporate World may have acted in the capacity of a non-vessel-operating common carrier ("NVOCC") with respect to the shipments. Section 8(a)(1) of the 1984 Act, 46 U.S.C. app. 1707(a)(1), requires each common carrier to file with the Commission tariffs showing all its rates, charges, classifications, rules, and practices between all transportation points or ports. In addition, section 23 of the 1984 Act, 46 U.S.C. app. 1720, requires each NVOCC to file evidence of a bond of not less than $50,000 with the Commission. Neither Mr. Sherwood nor Corporate World had filed a tariff or bond at the time of the shipments at issue. Therefore, it appears that Mr. Sherwood and Corporate World may have violated sections 8(a)(1) and 23(a) of the 1984 Act. These activities were continued despite warnings from the Commission that they might be unlawful.

Now therefore, *it is ordered*, That pursuant to sections 8, 11, 13, 19 and 23 of the 1984 Act, 46 U.S.C. app. 1707, 1710, 1712, 1718 and 1721, an investigation is hereby instituted to determine:

(1) Whether Bill Sherwood, Corporate World International, Inc., and Corporate World Relocation International, Inc., violated the following sections of the 1984 Act: (a) Section 19(a), for acting as an ocean freight forwarder without a license issued by the Commission; (b) section 8(a)(1), by operating as a NVOCC in the foreign commerce of the United States without having a tariff on file with the Commission; and (c) section 23(a), for operating as an NVOCC without furnishing the requisite bond to the Commission;

(2) Whether, in the event violations of sections 19(a), 8(a)(1), and 23(a) of the 1984 Act are found, civil penalties should be assessed and, if so, the amount of such penalties; and

(3) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Bill Sherwood, Corporate World International, Inc. and Corporate World Relocation International, Inc. are designated respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered, That in accordance with Rule 61 of the

[1] Hereinafter both companies will be referred to collectively as "Corporate World," except as otherwise stated.

Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by April 12, 1995 and the final decision of the Commission shall be issued by August 10, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 94–9179 Filed 4–14–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Financial Partners Fund I, L.P., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 6, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Financial Partners Fund I, L.P., New York, New York; to become a bank holding company by acquiring 62.9 percent of the voting shares of Treasury Bank, Ltd., Washington, D.C.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Banterra Corp., Eldorado, Illinois; to acquire 100 percent of the voting shares of Hopkins Bancorp, Inc., Wickliffe, Kentucky, and thereby indirectly acquire Citizens State Bank of Wickliffe, Wickliffe, Kentucky.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Pipestone Bancshares, Inc., Pipestone, Minnesota; to merge with Upper Midwest Financial Corporation, Garretson, South Dakota, and thereby indirectly acquire First National Bank in Garretson, Garretson, South Dakota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community Bancshares of Marysville, Inc., Marysville, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bancshares of Marysville, Inc., Marysville, Kansas; The Citizens State Bank of Marysville, Marysville, Kansas; Citizens Bancshares of Waterville, Inc., Waterville, Kansas; and The Citizens State Bank of Waterville, Waterville, Kansas.

Board of Governors of the Federal Reserve System, April 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-9110 Filed 4-14-94; 8:45 am]

BILLING CODE 6210-01-F

Terry P. Gilmore; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-8183) published on page 16210 of the issue for Wednesday, April 6, 1994.

Under the Federal Reserve Bank of Dallas heading, the entry for Terry P. Gilmore, is revised to read as follows:

1. Terry P. Gilmore, San Marcos, Texas; to acquire 24.52 percent, for a total of 49.04 percent, of the voting shares of S.B.T. Bancshares, Inc., San Marcos, Texas, and thereby indirectly acquire State Bank and Trust Company, San Marcos, Texas.

Comments on this application must be received by April 19, 1994.

Board of Governors of the Federal Reserve System, April 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-9111 Filed 4-14-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93E–0099]

Determination of Regulatory Review Period for Purposes of Patent Extension; Mycobutin™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Mycobutin™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the

Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Mycobutin™ (rifabutin). Mycobutin™ is indicated for the prevention of disseminated *Mycobacterium avium* complex (MAC) disease in patients with advanced human immunodeficiency virus (HIV) infection. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Mycobutin™ (U.S. Patent No. 4,219,478) from Adria Laboratories, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated June 7, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Mycobutin™ represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Mycobutin™ is 2,831 days. Of this time, 2,124 days occurred during the testing phase of the regulatory review period, while 707 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: March 23, 1986. The applicant claims April 18, 1986, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 23, 1986, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act:* January 17, 1992. The applicant claims January 16, 1992, as the date the new drug application (NDA) for Mycobutin™ (NDA 50–689) was initially submitted. However, FDA records indicate that NDA 50–689 was initially submitted on January 17, 1992.

3. *The date the application was approved:* December 23, 1992. FDA has verified the applicant's claim that NDA 50–689 was approved on December 23, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,392 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 14, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 12, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 5, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–9099 Filed 4–14–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA is in the process of implementing a voice mail telephone system which will allow the public to obtain information regarding advisory committee meetings. The public will be able to access the use of this information system by calling 1–800–741–8138. The project implementation date is May 1, 1994.

MEETINGS: The following advisory committee meetings are announced:

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. May 2, 1994, 8:30 a.m., and May 3, 1994, 8 a.m., Holiday Inn—Bethesda, Versailles Ballroom I, 8120 Wisconsin Ave., Bethesda, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Bethesda. Attendees requiring overnight accommodations must contact the hotel at 301–652–2000 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, May 2, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; open public hearing, May 3, 1994, 8 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 1 p.m.; Ramiah Subramanian, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2623.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 27, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a coronary interventional device and a dysrhythmia treatment device.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. May 10, 1994, 1 p.m., and May 11, 1994, 8 a.m., Bethesda Ramada Hotel and Conference Center, Ambassador Ballrooms I and II, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Closed committee deliberations, May 10, 1994, 1 p.m. to 5 p.m.; open public hearing, May 11, 1994, 8 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1307.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 2, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On May 11, 1994, the committee will discuss the: (1) Draft Supplementary Guidance on the Content of Premarket Submissions (510(k)) for Medical Devices with Sharps Injury Prevention Features, and (2) Reclassification of the Infant Radiant Warmer. A copy of the draft guidance is available from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800–638–2041 or 301–443–6597.

Closed committee deliberations. On May 10, 1994, the committee will discuss trade secret and/or confidential commercial information. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. May 20, 1994, 8:30 a.m., Bethesda Ramada Hotel and Conference Center, Embassy Ballrooms II and III, 8400 Wisconsin Ave., Bethesda, MD. A limited number of overnight accommodations have been reserved at the Bethesda Ramada Hotel and Conference Center. Attendees requiring overnight accommodations must contact the hotel at 301–654–1000 and reference the FDA Ophthalmic Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; closed committee deliberations, 4:30 p.m. to 5 p.m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1744.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 6, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues relating to premarket approval applications for: (1) A retinal tamponade used for the treatment of complicated retinal detachments, and (2) an intraocular lens. There will be an update presented to the panel on the policy initiatives in the contact lens area to include the current status of the November 1993 "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses." Updates on any intraocular implants issues are tentatively planned.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information relevant to premarket approval applications for surgical and diagnostic devices or intraocular implants. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Biological Response Modifiers Advisory Committee

Date, time, and place. May 25, 1994, 10:30 a.m., and May 26, 1994, 8 a.m., Bethesda Ramada Hotel and Conference Center, Embassy Ballrooms I, II, and III, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, May 25, 1994, 10:30 a.m. to 11:15 a.m., unless public participation does not last that long; open committee discussion, 11:15 a.m. to 5:30 p.m.; open public hearing, May 26, 1994, 8 a.m. to 8:45 a.m., unless public participation does not last that long; open committee discussion, 8:45 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; open committee discussion, 5 p.m. to 6 p.m.; William Freas or Pearline Muckelvene, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 18, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On May 25 and 26, 1994, the committee will discuss issues related to the safety and efficacy of hematopoietic support regimens in the setting of myelotoxic chemotherapy. On May 26, 1994, the committee will receive an update on issues related to myoblast transfer for the treatment of muscular dystrophy.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved

for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: April 13, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–9242 Filed 4–14–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA is in the process of implementing a voice mail telephone system which will allow the public to obtain information regarding advisory committee meetings. The public will be able to access the use of this information by calling 1–800–741–8138. The projected implementation date is May 1, 1994.

MEETINGS: The following advisory committee meetings are announced:

National Mammography Quality Assurance Advisory Committee

Date, time, and place. May 2, 1994, 9:30 a.m., and May 3 and 4, 1994, 9 a.m., Grand Ballroom, Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn. Attendees requiring overnight accommodations must contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, May 2, 1994, 9:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 5:30 p.m.; open committee discussion, May 3, 1994, 9 a.m. to 5 p.m.; open committee discussion, May 4, 1994, 9 a.m. to 5 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food

and Drug Administration, 1901 Chapman Ave., Rockville, MD 20857, 301–594–3311.

General function of the committee. The committee advises on developing appropriate quality standards and regulations for the use of mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 27, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On May 2 through 4, 1994, the committee will discuss the interim final standards for accreditation bodies and the interim final standards for facilities. Specific topics to be discussed include: (1) The Mammography Quality Standards Act (MQSA) inspection process, (2) mammography report requirements, (3) clinical outcomes audit requirements, (4) MQSA inspector qualifications, and (5) stereotactic unit and personnel requirements.

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. May 6, 1994, 8 a.m., Admiralty Ballroom, Stouffer Concourse Hotel, 2399 Jefferson Davis Hwy., Arlington, VA.

Type of meeting and contact person. Open public hearing, May 6, 1994, 8 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Wolf Sapirstein, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2717.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 29, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the draft revision of a guidance document on the content and organization of a premarket notification (510(k)) for medical laser devices. Copies of the draft document can be obtained by contacting Kathy Pointer, Sociometrics at 1–800–729–0890 or FAX 301–608–3542.

Food Advisory Committee

Date, time, and place. May 9 and 10, 1994, 8:30 a.m., Capitol Hilton, South American Room (A and B), 16th and K St. NW., Washington, DC 20024.

Type of meeting and contact person. Open committee discussion, May 9, 1994, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m. unless public participation does not last that long; open working group discussions, May 10, 1994, 8:30 a.m. to 4:30 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727, or Catherine M. DeRoever, Advisory Committee Staff (HFS–22), 202–205–4251, FAX 202–205–4970.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by close of business April 28, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. If necessary, comments may be limited to 5 minutes.

Open committee discussion. On May 9, 1994, the committee will be briefed on current high priority activities in the Center for Food Safety and Applied Nutrition. On May 10, 1994, the committee will continue with its working group discussions on: (1) The agency's food research activities, (2) the scientific and technical expertise needed to support the agency's regulatory mission, and (3) the criteria for risk-based inspections.

Joint Meeting of the Veterinary Medicine and Anti-Infective Drugs Advisory Committees

Date, time, and place. May 11 and 12, 1994, 8 a.m., Grand Ballroom, Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, May 11, 1994, 8 a.m. to 3:30 p.m.; open public hearing, 3:30 p.m to 5:30 p.m., unless public participation does not last that long; open committee discussion, May 12, 1994, 8 a.m. to 4:30 p.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV–244), 7500 Standish Pl., Rockville, MD 20855, 301–594–1769.

General functions of the committees. The Veterinary Medicine Advisory Committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production. The Anti-Infective Drugs Advisory Committee reviews and evaluates data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 4, 1994, and submit a brief statement of the general nature of the evidence or argument they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On May 11 and 12, 1994, the committees will discuss the relative benefits and risks to animals and humans of the use of fluoroquinolones in food animals, in light of possible concerns about microbial resistance to fluoroquinolones.

Antiviral Drugs Advisory Committee

Date, time, and place. May 20, 1994, 7:30 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 7:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4 p.m.; Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600

Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify a contact person before May 13, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss data submitted regarding new drug applications (NDA's) 20–412 and 20–413 for Zerit® (stavudine or D4T, Bristol-Myers Squibb) for the treatment of human immunodeficiency virus (HIV) infection.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: April 13, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–9243 Filed 4–14–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Ohio State Plan Amendment (SPA)

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on May 26, 1994, in the Medicaid Conference Room, 14th Floor, 105 W. Adams Street, Chicago, Illinois, to reconsider our decision to disapprove Ohio SPA 93–11.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Ground floor, Baltimore, Maryland 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Ohio State plan amendment (SPA) number 93–11.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

Ohio submitted SPA 93–11 to seek approval under section 1902(r)(2) of the Act for an income policy which Ohio believes is more liberal than that which is used by the Supplemental Security Income (SSI) program. This policy involves disregarding as income court ordered child support and alimony payments.

Generally, under section 1902(a)(10) of the Act, the Medicaid statute requires States to use the eligibility criteria of the SSI program in determining eligibility for the aged, blind and disabled. Under certain circumstances, section 2901(f) authorizes States to use more restrictive criteria than those of SSI. Under section 1902(r)(2) of the Act, States may use more liberal methodologies than are used by the cash assistance programs in determining Medicaid eligibility for certain groups of individuals. Section 1902(a)(10)(A)(ii)(V) authorizes States to cover institutionalized individuals who meet the SSI resource requirements and whose income does not exceed a separate income standard established by the State which is consistent with the Federal financial participation (FFP) limits. Because the amendment could have resulted in individuals with income above the levels specified in section 1903(f), HCFA disapproved the amendment as not consistent with the proper and efficient administration of the State plan and not consistent with simplicity of administration and the best interest of recipients. HCFA believed that providing Medicaid eligibility to individuals for whom FFP is not available would result in a costly and inefficient exercise to identify those individuals and disallow claims for matching funds filed on their behalf.

The issues are: (1) Whether Ohio SPA 93–11 is consistent with the requirements of sections 1902(a)(4) and (19) insofar as it provides for disregarding income which could result in individuals receiving Medicaid even though their income exceeds the limits established by section 1903(f); and (2) whether the authority found in section 1902(r)(3) to use more liberal eligibility methodologies than those of the SSI program permits a State to disregard income which would result in individuals receiving Medicaid even though their income exceeds the limits established by section 1903(f).

Ohio believes that court ordered alimony and child support would be disregarded as income for individuals eligible under a special income level under section 1902(a)(10)(A)(ii)(V) of the Act. HCFA believes this policy is more liberal than SSI policy, which requires that such alimony and child support be counted as income. In disapproving the amendment, HCFA concluded that using this more liberal policy was likely to result in providing Medicaid to individuals who have income greater than the limits established under section 1903(f) of the Act.

The notice to Ohio announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Arnold R. Tompkins
Director, Ohio Department of Human Services, 30 East Broad Street, 32nd Floor, Columbus, Ohio 43266–0423.

Dear Mr. Tompkins: I am responding to your request for reconsideration of the decision to disapprove Ohio State Plan Amendment (SPA) 93–11.

Ohio submitted SPA 93–11 to seek approval under section 1902(r)(2) of the Social Security Act (the Act) for an income policy which you believe is more liberal than that which is used by the Supplemental Security Income (SSI) program. This policy involves disregarding as income court ordered child support and alimony payments.

Generally, under section 1902(a)(10) of the Act, the Medicaid statute requires States to use the eligibility criteria of the SSI program in determining eligibility for the aged, blind and disabled. Under certain circumstances, section 2901(f) authorizes States to use more restrictive criteria than those of SSI. Under section 1902(r)(2) of the Act, States may use more liberal methodologies than are used by the cash assistance programs in determining Medicaid eligibility for certain groups of individuals. Section 1902(a)(10)(A)(ii)(V) authorizes States to cover institutionalized individuals who meet the SSI resource requirements and whose income does not exceed a separate income standard established by the State which is consistent with the Federal financial participation (FFP) limits. Because the amendment could have resulted in individuals with income above the levels specified in section 1903(f), HCFA disapproved the amendment as not consistent with the proper and efficient administration of the State plan and not consistent with simplicity of administration and the best interest of recipients. HCFA believed that providing Medicaid eligibility to individuals for whom FFP is not available would result in a costly and inefficient exercise to identify those individuals and disallow claims for matching funds filed on their behalf.

The issues are: (1) Whether Ohio SPA 93–11 is consistent with the requirements of sections 1902(a)(4) and (19) insofar as it provides for disregarding income which could result in individuals receiving Medicaid even though their income exceeds the limits established by section 1903(f); and (2) whether the authority found in section 1902(r)(3) to use more liberal eligibility methodologies than those of the SSI program permits a State to disregard income which would result in individuals receiving Medicaid even though their income exceeds the limits established by section 1903(f).

I am scheduling a hearing on your request for reconsideration to be held on May 26, 1994, in the Medicaid Conference Room, 14th Floor, 105 W. Adams Street, Chicago, Illinois 60603–6201. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

Bruce C. Vladeck,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: April 8, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–9112 Filed 4–14–94; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the Statutory General Funding Preference for Grants for Faculty Development in Family Medicine—Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory general funding preference for fiscal year (FY) 1994 for Grants for Faculty Development in Family Medicine authorized under the authority of section 747(a), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Purpose

Section 747(a)(3) of the PHS Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 747(a)(4) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

Statutory General Funding Preference

As provided in section 791(a) of the PHS Act, preference will be given to any qualified applicant that—

(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) during the 2-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile that have been recommended for approval by the peer review group.

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

A proposed notice was published in the **Federal Register** on September 29, 1993, at 58 FR 50945 for public comment. No comments were received during the 30-day comment period. Therefore, the proposed minimum percentages for "high rate" and "significant increase in the rate" will remain as proposed.

High rate is defined as a minimum of 20 percent of faculty development/ fellowship program graduates in academic year 1991–92 or academic year 1992–93, whichever is greater, who spend at least 50 percent of their worktime in the specified settings.

Significant increase in the rate means that, between academic years 1991–92 and 1992–93, the rate of placing faculty development/fellowship program graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of the academic year 1992–1993 graduates are working in these areas.

Additional Information

Questions regarding programmatic information should be directed to: Ms. Joan Harrison, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 9A–20, Rockville, Maryland 20857, Telephone: (301) 443–3614.

This program is listed at 93.895 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: April 11, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–9100 Filed 4–14–94; 8:45 am]

BILLING CODE 4160–15–M

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the Statutory General Funding Preference for Grants for Faculty Development in General Internal Medicine and General Pediatrics—Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory general funding preference for fiscal year (FY) 1994 for Grants for Faculty Development in General Internal Medicine and General Pediatrics authorized under the authority of section 748, title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Purpose

Section 748 of the Public Health Service Act authorizes Federal assistance to schools of medicine and osteopathic medicine, public or private nonprofit hospitals or other public or private nonprofit entities for planning, developing and operating programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs. These grants are intended to promote the development of faculty skills in physicians who are currently teaching or who plan teaching careers in general internal medicine or general pediatrics training programs. These grants also provide financial assistance in meeting the cost of supporting physicians who are trainees in such programs.

In addition, section 748 authorizes the award of grants to support general internal medicine or general pediatrics residency training programs and a separate grant program exists for this purpose. Further, section 748 now authorizes the award of grants to support predoctoral training in general internal medicine and general pediatrics.

Statutory General Funding Preference

As provided in section 791(a) of the PHS Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile that have been recommended for approval by the peer review group.

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

A proposed notice was published in the **Federal Register** on September 30, 1993, at 58 FR 51090 for public comment. No comments were received during the 30-day comment period. Therefore, the proposed minimum percentages for "high rate" and "significant increase in the rate" for this program will be retained as follows:

High rate is defined as a minimum of 20 percent of faculty development/ fellowship program graduates in academic year 1991–92 or academic year 1992–93, whichever is greater, who spend at least 50 percent of their worktime in the specified settings.

Significant increase in the rate means that, between academic years 1991–92 and 1992–93, the rate of placing faculty development/fellowship program graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of the academic year 1992–1993 graduates are working in these areas.

Additional Information

Questions regarding programmatic information should be directed to: Ms. Dianne G. Harbison, Program Specialist, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 9A–20, Rockville, Maryland 20857, Telephone: (301) 443–3614, FAX: (301) 443–8890.

The program is listed at 93.900 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: April 11, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–9101 Filed 4–14–94; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting of the Cancer Clinical Investigation Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, on May 16, 1994, The Hyatt Regency Dallas, 300 Reunion Boulevard, Dallas, Texas 75207.

This meeting will be open to the public on May 16, from 6:30 p.m. to 7 p.m., to review administrative details and other cancer clinical investigation review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on May 16, from approximately 7 p.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide a summary of the meeting and the roster of committee members, upon request.

Dr. John W. Abrell, Scientific Review Administrator, Cancer Clinical Investigation Review Committee, National Cancer Institute, Executive Plaza North, room 635B, National Institutes of Health, Bethesda, Maryland 20892 (301–496–9767) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. John W. Abrell, (301) 496–9767 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: April 11, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9074 Filed 4–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Developmental Therapeutics Contracts Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, on May 5, 1994, at the Holiday Inn Crown Plaza, Regency Conference Room, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public from 9 am to 10 am to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on May 5 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630, National Institutes of Health, Rockville, Maryland 20892, Tel. 301/496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Courtney Michael Kerwin, Scientific Review Administrator, Developmental Therapeutics Contracts Review Committee, 6130 Executive Boulevard, room 609, Rockville, Maryland 20892, Tel. 301/496–7421, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should contact Ms. Alma O. Carter, (301) 496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: April 11, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9075 Filed 4–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Public Law 92–463, notice is hereby given of meetings of committees of the National Institute of Neurological Disorders and Stroke (NINDS).

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Excecutive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary or the Scientific Review Administrator listed for the meeting.

Name of Committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council.

Date: May 25, 1994.

Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.

Open: 1:30 p.m.—3 p.m..

Agenda: To discuss program planning and fiscal matters.

Closed: 3p.m.—recess.

Agenda: To discuss specific grant applications.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 26–27, 1994.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Open: May 26, 9 a.m.—1 p.m.
Agenda: A report by the Acting Director, NINDS, a report by the Acting Director, Division of Extramural Activities, NINDS, a scientific presentation by an NINDS intramural scientist and a presentation by the Director of the NIH Office of Alternative Medicine.
Closed: May 26, 1 p.m.—recess. May 27, 8:30 a.m.—adjournment.
Agenda: To review grant applications.
Executive Secretary: Constance W. Atwell, Ph.D., Acting Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9248.

Name of Committee: Neurological Disorders Program Project Review A Committee.
Date: June 6–8, 1994.
Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: June 6, 7:30 p.m.—8 p.m..
Agenda: Reports by the Scientific Review Administrator on Committee concerns.
Closed: June 6, 8 p.m.—recess. June 7, 8 a.m.—recess. June 8, 8 a.m.—adjournment.
Agenda: To review grant applications.
Scientific Review Administrator: Dr. Katherine Woodbury, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223.

Name of Committee: Training Grant and Career Development Review Committee.
Date: June 16, 1994.
Place: Holiday Inn, Crown Plaza, 1750 Rockville Pike, Rockville, MD 20852.
Open: June 26, 8 a.m.—8:30 a.m..
Agenda: Reports by the Scientific Review Administrator on Committee concerns.
Closed: June 16, 8:30 a.m.—adjournment.
Agenda: To review grant applications.
Scientific Review Administrator: Dr. Alfred W. Gordon, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223.

Name of Committee: Neurological Disorders Program Project Review B Committee.
Date: June 27–29, 1994.
Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: June 27, 7 p.m.—7:30 p.m.
Agenda: Reports by the Scientific Review Administrator on Committee concerns.
Closed: June 27, 7:30 p.m.—recess. June 28, 8 a.m.—recess. June 29, 8 a.m.—adjournment.
Agenda: To review grant applications.
Scientific Review Administrator: Dr. Paul Sheehy, Federal Building, room 9C–10, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: April 11, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9076 Filed 4–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Board of Regents and its Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on May 24–25, 1994, in the Board Room of the National Library of Medicine 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee of the Board of Regents of the National Library of Medicine will meet on May 23 in the 5th-floor Conference Room, Building 38A, from 2 p.m. to approximately 3:30 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 3 p.m. on May 24 and from 9 a.m. to adjournment on May 25 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Karin Colton at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Extramural Programs Subcommittee will be closed to the public, and the Board meeting on May 24 will be closed from approximately 3 p.m. to 3:45 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Public Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters, of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879 Medical Library Assistance, National Institutes of Health.)

Dated: April 11, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9077 Filed 4–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, May 10, 1994, from 9 a.m. to 3 p.m., at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland, 20814, (301) 897–9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: James I. Cleeman, M.D., Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A05, Bethesda, Maryland 20892, (301) 496–0554.

Claude Lenfant,

Director, NHLBI.

[FR Doc. 94–9073 Filed 4–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart Association, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Heart Attack Alert Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Wednesday, June 15, 1994, from 8:30 a.m. to 3:30 p.m., at the Bethesda Holiday Inn Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland, 20814 (301) 652–2000. The entire meeting is open to the public. The Coordinating Committee is meeting to discuss the progress of the National Heart Attack Alert Program with its participating organizations.

Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Ms. Mary McDonald Hand, Coordinator, of the National Heart Attack Alert Program, Health Education Branch, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A18, Bethesda, Maryland 20892, (301) 496–1051.

Claude Lenfant,

Director, NHLBI.

[FR Doc. 94–9072 Filed 4–14–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, April 8, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Voluntary "Partner" Surveys to Implement Executive Order 12862 in the Public Health Service—New—These voluntary customer surveys will implement E.O. 12862 within the Public Health Service among our "partners" in delivery of services to the public. Partners include State or local governments, community based organizations, service providers, researchers and regulated entities. Resulting information will be used to assess strengths and weaknesses in program services and to plan and redirect resources and efforts to improve or maintain a high quality of service. *Respondents:* State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations, Individuals or households; *Number of Respondents:* 19,460; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .40 hour; *Estimated Annual Burden:* 7,795 hours.

2. Protection and Advocacy for Individuals with Mental Illness Annual Performance Report—(Reinstatement, formerly 0980–0234)—Recipients of formula grants to provide protection and advocacy services to individuals with mental illness are required by law to report annually their activities and accomplishments, including the number and types of persons served, the types of facilities covered, and the manner in which the activities are undertaken. The Advisory Council is required to submit a description of its activities and an assessment of the operations of the System. *Respondents:* State or local governments, Non-profit institutions.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Program Performance Report.	56	1	35 hours.
Advisory Council Report.	56	1	10 hours.

Estimated total annual. Burden—2,520 hours.

3. Women's Health Initiative Observational Study—New—The observational study will provide needed information on health and disease risks for women. This study will collect data from 100,000 postmenopausal women on biomarkers and risk factors for disease and the women will be followed for an average of 9 years to determine associations of these measurements with disease. The aggregate information will be analyzed and reported in appropriate journals. *Respondents:* Individuals or households; State or local governments, Small businesses or organizations; Businesses or other for-profit.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Screening.	50,000	1	.25 hour.
Initial Interview.	33,333	1.01	2.4 hours.
Physicians.	919	1	.167 hour.
Next-of-Kin.	184	1	.25 hour.

Estimated annual total. Burden—94,433.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address:

Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: April 11, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–9113 Filed 4–14–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–79]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 15, 1994.

ADDRESSES: For further information, contact Barbara Richards, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 7, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 94–8893 Filed 4–14–94; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–94–4333–04; 4–00154 ILM]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of certain public lands in Storey, Lyon and

Douglas Counties on and adjacent to two Off Highway Vehicle race courses:

May 28–29, 1994 Valley Off-Road Racing Association, Yerington 400—Permit Number NV–03516–94–11.

June 17–18, 1994 Valley Off-Road Racing Association, Virginia City 200—Permit Number NV–03516–94–12.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety and to protect adjacent resources during the official running of the Yerington 400 and Virginia City Classic 200 Off Highway Vehicle Races.

EFFECTIVE DATES: May 28 & 29, 1994; June 17 & 18, 1994.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. The event permittee is required to clearly mark and monitor the event route during the closure period. Spectators shall remain in safe locations as directed by event officials and BLM personnel. Specific information pertaining to each event is as follows:

1. Valley Off-Road Racing Association Yerington 400 Off-Road Race—Permit Number NV–03516–94–11. Multiple-lap OHV race on roads and washes near Yerington, Nevada in Douglas and Lyon Counties, within T13N R24E; T14N R24E; T15N R24E; T16N R24E; T13N R25E; T16N R25E; T16N R26E; and T17N R26E.

Bureau Lands to be closed include existing roads and washes identified on the ground as the 1993 Yerington 400 Off-Road Race route except at designated pit and spectator areas. Spectator areas are: the Start/Finish area, Gallagher Pass Road and Hooten Wells Road at Check Point 5. Camping on public lands in conjunction with the event must be a minimum of fifty yards away from the race course centerline. This closure will be in effect from 6 p.m. May 28 until midnight on May 29, 1994.

2. Valley Off-Road Racing Association Virginia City 200 Off-Road Race Number NV–03516–94–12. Multiple-lap off-road race on roads and trails near Virginia City, Nevada in Storey County within T17N R21E. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground as the 1994 Virginia City 200 Off-Road Race route expect at designated pit and spectator areas. These areas are located in Virginia City at the Old Railroad Depot. Camping on public lands near the race route and in conjunction with the event is prohibited.

This closure will be in effect from 6 p.m. on June 17 through midnight on June 18, 1994.

The above restrictions do not apply to race officials, law enforcement and agency personnel, or BLM personnel monitoring the event.

Authority: 43 CFR 8341; 43 CFR 8364 and 43 CFR 8372.

Penalty: Any person failing to comply with the closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: April 6, 1994.

James W. Elliott,

District Manager.

[FR Doc. 94–9051 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–HC–M

[OR–030–04–4410–01: G4–107; 0–00151]

Proposed Amendment to the Northern Malheur Management Framework Plan

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: A proposed land use plan amendment to the Northern Malheur Management Framework Plan (MFP) has been completed. The proposed amendment concerns issues within the Leslie Gulch Area of Critical Environmental Concern (ACEC). The issues are related to inholding acquisition, livestock grazing, road closure, plant and mineral collection, wild and domestic horses, camping, and rock climbing as they pertain to management of the relevant and important values of the ACEC.

The 11,653 acre Leslie Gulch ACEC is located 50 miles south of Ontario, Oregon and adjoins the east side of the Owyhee Reservoir

DATES: The proposed MFP amendment is available for a thirty (30) day protest period. Protests must be submitted on or before May 16, 1994. There is no provision for any extension of time. To be considered "timely", protests must be postmarked no later than the last day of the protest period.

FOR FURTHER INFORMATION CONTACT: Ralph Heft, Malheur Resource Area Manager, Bureau of Land Management, Vale District, 100 Oregon street, Vale, OR 97918, (Telephone 503 473–3144).

SUPPLEMENTARY INFORMATION: On December 30, 1994, the Vale District began a forty five (45) day public comment period on the Environmental Assessment for the Leslie Gulch Area of Critical Environmental Concern (ACEC) Draft Amendment of the Northern Malheur Management Framework Plan and Draft ACEC Management Plan. The comment period was advertised with publication of a Notice of Availability in both the **Federal Register** and a local newspaper. In answer to a request from the public, the comment period was extended fifteen (15) days. The public comment period and the extension ended on March 3, 1994, with the receipt of written comments from eighty six (86) individuals, fifteen (15) organizations and five (5) government agencies.

Under the proposed decision, the BLM will: (1) Acquire the 40 acre private parcel in the ACEC from a willing seller, (2) close most of the ACEC to livestock grazing, (3) remove the ACEC from the Three Fingers wild horse Herd Management Area, (4) close the ACEC to recreational domestic livestock, (5) close 0.8 mile of the Dago Gulch road for general vehicle traffic, (6) close the ACEC to vegetation and mineral gathering, (7) close the ACEC to the installation of rock climbing bolts, (8) restrict the ACEC to day use only, (9) correct the acreage calculated for the ACEC.

In addition to publishing this Notice of Availability in the **Federal Register**, the Vale District has: (1) Mailed copies of the proposed decision to all parties on the MFP amendment mailing list, (2) provided the Office of the Governor of the State of Oregon with a copy of the environmental analysis and proposed decision, and (3) published a similar notice of availability in a local newspaper.

Ralph Heft,

Acting District Manager.

[FR Doc. 94–9095 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–33–M

[OR–050–4333–04:GP4–113; 4–00151]

Prohibited Acts in Deschutes National Wild and Scenic River Area

April 8, 1994.

AGENCY: Bureau of Land Management, Interior, Prineville District.

ACTION: Notice.

Pursuant to 43 CFR 8351.2–1, the following acts are prohibited on all public lands within the boundaries of the Deschutes River component of the National Wild and Scenic Rivers System administered by the Bureau of Land Management:

Violation of these prohibitions is punishable by a fine of not more than $500 or imprisonment for not more than 6 months or both. (Title 16 U.S.C. section 1281(a)(c) and title 18 U.S.C. section 3.)

1. Camping

a. Camping longer than 4 consecutive nights at boat-in only sites or camping longer than 14 nights at drive-in sites.

b. Digging or leveling the ground at any campsite.

c. Installation of permanent camping facilities.

d. Camping on river islands, or any area posted as closed to that use or vehicle camping in non-designated sites or sites posted as closed to drive-in camping.

e. Occupying between the hours of sunset and sunrise any place designated for day use only.

f. Possessing or leaving refuse, debris or litter in an exposed, unsightly or unsanitary condition.

g. Leaving campground equipment, site alterations or refuse after departing any campsite or in any unoccupied campsite.

h. Failure to pay fees within 30 minutes of occupying a fee site.

i. Exceeding party or group sizes of:

—16 in river segments 1, 3 and 4.

—24 in river segment 2, in any boat-in site and in any designated group campsite.

—8 in any designated single drive-in site.

j. After camping at a boat-in only site:

—Failure to move from that site at least ¼ mi. and

—Failure to vacate that site for at least 3 nights before returning to that site.

k. After camping at a drive-in site:

—Failure to move from that site at least 1 mi. and

—Camping longer than 14 nights during any consecutive 28-night period.

2. Fires

a. Building or maintaining any open campfires except those contained in a firepan or similar metal container with sides measuring at least 2" in height.

b. Leaving any fire unattended or without completely extinguishing it.

c. Burning or attempting to burn items such as tin, aluminum, glass or other noncombustible items in any campfire.

d. Throwing or discarding lighted or smoldering material, or lighting, tending or using a fire, stove or lantern in such a manner that threatens, causes damage to or results in the burning of property or resources, or creates a public safety hazard.

e. Using or possessing fireworks or firecrackers.

f. Failing to observe any fire orders, closure regulations or notices issued by the Bureau of Land Management or Oregon Department of Forestry.

3. Sanitation and Refuse

a. Disposing of refuse in other than refuse receptacles.

b. Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

c. Using government refuse receptacle for dumping household, commercial or industrial refuse brought in as such from private or municipal property except in accordance with conditions established by an authorized official.

d. Disposal of human body waste except at designated locations or fixtures provided for that purpose or burying human body waste less than 6–8 inches deep and less than 50 feet from any natural water source.

e. Draining any refuse from a trailer or vehicle, except in facilities provided for that purpose.

f. Washington dishes or using soap in the river or any tributaries or less than 50 feet from any natural water source.

4. Firearms

a. Discharging any firearms between: 3rd Sat. in May and August 31, or at any time within a developed recreation site.

b. Discharging a firearm at any time within 150 yards of a residence, building, developed recreation site, or occupied area.

c. Discharging a firearm at any time into or from within any area posted no shooting or safety zone.

d. Discharging a firearm at any time in violation of State law.

5. Disorderly Conduct

a. A person commits disorderly conduct when, with the intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly committing a risk thereof, such a person commits any of the following prohibited acts:

1—Engages in fighting, threatening or violent behavior;

2—Uses language, an utterance or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace;

3—makes noise that is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances;

4—creates or maintains a hazardous or physically offensive condition including but not limited to: using or operating mechanized or manual water cannons, spud guns, water balloon launchers or any other projectile device.

b. Operating generators, amplified music and other excessive or loud noise from 10 p.m. to 7 a.m.

6. Vehicles

a. Parking in such a manner as to impede or obstruct the normal flow of traffic, create a hazardous condition, or parking in any area designated as closed to parking.

b. Exceeding posted speed limits.

c. Disregarding traffic control devices.

d. Failure to report a motor vehicle accident resulting in property damage, injury or death within 24 hours to Prineville BLM District Office.

e. Traveling or parking off of designated roads, parking areas or launch sites.

f. Operation of any vehicle that does not meet State registration, licensing and safety requirements.

g. Operation of any vehicle without a valid State driver's license.

h. Operation of a motor vehicle while under the influence of alcohol, drugs or intoxicants, or any combination thereof.

i. Operation of a motor vehicle in violation of any State law.

j. Using or riding a mountain bike except in areas designated for mountain bike use.

k. The following acts are prohibited on these roads within the Deschutes River National Wild and Scenic corridor:

Mecca Flat Road
Trout Creek Road
BLM Upper River Access Road—Maupin to Locked Gate
BLM Middle River Access Road—Bakeover Road to Hwy 216
BLM Lower River Access Road—Hwy 216 to Macks Canyon

1—operating a vehicle with a seating capacity greater than 24 passengers (each seat to hold no more than 2 persons) and 1 driver and a total vehicle length greater than 28 feet

2—riding or allowing to ride in or on top of the load of any trailer

3—riding or allowing to ride in or on top of the load within or on the back of any open bed motor vehicle

4—pulling any trailer with a total overall width greater than 8 feet 6 inches

5—operating any trailer, tow vehicle combination with a combined total length greater than 50 feet.

7. Other Acts

a. Tree cutting or firewood gathering, including driftwood, dead/down wood.

b. Defacing, disturbing, or removing any natural feature or property of the United States.

c. Failing to possess a Deschutes River Boater Pass as required by Oregon State Parks and Recreation Division.

d. Failing to exhibit required permits or identification when requested by a BLM authorized officer or representative.

e. Selling or offering for sale any services or merchandise or conducting any kind of business enterprise on public lands without a BLM permit.

f. Threatening, resisting, intimidating or interfering with any BLM official, employee or volunteer engaged in, or on account of, the performance of their official duties.

g. Failure to restrain pets on a leash or in a cage at all times in developed camping areas and within the river corridor except when in use for hunting.

h. Aircraft landing without authorization.

i. Taking, attempting to take, or possession of any fish or wildlife in violation of any State law or other regulation.

j. Participating in an unauthorized event or activity.

k. Defacing, disturbing or removing any historic or prehistoric feature or artifact.

l. Allowing livestock to graze within any closed area or at any time when grazing is prohibited.

m. Using or riding horses except in areas designated for horse use.

n. Violations by commercial permittees of any stipulations outlined in the Guidelines for Commercial Use of Rivers in the Prineville District.

o. Exceeding party or group sizes of:

—16 in river segment 1, 3 and 4

—24 in river segment 2.

8. Boating

a. Operation of any motor-driven (including electric motor-driven) vessel in any areas posted "Closed" to such use.

b. Failure to observe posted regulations at launch sites.

c. Operation of any vessel in such a manner as to create a hazardous or unsafe condition.

d. Operation of any personal watercraft including, but not limited to: jet skis, wet bikes, waverunners, and wetjets from Heritage Landing boat ramp upstream.

e. Operation of any motor-driven vessel with more than seven people (including the operator) on board.

f. Any motor-driven vessel making more than two round trips per day.

g. Failure of floating craft (except float tubes) to observe the pass-through zone from the no-wake zone below Moody Rapids to the upstream end of Rattlesnake Rapids.

h. Exceeding Oregon State noise standards for motorboats.

i. Violation of any State Marine Board regulation.

The provisions of paragraphs 1a,d,e,h; 4a,b,c; 6a,b,c,e,j; 7c,m; 8a,f,g shall not apply to any Federal, State or local officer or member of any organized rescue or firefighting force in the performance of an official duty.

Dated: March 28, 1994.

James L. Hancock,

District Manager, Prineville District Office.

Exhibit A

The lands administered by the Bureau of Land Management to which this order applies are within the Administrative boundary of the Deschutes National Wild and Scenic River.

Legal description of the administrative boundary commencing at Pelton Reregulating Dam and extending downstream to the Columbia River:

T. 10 S., R. 12 E., W.M.

Section 1 (Regulator Dam):

Beginning at the centerline point of the east end of the Regulating Dam, thence northeasterly along the centerline of the existing road to the intersection of a road, thence northerly and easterly along the centerline of the existing road to the intersection of the north-south centerline of southeast ¼ of section 1, thence northerly to the center east 1/16 corner, thence easterly to the westerly right-of-way boundary line of highway 26, thence along said right-of-way boundary to the north line of section 1.

T. 9 S., R. 12 E., W.M.

Section 31:

Thence northeasterly along the northwest right-of-way boundary of highway 26 to the east-west centerline of the northwest ¼, thence easterly to the northeast 1/16 corner, thence northerly to the east 1/16 corner common of sections 30 and 31.

Section 30:

Thence northerly to the center east 1/16 corner, thence easterly to the ¼ corner common to sections 29 and 30.

Section 29:

Thence easterly to the center west 1/16 corner, thence northerly to the northwest 1/16 corner, thence easterly to the center north 1/16, thence northerly to the ¼ corner common to sections 20 and 29.

Section 20:

Thence easterly to the east 1/16 corner common to sections 20 and 29, thence northerly to the center east 1/16 corner, thence easterly to the rimrock of the canyon, thence northeasterly along said rimrock to the line common to section 20 and 21.

Section 21:

Thence continuing northeasterly along said rimrock to the line common to sections 15 and 21.

Section 16:

Thence continuing northeasterly along said rimrock to the southeast 1/16 corner, thence easterly to the south 1/16 corner common to sections 16 and 15.

Section 15:

Thence easterly to the southwest 1/16 corner, thence northerly to the center west 1/16 corner, thence easterly to the ¼ corner common to sections 15 and 14.

Section 14:

Thence easterly to the ¼ corner common to sections 14 and 13.

Section 13:

Thence easterly to the center west 1/16 corner, thence northerly to the northwest 1/16 corner, thence easterly to the northeast 1/16 corner, thence northerly to the east 1/16 corner common to sections 13 and 12.

Section 12:

Thence easterly to the section corner common to sections 12 and 13, T. 9. S., R. 13 E., W.M. and sections 7 and 18, T. 9 S., R. 14 E., W.M.

T. 9 S., R. 14 E., W.M.

Section 7:

Thence northerly to the south 1/16 corner common to sections 7 and 12, thence easterly to the southwest 1/16 corner, thence northerly to the center west 1/16 corner, thence easterly to the center ¼ corner, thence northerly to the center north 1/16 corner, thence easterly to the north 1/16 corner common to sections 7 and 8, thence northerly to the corner common to sections 5, 6, 7 and 8.

Section 5:

Thence northerly to the south 1/16 corner common to sections 5 and 6, thence easterly to the southwest 1/16 corner thence northerly to the center west 1/16 corner, thence easterly to the center ¼ corner, thence northerly to the ¼ corner common to section 5, T. 9 S., R. 14 E. and section 32, T. 8 S., R. 14 E., W.M.

T. 8 S., R. 14 E., W.M.

Section 32:

Thence northerly to the center south 1/16 corner, thence easterly to the southeast 1/16 corner, thence northerly to the east 1/16 corner common to sections 29 and 32.

Section 29:

Thence easterly to the section corner common to sections 28, 29, 32 and 33, thence northerly to the section corner common to sections 20, 21, 28 and 29.

Section 21:

Thence easterly to the east 1/16 corner common to sections 21 and 28, thence northerly to the center east 1/16 corner, thence easterly to the ¼ corner common to sections 21 and 22, thence northerly to the section corner common to sections 15, 16, 21 and 22.

Section 15:

Thence easterly to the west 1/16 corner common to sections 15 and 22, thence northerly to the west 1/16 corner common to sections 10 and 15.

Section 10:

Thence northerly to the northwest 1/16 corner, thence westerly to the north 1/16 corner common to sections 9 and 10.

Section 9:

Thence westerly to the northeast 1/16 corner, thence northerly to the east 1/16 corner common to sections 4 and 9.

Section 4:

Thence westerly to the ¼ corner common to sections 4 and 9, thence northerly to the center north 1/16 corner, thence westerly to the northwest 1/16 corner, thence northerly to the west 1/16 corner common to section 4, T.

8 S., R. 14 E. and section 33, T. 7 S., R. 14 E., W.M., thence westerly to the section corner common to sections 4 and 5, T. 8 S., R. 14 E. and sections 32 and 33, T. 7 S., R. 14 E., W.M.

T 7 S., R. 14 E., W.M.

Section 32:

Thence westerly along the section line common to sections 5 and 32 to the intersection with the west right-of-way boundary line of the Burlington-Northern railroad, thence northwesterly along the west right-of-way boundary line of said railroad to the intersection of the section line common to sections 29 and 32.

Section 29:

Thence easterly to the section corner common to sections 28, 29, 32 and 33, thence northerly to the ¼ corner common to sections 28 and 29.

Section 28:

Thence easterly to the center west 1/16 corner, thence northerly to the west 1/16 corner common to sections 21 and 28.

Section 21:

Thence northerly to the west 1/16 corner common to sections 16 and 21, thence westerly to the section corner common to sections 16, 17, 20 and 21.

Section 17:

Thence northerly to the section common to sections 8, 9, 16 and 17.

Section 9:

Thence easterly to the ¼ corner common to sections 9 and 16, thence northerly to the ¼ corner common to sections 4 and 9.

Section 4:

Thence easterly to the east 1/16 corner common to sections 4 and 9, thence northerly to the center east 1/16 corner, thence easterly to the east ¼ corner common to sections 3 and 4, thence northerly to the section corner common to sections 3 and 4, T. 7 S., R. 14 E. and sections 33 and 34 of T. 6 S., R. 14 E., W.M.

T. 6 S., R. 14 E., W.M.

Section 34:

Thence easterly to the west 1/16 corner common to section 3, T. 7 S., R. 14 E. and section 34, T. 6 S., R. 14 E., W.M., thence northerly to the west 1/16 corner common to sections 27 and 34, T. 6 S., R. 14 E., W.M.

Section 27:

Thence northwesterly to the section corner common to 21, 22, 27, and 28.

Section 21:

Thence northerly to the ¼ corner common to sections 21 and 22, thence westerly to the center west 1/16 corner, thence northerly to the northwest 1/16 corner, thence westerly to the north 1/16 corner common to sections 20 and 21, thence northerly to the section corner common to the sections 16, 17, 20 and 21.

Section 17:

Thence westerly to the west 1/16 corner common to sections 17 and 20, thence northerly to the center west 1/16 corner, thence westerly to the ¼ corner common to sections 17 and 18.

Section 18:

Thence westerly to the west ¼ corner of section 18, thence northerly to the west section corner common to sections 7 and 18.

Section 7:

Thence easterly to the west 1/16 corner common to sections 7 and 18, thence northerly to the northwest 1/16 corner, thence easterly to the center north 1/16 corner, thence northerly to the ¼ corner common to sections 6 and 7, thence easterly to the east 1/16 corner common to sections 6 and 7.

Section 6:

Thence northerly to the northeast 1/16 corner, thence westerly to the north 1/16 corner on the west boundary of section 6, thence northerly to the corner common to section 1, T. 6 S., R. 14 E., section 6, T. 6 S., R. 14 E., section 31, T. 5 S., R. 14 E. and section 36, T. 5 S., R. 14 E., W.M.

T. 5 S., R. 14 E., W.M.

Section 36:

Thence westerly to the east 1/16 corner on the south section line of section 36, thence northerly to the east 1/16 corner common to sections 25 and 36, thence westerly to the ¼ corner common to sections 25 and 36.

Section 25:

Thence northerly to the ¼ corner common to sections 24 and 25.

Section 24:

Thence northerly to the center north 1/16 corner, thence easterly to the northeast 1/16 corner, thence northerly to the east 1/16 corner common to sections 13 and 24.

Section 13:

Thence northerly to the east 1/16 corner between sections 12 and 13, thence easterly to the east section corner common to sections 12 and 13, T. 5 S., R. 13 E. on the west line of section 7, T. 5 S., R. 14 E., W.M.

T. R. S., R. 14., W.M.

Section 7:

Thence northerly to the south 1/16 corner on the west line of section 7, thence easterly to the southwest 1/16 corner, thence northerly to the center west 1/16 corner, thence easterly to the center ¼ corner, thence northerly to the center north 1/16 corner, thence northeasterly to the east 1/16 corner common to sections 6 and 7.

Section 6:

Thence northeasterly to the south 1/16 corner common to sections 5 and 6.

Section 5:

Thence northeasterly to the center west 1/16 corner, thence northerly along the west boundary of the southeast ¼ of the northwest ¼ to the mean high waterline on the southeast bank of the Deschutes River, thence northeasterly along said mean high waterline to the section line common to section 32, T. 4 S., R. 14 E. and section 5, T. 5 S., R. 14 E., W.M.

T. 4 S., R. 14. E., W.M.

Section 32:

Thence continuing northeasterly along the mean high waterline on the southeasterly bank of the Deschutes River to intersection with the section line between sections 32 and 33.

Section 33:

Thence continuing northerly along the mean high waterline on the east bank of the Deschutes River to the intersection with the section line between sections 32 and 33, thence northerly to the section corner common to sections 28, 29, 32 and 33.

Section 29:

Thence northerly to the north 1/16 corner, between sections 28 and 29, thence westerly to the northeast 1/16 corner, thence northerly to the east 1/16 corner common to sections 20 and 29.

Section 30:

Thence northerly to the southeast 1/16 corner, thence northeasterly to the ¼ corner common to sections 20 and 21.

Section 21:

Thence northeasterly to the northwest 1/16 corner, thence northerly to the west 1/16 corner common to sections 16 and 21.

Section 16:

Thence northerly to the center west 1/16 corner, thence westerly to the ¼ corner between sections 16 and 17, thence northerly to the north 1/16 corner between sections 16 and 17, thence northeasterly to the west 1/16 corner between sections 9 and 16, thence easterly to the section corner common to sections 9, 10, 15 and 16.

Section 10:

Thence northeasterly to the southwest 1/16 corner, thence easterly to the southeast 1/16 corner, thence northerly to the east 1/16 corner common to sections 3 and 10, thence easterly to the section corner common to sections 2, 3, 10 and 11.

Section 3:

Thence northerly to the corner common to sections 2 and 3, T. 4 S., R. 14 E. and sections 34 and 35, T. 3 S., R. 14 E., W.M.

T. 3 S., R. 14 E., W.M.

Section 35:

Thence easterly to the ¼ corner common to section 2, T. 4 S., R. 14 E. and section 35, T. 3 S., R. 14 E., W.M., thence northerly to the center south 1/16 corner, thence easterly to the south 1/16 corner common to sections 35 and 36, thence northerly to the section corner common to sections 25, 26, 35 and 36.

Section 26:

Thence northerly to the section corner common to sections 23, 24, 25 and 26.

Section 23:

Thence northerly to the section corner common to sections 13, 14, 23 and 24.

Section 14:

Thence northerly to the south 1/16 corner common to sections 13 and 14.

Section 13:

Thence easterly to the southwest 1/16 corner, thence southerly to the west 1/16 corner common to sections 13 and 24, thence easterly to the section corner common to sections 13 and 24, T. 3 S., R. 14 E. and sections 18 and 19, T. 3 S., R. 15 E., W.M.

T. 3 S., R. 15 E., W.M.

Section 18:

Thence easterly to the ¼ corner common to sections 18 and 19, thence northerly to the ¼ corner common to sections 7 and 18, thence easterly to 1/16 corner common to

sections 7 and 18, thence southerly to the center east 1/16 corner, thence southeasterly to the south 1/16 corner common to sections 17 and 18.

Section 17:

Thence southeasterly to the west 1/16 corner common to sections 17 and 20, thence easterly to the section corner common to sections 16, 19, 20 and 21, thence northerly to the section corner common to sections 8, 9, 16 and 17.

Section 9:

Thence easterly to the 1/4 corner common to sections 9 and 16, thence northerly to the center 1/4 corner, thence northeasterly to the northeast 1/16 corner common to sections 9 and 10.

Section 10:

Thence northeasterly to the west 1/16 corner common to sections 3 and 10.

Section 3:

Thence northeasterly to the center south 1/16 corner, thence northerly to the 1/4 corner common to section 3, T. 3 S., R. 15 E. and section 34, T. 2 S., R. 15 E., W.M.

T. 2 S., R. 15 E., W.M.

Section 34:

Thence easterly to the east 1/16 corner common to section 3, T. 3 S., R. 15 E. and section 34, T. 2 S., R. 15 E., W.M., thence northerly to the northeast 1/16 corner, thence easterly to the north 1/16 corner common to sections 34 and 35.

Section 35:

Thence easterly to the north 1/16 corner common to sections 35 and 36, thence northerly to the section corner common to sections 25, 26, 35 and 36.

Section 26:

Thence northerly to the section corner common to sections 23, 24, 25 and 26.

Section 23:

Thence northerly to the south 1/16 corner common to sections 23 and 24.

Section 24:

Thence northeasterly to the center 1/4 corner, thence easterly to the east 1/4 corner of section 24.

T. 2 S., R. 16 E., W.M.

Section 19:

Thence southerly to the west 1/4 corner of section 19, thence easterly to the center 1/4 corner, thence northerly to the 1/4 corner common to sections 12 and 19.

Section 12:

Thence northerly to the 1/4 corner common to sections 7 and 12.

Section 7:

Thence northerly to the 1/4 corner common to sections 6 and 7.

Section 6:

Thence northeasterly to the center east 1/16 corner, thence easterly to the 1/4 corner common to sections 5 and 6.

Section 5:

Thence northeasterly to the 1/4 corner common to section 5, T. 2 S., R. 16 E. and section 32, T. 1 S., R. 16 E., W.M.

T. 1 S., R. 16 E., W.M.

Section 32:

Thence northeasterly to the 1/4 corner common to sections 31 and 32.

Section 31:

Thence westerly to the center east 1/16 corner, thence northerly to the east 1/16 corner common to sections 30 and 31.

Section 30:

Thence northerly to the northeast 1/16 corner, thence easterly to the north 1/16 corner common to sections 29 and 30.

Section 29:

Thence easterly to the northwest 1/16 corner, thence northerly to the west 1/16 corner common to sections 20 and 29.

Section 20:

Thence easterly to the 1/4 corner common to sections 20 and 29, thence northeasterly to the 1/4 corner common to sections 20 and 21, thence northerly to the section corner common to sections 16, 17, 20 and 21.

Section 17:

Thence northerly to the south 1/16 corner common to section 16 and 17, thence westerly to the southeast 1/16 corner, thence northerly to the northeast 1/16 corner, thence easterly to north 1/16 corner common to sections 16 and 17, thence northerly to the section corner common to sections 8, 9, 16 and 17.

Section 8:

Thence northerly to the section corner common to sections 4, 5, 8 and 9.

Section 4:

Thence easterly to the west 1/16 corner common to sections 4 and 9, thence northerly to the southwest 1/16 corner, thence easterly to the center south 1/16 corner, thence northerly to the north 1/4 corner, section 4, T. 1 S., R. 16 E., W.M., thence easterly to the section corner common to sections 4 and 5, T.1 S., R. 16 E., W.M.

Section 5:

Thence westerly to the section corner common to section 32 and 33, T. 1 N, R. 16 E., W.M.

T. 1 N., R. 16 E., W.M.

Section 32:

Thence westerly to the east 1/16 corner on the south line of section 32, thence northerly to the southeast corner, thence westerly to the southwest 1/16 corner, thence northerly to the center west 1/16 corner, thence westerly to the 1/4 corner common to sections 31 and 32.

Section 31:

Thence northerly to the section corner common to sections 29, 30, 31 and 32, thence westerly to the section corner common to sections 30 and 31, T. 1 N., R. 16 E. and sections 25 and 36, T. 1 N., R. 15 E., W.M.

T. 1 N., R. 15 E., W.M.

Section 25:

Thence westerly to the east 1/16 corner common to sections 25 and 36, thence northerly to the northeast 1/16 corner, thence westerly to the northwest 1/16 corner, thence northerly to the west 1/16 corner common to sections 24 and 25.

Section 24:

Thence northerly to the southwest 1/16 corner, thence westerly to the south 1/16 corner common to sections 23 and 24.

Section 23:

Thence northerly to the section corner common to sections 13, 14, 23 and 24.

Section 14:

Thence northerly to the section corner common to sections 11, 12, 13 and 14.

Section 11:

Thence northerly to the westerly boundary of the old Deschutes railroad right-of-way, thence northerly along said right-of-way boundary to a point on the south boundary of the northwest 1/4 of section 12, thence easterly to the center 1/4 corner, thence northerly to the 1/4 corner common to sections 1 and 12, thence westerly to the west 1/16 corner common to sections 1 and 12.

Section 1:

Thence northwesterly to the north 1/16 corner common to sections 1 and 2.

Section 2:

Thence westerly to the northeast 1/16 corner, thence northerly to the east 1/16 corner common to section 2, T. 1 N., R. 15 E. and section 35, T. 2 N., R. 15 E., W.M.

T. 2 N., R. 15 E., W.M.

Section 35:

Thence northerly to the east 1/16 corner common to sections 35 and 26.

Section 26:

Thence northerly to the center east 1/16 corner, thence easterly to the west right-of-way boundary of the old Deschutes railroad, thence northerly along the west boundary of the old railroad right-of-way to where it intersects the west boundary of lot 1, thence northerly to the intersection of the south boundary of the right-of-way for highway 206, thence westerly along said highway right-of-way boundary to the intersection with the section line common to sections 26 and 27, thence southerly to the southwest corner of lot 7, thence easterly to the northwest corner of lot 6, thence southerly to the west 1/16 corner common to sections 26 and 35.

Section 35:

Thence southerly to the center west 1/16 corner, thence westerly to the 1/4 corner common to sections 34 and 35, thence southerly to the section corner common to sections 34 and 35, T. 2 N., R. 15 E. and sections 2 and 3, T. 1 N., R. 15 E., W.M.

T. 1 N., R. 15 E., W.M.

Section 2:

Thence southerly to the 1/4 corner common to sections 2 and 3, thence easterly to the center 1/4 corner, thence southerly to the center south 1/16 corner, thence easterly to the southeast 1/16 corner, thence southerly to the east 1/16 corner common to sections 2 and 11.

Section 11:

Thence southerly to the center east 1/16 corner, thence easterly to the center 1/4 corner, thence southerly to the 1/4 corner common to sections 11 and 14.

Section 14:

Thence westerly to the west 1/16 corner common to sections 11 and 14, thence southerly to the west 1/16 corner common to sections 14 and 23.

Section 23:

Thence southerly to the center west 1/16 corner, thence easterly to the center 1/4 corner, thence southerly to the 1/4 corner common to sections 23 and 26.

Section 26:

Thence southerly to the center 1/4 corner, thence easterly to the 1/4 corner common to sections 25 and 26.

Section 25:

Thence easterly to the intersection with the east right-of-way boundary of the electric transmission line, thence southerly along said right-of-way boundary to the intersection of the section line common to sections 25 and 36.

Section 36:

Thence southerly along said right-of-way boundary to the intersection with the north line of the southeast 1/4 of the southeast 1/4, thence easterly to the south 1/16 corner common to section 36, T. 1 N., R. 15 E. and section 31, T. 1 N., R. 16 E., W.M.

T. 1 N., R. 16 E., W.M.

Section 31:

Thence easterly to the center south 1/16 corner, thence southerly to the south 1/4 corner section 31.

T. 1 S., R. 16 E., W.M.

Section 6:

Thence southeasterly to the northeast 1/16 corner, thence easterly to the north 1/16 corner common to sections 5 and 6.

Section 5:

Thence southeasterly to the center 1/4 corner, thence southerly to the south 1/16 corner, thence westerly to the southwest 1/16 corner, thence southerly to the west 1/16 corner common to sections 6 and 8.

Section 8:

Thence southerly to the west 1/16 corner common to sections 8 and 17.

Section 16:

Thence southerly to the west 1/16 corner common to sections 17 and 20.

Section 20:

Thence southwesterly to the north 1/16 corner common to sections 19 and 20, thence southerly to the sourt 1/16 corner common to sections 19 and 20.

Section 19:

Thence westerly to the southwest 1/16 corner, thence southerly to the west 1/16 corner common to sections 19 and 30.

Section 30:

Thence easterly to the section corner common to sections 19 and 30, thence southerly to the section corner common to sections 30 and 31.

Section 31:

Thence southerly to the west 1/4 corner of section 31, thence southeasterly to the southwest 1/16 corner, thence southerly to the west 1/16 corner common to section 31, T. 1 S., R. 16 E. and section 6, T. 2 S., R. 16 E., W.M.

T. 2 S., R. 16 E., W.M.

Section 6:

Thence southwesterly to the north 1/16 corner on the west side of section 6, thence southerly to the section corner common to sections 6 and 7, T. 2 S., R. 16 E. and sections 1 and 12, T. 2 S., R. 15 E., W.M.

Section 7:

Thence southerly to the section corner common to sections 7 and 18, T. 2 S., R. 16 E. and sections 12 and 13, T. 2 S., R. 15 E., W.M.

Section 18:

Thence southerly to the 1/4 corner common to section 18, T. 2 S., R. 16 E. and section 13, T. 2 S., R. 15 E., W.M.

T. 2 S., R. 15 E., W.M.

Section 13:

Thence westerly to the 1/4 corner common to sections 13 and 14, thence southerly to the section corner common to sections 13, 14, 23 and 24, thence southwesterly to the center south 1/16 corner, thence westerly to the southwest 1/16 corner, thence southerly to the west 1/16 corner common to sections 23 and 26.

Section 26:

Thence southerly to the center west 1/16 corner, thence westerly to the 1/4 corner common to sections 26 and 27, thence westerly to the 1/4 corner common to sections 27 and 28, thence southerly to the section corner common to sections 27, 28, 33 and 34.

Section 33:

Thence southwesterly to the section corner common to sections 32 and 33, T. 2 S., R. 15 E. and sections 4 and 5, T. 3 S., R. 15 E., W.M.

T. 3 S., R. 15 E., W.M.

Section 4:

Thence southerly to the northwest 1/16 corner common to sections 4 and 5.

Section 5:

Thence westerly to the center north 1/16 corner, thence southerly to the 1/4 corner common to sections 5 and 8, thence easterly to the section corner common to sections 4, 5, 8 and 9.

Section 9:

Thence southerly to the 1/4 corner common to sections 8 and 9.

Section 8:

Thence southwesterly to the 1/4 corner common to sections 8 and 17, thence westerly to the west 1/16 corner common to sections 8 and 17, thence northwesterly to the north 1/16 corner common to sections 7 and 8, thence northerly to the section corner common to sections 5, 6, 7 and 8.

Section 7:

Thence westerly to the 1/4 corner common to sections 6 and 7, thence southerly to the center north 1/16 corner, thence westerly to the north 1/16 corner common to section 7, T. 3 S., R. 15 E. and section 12, T. 3 S., R. 14 E., W.M., thence southerly to the section corner common to sections 7 and 18, T. 3 S., R. 15 E. and sections 12 and 13, T. 3 S., R. 14 E., W.M.

Section 18:

Thence southerly to the north 1/16 corner common to section 18, T. 3 S., R. 15 E. and section 13, T. 3 S., R. 14 E., W.M.

T. 3 S., 14 E., W.M.

Section 13:

Thence westerly to the north 1/16 corner common to sections 13 and 14.

Section 14:

Thence westerly to the center north 1/16 corner, thence southerly to the 1/4 corner common to sections 14 and 23.

Section 23:

Thence westerly to the west 1/16 corner common to sections 14 and 23, thence southerly to the center west 1/16 corner, thence westerly to the 1/4 corner of sections 22 and 23, thence southerly to the section corner common to sections 22, 23, 26 and 27.

Section 26:

Thence southerly to the 1/4 corner common to sections 26 and 27, thence easterly to the center west 1/16 corner, thence southerly to the west 1/16 corner common to sections 26 and 35.

Section 35:

Thence southeasterly to the center north 1/16 corner, thence southerly to the center 1/4 corner, thence easterly to the intersection with the east side of the Burlington Northern right-of-way boundary, thence southwesterly along said right-of-way boundary to the intersection of the section line between sections 34 and 35.

Section 34:

Thence southwesterly on said right-of-way boundary to the intersection of the section line between section 34, T. 3 S., R. 14 E. and section 3, T. 4 S., R. 14 E., W.M.

T. 4 S., R. 14 E., W.M.

Section 3:

Thence southwesterly along said right-of-way boundary to the intersection with the north line of the southeast 1/4 of the southwest 1/4 of section 3, thence westerly to the south 1/16 corner common to sections 3 and 4, thence southerly to the section corner common to sections 3, 4, 9 and 10.

Section 10:

Thence southerly to the north 1/16 corner common to sections 9 and 10.

Section 9:

Thence easterly to the center north 1/16 corner, thence southerly to the center south 1/16 corner, thence westerly to the south 1/16 corner common to sections 8 and 9.

Section 8:

Thence westerly to the southeast 1/16 corner, thence southerly to the east 1/16 corner common to sections 8 and 17.

Section 17:

Thence westerly to the 1/4 corner common to sections 8 and 17, thence southerly to the center north 1/16 corner, thence easterly to the east boundary of the Burlington Northern railroad right-of-way, thence southerly along said right-of-way boundary to the east boundary of the northeast 1/4 of the southeast 1/4, thence southerly to the east 1/16 corner common to sections 17 and 20.

Section 20:

Thence southerly to the northeast 1/16 corner, thence westerly to the center north 1/16 corner, thence southerly to the 1/4 corner common to sections 20 and 29.

Section 29:

Thence westerly to the west 1/16 corner common to sections 20 and 29, thence

southerly to the center west 1/16 corner, thence easterly to the center 1/4 corner, thence southerly to the 1/4 corner common to sections 29 and 32.

Section 32:

Thence southerly to the center north 1/16 corner, thence westerly to the mean high waterline on the west bank of the Deschutes River, thence southerly along said high waterline to the intersection of the section line common to section 32, T. 4 S., R. 14 E., and section 5, T. 5 S., R. 14 E., W.M.

T. 5 S., R. 14 E., W.M.

Section 5:

Thence southerly along said mean high waterline to intersection with the south boundary of lot 3, thence westerly to the top of the canyon rim, thence southwesterly to the intersection of the section line between sections 5 and 6.

Section 6:

Thence southwesterly to the center east 1/16 corner, thence southwesterly to the west 1/16 corner common to sections 6 and 7.

Section 7:

Thence southerly to the northwest 1/16 corner, thence westerly to the north 1/16 corner common to section 7, T. 5 S., R. 14E. and section 12, T. 5 S., R. 13E., W.M.

T. 5S., R. 13 E., W.M.

Section 12:

Thence southwesterly to the center west 1/16 corner, thence southerly to southwest 1/16 corner, thence westerly to the south 1/16 corner common to sections 12 and 13, thence southerly to the section corner common to sections 11 and 12.

Section 13:

Thence easterly to the west 1/16 corner on the north boundary of section 13, thence southerly to the southwest 1/16 corner, thence southwesterly to the section corner common to sections 13, 14, 23 and 24.

Section 24:

Thence southerly to the section corner common to sections 23, 24, 25 and 26.

Section 25:

Thence southerly to the section corner common to sections 25, 26, 35 and 36.

Section 36:

Thence southerly to the south 1/16 corner common to sections 35 and 36, thence easterly to the southwest 1/16 corner, thence southerly to the west 1/16 corner common to section 36, T. 5 S., R. 13 E. and section 1, T. 6 S., R. 13 E., W.M.

T. 6 S., R. 13 E., W.M.

Section 1:

Thence southerly to northwest 1/16 corner, thence easterly to the center north 1/16 corner, thence southerly to the center south 1/16 corner, thence westerly to the south 1/16 corner common to section 1, T. 6 S., R. 13 E. and section 6, T. 6 S., R. 14 E., W.M., thence southerly to the section corner common to sections 1 and 12, T. 6 S., R. 13 E. and sections 6 and 7, T. 6 S., R. 14 E., W.M.

Section 12:

Thence westerly to the 1/4 corner common to sections 1 and 12, thence southerly to the 1/4 corner common to sections 12 and 13.

Section 13:

Thence southerly to the 1/4 corner common to sections 13 and 24.

Section 24:

Thence southeasterly to the east 1/4 corner of section 24, thence southerly to the south 1/16 corner of the west section line of section 19, T. 6 S., R. 14 E., W.M.

T. 6 S., R. 14 E., W.M.

Section 19:

Thence easterly to the south 1/16 corner common to sections 19 and 20.

Section 20:

Thence easterly to the south 1/16 corner common to sections 20 and 21, thence southerly to the section corner common to sections 20, 21, 28 and 29.

Section 28:

Thence easterly to the west 1/16 corner common to sections 21 and 28, thence southerly to the west 1/16 corner common to sections 28 and 33.

Section 33:

Thence southeasterly to the 1/4 corner common to section 33, T. 6 S., R. 14 E. and section 4, T. 7 S., R. 14 E., W.M.

T. 7 S., R. 14 E., W.M.

Section 4:

Thence southerly to the center south 1/16 corner, thence westerly to the southwest 1/16 corner, thence southerly to west 1/16 corner common to sections 4 and 9.

Section 9:

Thence southerly to the center west 1/16 corner, thence westerly to the 1/4 corner common to sections 8 and 9.

Section 8:

Thence westerly to the center 1/4 corner, thence southerly to the center south 1/16 corner, thence westerly to the southwest 1/16 corner, thence southerly to the west 1/16 corner common to sections 8 and 17.

Section 17:

Thence southerly to the west 1/16 corner common to sections 17 and 20.

Section 20:

Thence southerly to the northwest 1/16 corner, thence easterly to the center north 1/16 corner, thence southerly to 1/4 corner common to sections 20 and 29.

Section 29:

Thence southerly to the center 1/4 corner, thence westerly to the center west 1/16 corner, thence southerly to the west 1/16 corner common to sections 29 and 32.

Section 32:

Thence southerly to the west 1/16 corner on the south line of section 32.

T. 8 S., R. 14 E., W.M.

Section 5:

Thence easterly to the north 1/4 corner of section 5, thence southerly to the center north 1/16 corner, then easterly to the northeast 1/16 corner, thence southerly to the center east 1/16 corner, thence easterly to the 1/4 corner common to sections 4 and 5.

Section 4:

Thence southerly to the section corner common to sections 4, 5, 8 and 9, thence easterly to the west 1/16 corner common to sections 4 and 9.

Section 9:

Thence southerly to the center west 1/16 corner, thence easterly to the center 1/4 corner, thence southerly to the center south 1/16 corner, thence easterly to the southeast 1/16 corner, thence southerly to the east 1/16 corner common to sections 9 and 16.

Section 16:

Thence southerly to the northeast 1/16 corner, thence easterly to the north 1/16 corner common to sections 15 and 16, thence southerly to the 1/4 corner common to sections 15 and 16, thence westerly to the center east 1/16 corner, thence southerly to the southeast 1/16 corner, thence westerly to the center south 1/16 corner, thence southerly to the 1/4 corner common to sections 16 and 21.

Section 21:

Thence southerly to the center 1/4 corner, thence westerly to the 1/4 corner common to sections 20 and 21.

Section 20:

Thence westerly to the center east 1/16 corner, thence southerly to the southeast 1/16 corner, thence westerly to the center south 1/16 corner, thence southerly to the 1/4 corner common to sections 20 and 29.

Section 29:

Thence southerly to the 1/4 corner common to sections 29 and 32.

Section 32:

Thence southerly to the center 1/4 corner, thence westerly to the center west 1/16 corner, thence southerly to the southwest 1/16 corner, thence westerly to the south 1/16 corner common to sections 31 and 32, thence southerly to the section corner common to sections 31 and 32, T. 8 S., R. 14 E. and sections 5 and 6, T. 9 S., R. 14 E., W.M.

T. 9S., R. 14 E., W.M.

Section 6:

Thence southerly to the 1/4 corner common to sections 5 and 6, thence westerly to the center east 1/16 corner, thence southerly to the east 1/16 corner common to sections 6 and 7, thence westerly to the section corner common to sections 6 and 7, T. 9 S., R. 14 E. and sections 1 and 12, T. 9 S., R. 13 E., W.M.

T. 9 S., R. 13 E., W.M.

Section 12:

Thence westerly to the east 1/16 corner common to sections 1 and 12, thence southerly to the northeast 1/16 corner, thence westerly to the center north 1/16 corner, thence southerly to the center south 1/16 corner, thence westerly to the south 1/16 corner common to sections 11 and 12.

Section 11:

Thence southerly to the section corner common to sections 11, 12, 13 and 14, thence westerly to the section corner common to sections 10, 11, 14 and 15.

Section 15:

Thence westerly to the section corner common to sections 9, 10, 15 and 16.

Section 16:

Thence southerly to the north 1/16 corner common to sections 15 and 16, thence

westerly to the center north 1/16 corner, thence southerly to the center 1/4 corner, thence westerly to the 1/4 corner common to sections 16 and 17.

Section 17:

Thence westerly to the center east 1/16 corner, thence southerly to the east 1/16 corner common to sections 17 and 20, thence westerly to the west 1/16 corner common to sections 17 and 20.

Section 20:

Thence southerly to the west 1/16 corner common to sections 20 and 29, thence westerly to the section corner common to sections 19, 20, 29 and 30.

Section 30:

Thence southerly to the mean high waterline on the north bank of the Deschutes River, thence westerly and southerly along said mean high waterline to a point on the north boundary of the northeast 1/4, southwest 1/4 of section 30, thence westerly to the center west 1/4 corner, thence southerly to the west 1/16 corner common to sections 30 and 31.

Section 31:

Thence southerly to the center west 1/16 corner, thence southerly to the point of intersection with the south right-of-way boundary of the existing road, thence southwesterly along said right-of-way boundary to the intersection with the section line between section 31, T. 9 S., R. 13 E. and section 36, T. 9 S., R. 12 E., W.M.

T. 9 S., R. 12 E., W.M.

Section 36:

Thence continuing southwesterly along south right-of-way boundary of said road to the intersection with the section line between section 36, T. 9 S., R. 12 E. and section 1, T. 10 S., R. 12 E., W.M.

T. 10 S., R. 12 E., W.M.

Section 1:

Thence easterly to the mean high waterline on the west bank of the Deschutes River, thence southerly along said mean high waterline to the Reregulating Dam, thence easterly across the Reregulating Dam to the Point of Beginning.

[FR Doc. 94–9061 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–33–M

[AZ–055–4333–02]

Arizona: Final Ehrenberg-Cibola Recreation Area Management Plan and Environmental Assessment, Yuma District, Yuma, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976, and section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a final recreation area management plan and environmental assessment for the Ehrenberg-Cibola Special Recreation Management Area. The plan involves approximately 115,947 acres of land along the Colorado River in western Arizona and southeastern California. The land lies within La Paz County, Arizona, and Imperial and Riverside Counties, California. The plan describes the recreation management practices the Bureau of Land Management intends to implement in the Ehrenberg-Cibola Special Recreation Management Area.

Among the management actions prescribed in the draft plan are off-highway vehicle designations, use authorization for concessions and non-commercial leases, and 12 Bureau of Land Management project plans for redevelopment of current facilities and development of new facilities. The new facilities include two boat ramps, one off-highway vehicle areas, one recreation concession, one watchable wildlife area, a Back Country Byway, fishing access, river access camping, and 2 day-use areas. The plan also recognizes the need for open space and wildlife habitat.

The appeal period for this plan and decision will begin upon publication of this notice in the **Federal Register** and will run for 30 days after which the Decision will become final. Procedures for appeals can be found in the Code of Federal Regulations (43 CFR part 4). Send appeals to Bureau of Land Management, Yuma Resource Area Manager, 3150 Winsor Ave., Yuma, Arizona, 85365.

SUPPLEMENTARY INFORMATION: A limited number of copies of the final Ehrenberg-Cibola Recreation Area Management Plan and Environmental Assessment area available upon request to the Yuma Resource Area Manager, Bureau of Land Management, 3150 Winsor Ave., Yuma, Arizona 85365.

FOR FURTHER INFORMATION CONTACT: Joy Gilbert, Yuma Resource Area Manager, 3150 Winsor Ave., Yuma, Arizona 85365, Telephone (602) 726–6300.

Dated: April 7, 1994.

Michael A. Taylor,

Associate District Manager.

[FR Doc. 94–9059 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[NM–030–4210–01]

Intent To Prepare Resource Management Plan Amendment; Caballo Resource Area, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and invitation to participate in an amendment of the White Sands Resource Management Plan.

SUMMARY: The Bureau of Land Management (BLM), Las Cruces District, Caballo Resource Area is initiating the preparation of a Resource Management Plan (RMP) Amendment, which will include an Environmental Assessment (EA) for the possible designation of six Areas of Critical Environmental Concern (ACECs) in Otero County in south-central New Mexico. Approximately 19,000 acres are identified for designation. The plan amendment will guide BLM programs and management practices on the ACECs.

The public is invited to participate in the planning process. Two public meetings will be held to obtain public input for the RMP Amendment. The meetings will be held at the following times and locations:

Date/Time	Location
May 4, 1994—7 pm.	Civic Center, 800 1st St., Room D, Alamogordo, New Mexico.
May 5, 1994—7 pm.	BLM Office, 1800 Marquess, Las Cruces, New Mexico.

DATES: Comments relating to the designation of ACECs and criteria for selecting them will be accepted until May 20, 1994.

ADDRESSES: Comments should be sent to Area Manager, BLM Caballo Resource Area, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Timothy M. Murphy, Area Manager, BLM, Caballo Resource Area at (505) 525–4372, or Mike Howard, Team Leader, Caballo Resource Area at (505) 525–4348.

SUPPLEMENTARY INFORMATION: ACECs are land designations unique to the BLM. The purpose of ACECs is to recognize, protect, and manage unique or sensitive resources or potential hazards to the public. Each area receives management or protection based on its unique needs, in consultation and coordination with the public.

The Caballo Resource Area has completed an inventory of areas containing unique or sensitive biological resources suitable for designation as ACECs. In addition, the Resource Area has received nominations both internally and from the public to consider several areas as ACECs based on visual, cultural, and biological values. In some cases, the nominations overlap those areas that were inventoried.

At this time, the Resource Area has more areas nominated than can reasonably be addressed in this effort. The Resource Area has elected to consider six areas. Nominations for other potential ACECs will be accepted at any time, but studies for the designation of these and other existing nominations will be addressed at a future date.

The nominated ACECs selected for consideration in this effort will include approximately 19,000 acres in Otero County, New Mexico. Maps showing the areas are available for review in the Caballo Resource Area Office.

The following nominated ACECs will be addressed: The Alkali Lakes area is located 80 miles southeast of Alamogordo, New Mexico and near the Texas border. This area was nominated to protect and manage endangered and sensitive plants and the plant community in which they occur. Total area to be considered is approximately 7,000 acres.

The Sacramento Escarpment ACEC is located 2 miles south of Alamogordo, New Mexico along the west face of the Sacramento Mountains. This area currently is a designated ACEC for the management of visual resources. The RMP amendment will consider expansion to provide for the protection and management of scenic resources and an endangered and sensitive plant community. Total area to be considered is approximately 4,800 acres.

Cornudas Mountain is located 60 miles southeast of Alamogordo, New Mexico and near the Texas border. The area was nominated to protect and manage visual resources, cultural resources, and sensitive plants. Total area to be considered is approximately 850 acres.

Wind Mountain is located 64 miles southeast of Alamogordo, New Mexico and near the Texas border. The area was nominated to protect and manage visual resources, cultural resources, and unique and sensitive plants and animals. Total area to be considered is approximately 2,500 acres.

Alamo Mountain is located 61 miles southeast of Alamogordo, New Mexico and near the Texas border. The area was nominated to protect and manage visual and cultural resources. Total area to be considered is approximately 2,800 acres.

The Three Rivers Petroglyph Site is located 30 miles north of Alamogordo, New Mexico. The area was nominated to protect and manage cultural resources. Total area to be considered is approximately 1,200 acres.

The RMP Amendment will address the designation of these areas as ACECs and include general management and protection measures that may apply to them. The management or protection measures to be considered for the six areas may include, but are not limited to, development of site-specific management plans; withdrawal from the mining laws except for valid existing rights; closure to permitting of new rights-of-way; restriction or closure to mineral leasing and sales; allowances and restrictions for recreational use including off-road vehicles; provision for interpretation of resources for the public; management of livestock grazing (specific to the Alkali Lakes area only); land exchanges; and public land access acquisition, restrictions, and permitting.

The RMP Amendment will be developed by an interdisciplinary team consisting of a Team leader, Technical Coordinator, Writer-Editor, Range Conservationists, Realty Specialists, Wildlife Biologists, Botanist, Geologist, Outdoor Recreation Planner, Archaeologist, and Public Affairs Officer. Additional technical support will be provided by other specialists as needed.

The planning criteria proposed to guide the development of the RMP amendment are:

1. Resource values.
2. Manageability of an area to preserve its resource values.
3. Existing ACEC designations and wilderness study areas.
4. Current and potential land uses.
5. Effects of designation on other resources and uses.
6. Effects on non-designation on other resources and uses.
7. Social and economic effects.
8. Public interest and attitudes.
9. Consistency of designation with resource plans of other Federal, State, and local governments and Indian Tribes.
10. Consultation with Federal, State, and local agencies, the scientific community, and individuals.
11. Long-term (more than 20 years) versus short-term (less than 20 years) benefits.
12. Management concerns along the U.S./Mexico border.
13. Public health and safety.

Public participation activities during the planning process will include consultation with affected users and other agencies, meetings with interested groups and individuals, mail outs, media notices, **Federal Register** notices, public meetings, and distribution of the RMP amendment and EA for comments.

Complete records of the planning process will be available for public review at the Caballo Resource Area Office at the address above.

Dated: April 8, 1994.

Carol L. Sampson,

Acting Associate State Director.

[FR Doc. 94–9098 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–FB–M

Bureau of Land Management

[AZ–050–04–4410–02; 4–00162]

Arizona: Availability of the Draft Yuma District (Havasu) Resource Management Plan Amendment and Environmental Assessment, Yuma District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Yuma District (Havasu) Resource Management Plan Amendment and Environmental Assessment, Yuma District.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared an amendment and environmental assessment to its Yuma District Resource Management Plan. The proposed changes include:.

1. Additional lands open for utility right-of-way applications in the Crossman Peak Natural Scenic Area.
2. Consideration of applications for terminal distribution lines outside of designated corridors.
3. Additional lands available for disposal in San Luis, Arizona, and near Needles, California.
4. Modification of the limited route designations of the Yuma District Resource Management Plan in the vicinity of Lake Havasu City to include a competitive-use off-highway vehicle race event.
5. An additional general use off-highway vehicle area near Lake Havasu city.
6. A salvage policy for displaced native plants.

None of the proposals would be approved without site-specific environmental documentation.

SUPPLEMENTARY INFORMATION: Comments addressing the adequacy of the document or the merits of the alternatives will be responded to in the Final Resource Management Plan Amendment/Environmental Assessment. In order to be considered in the Final, comments must be received within 60 days of this **Federal Register** notice of availability.

A limited number of copies of the Amendment and Environmental Assessment are available upon request to the Yuma District Manager, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365. There

are also copies available for review at the above location.

This notice is published under authority found in 43 CFR 1610.2(c).

FOR FURTHER INFORMATION CONTACT: Planning and Environmental Coordinator Dave Curtis, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726–6300.

Dated: April 6, 1994.

Judith I. Reed,

District Manager,

[FR Doc. 94–9053 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–32–M

[AZ–050–04–4410–02; 4–00162]

Arizona: Availability of the Final Yuma District (Bill Williams) Resource Management Plan Amendment and Environmental Assessment, Yuma District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Yuma District (Bill Williams) Resource Management Plan Amendment and Environmental Assessment, Yuma District.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared an amendment and environmental assessment to its Yuma District Resource Management Plan. The Final Amendment/Environmental Assessment determined that a portion of the Bill Williams River is eligible for further study. Further study includes determining the suitability for recommending this portion of the river to Congress for inclusion in the National Wild and Scenic Rivers System.

The document contains procedures for protesting the Amendment. These procedures can also be found in the Code of Federal Regulations (43 CFR 1610.5–2).

SUPPLEMENTARY INFORMATION: A limited number of copies of the amendment and environmental assessment are available upon request to the Yuma District Manager, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365. There are also copies available for review at the above location.

EFFECTIVE DATE: The protest period will begin upon publication of this notice in the **Federal Register** and run for 30 days, after which the decision will become final. The BLM's Arizona State Director may approve the Amendment 30 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Planning and Environmental Coordinator Dave Curtis, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726–6300.

This notice is published under authority found in 43 CFR 1610.2(c).

Dated: April 6, 1994.

Judith I. Reed,

District Manager.

[FR Doc. 94–9054 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–32–M

[CO–942–94–4730–02]

Colorado: Filing of Plats of Survey

April 4, 1994.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., April 4, 1994.

The plat representing the dependent resurvey of portions of the subdivisional lines, and the subdivision of section 11, T. 3 N., R. 100 W., Sixth Principal Meridian, Colorado, Group No. 963, was accepted January 27, 1994.

The plat representing the dependent resurvey of portions of the subdivisional lines, and the subdivision of sections 21 and 22, T. 12 N., R. 91 W., Sixth Principal Meridian, Colorado, Group No. 966, was accepted February 22, 1994.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of sections 34 and 35, T. 12 S., R. 79 W., Sixth Principal Meridian, Colorado, Group No. 975, was accepted January 18, 1994.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, the Independent Resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey of private land claims, T. 25 S., R. 72 W., Sixth Principal Meridian, Colorado, Group 909, was accepted February 10, 1994.

The plat representing the dependent resurvey of portions of the subdivisional lines, and the subdivision of sections, T. 8 S., R. 69 W., Sixth Principal Meridian, Colorado, Group No. 927, was accepted February 22, 1994.

The plat representing the dependent resurvey of a portion of the Rights-of-Way Boundaries in sections 12 and 13, T. 3 N., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 985, was accepted January 21, 1994.

The supplemental plat, creating new Tracts 44A, 44B, and 44C, from Tract 44, in unsurveyed T. 2 S., R. 75 W., Sixth Principal Meridian, Colorado, was accepted March 1, 1994.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 94–9055 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Garrison Diversion Unit Federal Advisory Council Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Pub. L. 99–294, May 12, 1986). The meeting is open to the public. Interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: The Garrison Diversion Unit Federal Advisory Council will meet from 8:30 a.m. to 5 p.m. on Wednesday, April 27, 1994.

ADDRESSES: The meeting will be held at the North Dakota Game and Fish Department Office, Lonetree Headquarters, Rural Route 2, Box 32, Harvey, North Dakota. The office is located 5 miles south, 8 miles west, and ½ mile north of Harvey.

SUPPLEMENTARY INFORMATION: The Garrison Diversion Unit Federal Advisory Council will consider and discuss subjects such as the Garrison Diversion Unit Project update and wildlife budget, Garrison collaborative process, Lonetree development/transfer schedule/tax issue and land acquisition status, Kraft Slough acquisition and development status, Audubon and Arrowwood National Wildlife Refuge mitigation progress, Wetlands Trust, Mitigation and Enhancement Ledger, Oakes Test Area status/future, Stump Lake status, Devils Lake inlet/outlet

proposal, Sykeston Canal, and the Northwest Area Water Supply.

FOR FURTHER INFORMATION CONTACT: Dr. Grady Towns, Ecological Services, at (303) 236–8186.

Dated: April 8, 1994.

John L. Spinks, Jr.,

Deputy Regional Director, Region 6.

[FR Doc. 94–9107 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Designation of Wilderness, Gulf Islands National Seashore, MS

AGENCY: National Park Service, Department of the Interior.

ACTION: Designation of Wilderness, Gulf Islands National Seashore, Mississippi.

SUMMARY: Public Law 95–625 (92 Stat. 3490) approved on November 10, 1978, designated 1,800 acres of Gulf Islands National Seashore as wilderness and another 2,800 acres as potential wilderness additions. These wilderness designations apply to portions of Horn and Petit Bois Islands in Mississippi and are depicted on a map entitled "Wilderness Plan, Gulf Islands National Seashore, Mississippi, Florida" numbered 635–20,018A and dated March 1977. Section 403 of the public law directed the Secretary of the Interior to designate the potential wilderness additions as wilderness, by the publication of a notice in the **Federal Register**, when all uses thereon that were prohibited by the Wilderness Act (Public Law 88–577) had ceased.

Five tracts on Horn Island totalling 159.85 acres and two tracts on Petit Bois Island totalling 717.42 acres were a portion of the properties designated as potential wilderness by Public Law 95–625 in 1978. These seven tracts described, respectively, as Tracts 02–106, 02–114, 02–121, 02–122, 02–147, 04–105 and 04–107, were acquired by the United States subsequent to their designation as potential wilderness. All uses of these tracts which are prohibited by the Wilderness Act have now ceased.

Since all uses of this property now comply with the restrictions of the Wilderness Act, this notice, pursuant to the authority found in U.S.C. section 1132(c), hereby changes the designation of the seven described tracts of land from potential wilderness to wilderness. This increases the designated Gulf Islands Wilderness by 877.27 acres to a total of 4,080.15 acres. By virtue of this designation, these properties have become a component of the National Wilderness Preservation System.

FOR FURTHER INFORMATION CONTACT: The Superintendent, Gulf Islands National Seashore, (904) 934–2604, at the address below.

SUPPLEMENTARY INFORMATION: Each of the tract numbers used in this notice refers to National Park Service Map Number 63535000B, Sheets 3 and 5 of 12, dated April 1971. All 12 sheets of this map are available at the following addresses:

ADDRESSES:

Department of the Interior, National Park Service—room 3230, 18th & C Streets NW., Washington, DC 20240

Southeast Regional Office, National Park Service, 75 Spring Street SW., Atlanta, Georgia 30303

Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561.

Dated: April 7, 1994.

Roger G. Kennedy,

Director, National Park Service.

[FR Doc. 94–9096 Filed 4–14–94; 8:45 am]

BILLING CODE 4310–70–M–P

Bureau of Reclamation

Stillwater Area Remediation Plan

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation of scoping meetings.

SUMMARY: The Bureau of Reclamation is cancelling the following scoping meetings scheduled to identify issues and concerns to be addressed in the Stillwater Area Remediation Plan which was published in the **Federal Register**, 59 FR 14199, Mar. 25, 1994:

- April 19, 1994, 6:30 p.m., Fernley Senior Citizen Center, 1170 East Newland, Fernley NV.
- April 20, 1994, 7 p.m., Fallon Community Center, 100 Campus Way, Fallon NV.
- April 21, 1994, 7 p.m., Fallon Tribal Administrative Building, Fallon Indian Reservation, Fallon NV.

The public will be notified if the scoping meetings are rescheduled.

FOR FURTHER INFORMATION CONTACT: Dave Overvold, Study Team Leader, Lahontan Basin Projects Office, Bureau of Reclamation, PO Box 640, Carson City, Nevada; telephone: (702) 882–3436.

Dated: April 12, 1994.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 94–9229 Filed 4–4–94; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Mr. Kenneth A. Mills ({202} 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for {BLS/DM/ESA/ETA/ OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ({202} 395–7316).

Any member of the public who wants to comment on recordkeeping/reporting

requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Pension and Welfare Benefits Administration.
Pension and Health Benefits Supplement to the September 1994 Current Population Survey.
On occasion.
Individuals and households.
57,000 respondents; 6 minutes per response, 5,700 total hours; 1 form.
The survey will provide detailed information needed to understand changes that have occurred in the status of employment based health and pension benefits. Analysis of the data will be used in formulating public policy in the pension and health areas.

Extension

Employment and Training Administration.
JTPA Semiannual Report and JTPA Summer Performance Report.
1205–0200.
State or local governments.

Form No.	Respondents	Frequency	Average time per response	Total burden
ETA 9009	59	Semi-Annual	7 hours	826
Recordkeeping	59	Annual	2 hours	118
ETA 9047	59	Annual	2 hours	118
Recordkeeping	59	Annual	30 minutes	29
Record Retention for Auditing Purposes				1,450
2,541 total hours				

The information will be used to assess the Job Training Partnership Act (JTPA) programs and learn who is served by Title II-B summer programs. Participant and financial data will be used to respond to Congressional oversight, prepare budget requests and make annual reports to Congress per statute.

Reinstatement

Employment and Training Administration.
1205–0202.
Service Delivery Area Appeal.
One-time.
State or local governments
20 respondents; 2 hours per response; 40 total hours.
The information collected will be used to determine whether the Job Training Partnership Act (JTPA) recipients denial of designation of entities as a service delivery area is in conformance with JTPA.

Signed at Washington, DC this 11th day of April, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–9141 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–30–P

Glass Ceiling Commission; Open Meeting

Summary: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Thursday, June 23, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of:

(a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled;

(b) Conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and

(c) Recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

Time and Place: The meeting will be held on Thursday, June 23, 1994 from 3 p.m. until 6 p.m. in the Park Suite at the Gramercy Hotel, 21st and Lexington Avenue, New York, NY 10010.

Agenda: The agenda for the meeting is as follows:

Discussion of Future Hearings.
Review of Hearing Materials.
Discussion of Research.
Discussion of Perkins-Dole Award.

Public Participation: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than June 10, 1994, if special accommodations are needed. Individuals or organizations wishing to submit written statements should send twenty (20) copies to Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210.

For Further Information Contact: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 8th day of April, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–9142 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–23–M

Glass Ceiling Commission; Open Site Hearing

Summary: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a public hearing of the Commission which is to take place on Friday, June 24, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of:

(a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled;

(b) Conducting comparative research of business and industries in which

minorities and women are promoted or are not promoted to management and decisionmaking positions; and

(c) Recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

Time and Place: The hearing will be held on Friday, June 24, 1994 from 9 a.m. until 6 p.m. in the Meeting Hall at the Association Of The Bar Of The City Of New York, 42 West 44th Street, New York, NY 10036.

Agenda: The agenda for the hearing is as follows:

9 a.m. Opening Remarks By Secretary Reich.
9:30 Welcoming Remarks.
9:45–12:30 Witnesses.
12:30–1:45 Lunch break.
2–5 Witnesses.
5–6 p.m. Open public session.

Public Participation: The hearing will be open to the public. Seating will be available on a first-come, first-serve basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than June 10, 1994, if special accommodations are needed.

Individuals or organizations wishing to testify orally must provide written testimony in advance of the hearing. Send twenty (20) copies of testimony, postmarked on or before June 10, 1994, to: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210.

The written testimony must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) Oral comments are limited to 10 minutes, written testimony may be longer.

(4) The issues that will be addressed.

(5) Twenty (20) copies of testimony. (Testimony may be longer in length than oral comments.)

This information is needed to properly develop a hearing schedule. As many people as time allows will be permitted to testify. To provide all interested parties an opportunity to present their views in the public hearing, and answer questions from Commissioners.

Issues: Testimony should highlight successful initiatives and/or recommendations for addressing the areas discussed below. The Commission is especially interested in hearing about procedures, practices and systems that have been put in place to make sure that goals are achieved in work force diversity.

Recruitment: What systems are in place to ensure that external recruiting for decisionmaking positions will produce a pool of applicants which includes minorities and women? Similarly, does the process for considering promotion of current employees to decisionmaking positions ensure consideration of minorities and women?

Development practices and credential building experiences: How are minorities and women ensured that they will be given the kinds of experiences that will make them competitive for decisionmaking positions, including not only advanced education, but also developmental assignments such as to corporate committees and task forces, special projects, etc.

Accountability for equal employment opportunity responsibilities: How are senior level executives, line managers, and corporate decision makers held accountable for EEO responsibilities?

Compensation systems: How is the total compensation package including bonuses, stock options and other incentives evaluated for fairness for minorities and women? How is the appraisal system/performance rating system protected from subjective decisions which impact compensation? Do management and supervisory compensation systems depend upon or reward managers' achieving work force diversity goals, and, if so, how does that work?

Placement patterns: What kind of monitoring is done to ensure that minorities and women are placed in the line positions that will provide better opportunity for promotion to decisionmaking positions?

Testimony on successful initiatives may include discussion of the elements above and how other factors are combined to create a complete initiative resulting in the advancement of minorities and women.

A videotape may be made of the hearing. A transcript of the hearing will be made.

Materials submitted at this hearing should not have been submitted at any previous or subsequent Glass Ceiling Commission hearings.

Those individuals or organizations wishing to submit written statements, but not testify orally, should send twenty (20) copies to Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210. Written statements should be postmarked on or before June 10, 1994.

For Further Information Contact: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC, this 8th day of April, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–9143 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–23–M

Privacy Act of 1974; Publication of Two New Systems of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of new systems of records.

SUMMARY: The Privacy Act of 1974 requires that each agency publish notice of all of the systems of records that it maintains. This document adds two new systems of records to this Department's September 23, 1993 publication in full of all of our systems of records. With the addition of these two new systems of records, the Department will be maintaining 140 systems of records.

DATES: Persons wishing to comment on these two new systems of records may do so by June 14, 1994.

EFFECTIVE DATE: Unless there is a further notice in the **Federal Register**, these two new systems of records will become effective on July 5, 1994.

ADDRESSES: Written comments may be mailed or delivered to Robert A. Shapiro, Associate Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue NW., room N–2428, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue NW., room N–2428, Washington, DC 20210, telephone (202) 219–8188.

SUPPLEMENTARY INFORMATION: Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby publishes notice of two new systems of records currently maintained pursuant to the Act.

This document supplements this Department's recent publication in full of all of our Privacy Act systems of records. On September 23, 1993, in Volume 58 at page 49548 of the **Federal Register**, we published a notice of all 138 systems of records which we maintain under the Act. Of those 138 systems, there were 37 new systems. The two new systems presented herein are in addition to the 138 current systems, for a total of 140 systems. The two new systems presented herein are DOL/OASAM–31 and DOL/PCEPD–1. They are summarized as follows:

DOL/OASAM–31

"DOL Flexible Workplace (Flexiplace) Pilot Programs Evaluation and Files" is a new system which is used solely for statistical research or evaluation of the DOL Flexiplace Pilot Programs. The records in this system may include the characteristics of the program participants, the description of program activities, program outcomes and follow-up information.

DOL/PCEPD–1

"Job Accommodation Network (JAN) Files" is a new system which makes it possible for employers, individuals with disabilities and others to share information about job accommodations. The JAN system compiles a comprehensive resource data bank for job accommodations currently available.

Universal Routine Uses

In our September 23, 1993 publication, the Department gave notice of eleven paragraphs containing routine uses which apply to all of our systems of records, except for DOL/OASAM–5 and DOL/OASAM–7. These eleven paragraphs were presented in the General Prefatory Statement for that document, and it appeared at Pages 49554–49555 of Volume 58. At this time we are republishing the General Prefatory Statement as a convenience to the reader of this document. At this time we are amending paragraphs 8 and 11, herein, to correct a grammatical mistake when they appeared in the September 23rd publication.

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on these two new systems. A report on these two new systems has been provided to OMB and to the Congress as required by OMB Circular A–130, Revised, and 5 U.S.C. 552a(r).

General Prefatory Statement

The following routine uses apply to and are incorporated by reference into each system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses do not apply to DOL/OASAM–5 Rehabilitation and Counseling File nor to DOL/OASAM–7-Employee Medical Records.

1. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. It shall be a routine use of the records in this system of records to disclose them in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. A record from this system of records may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. Records from this system of records may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. Disclosure may be made to agency contractors, or their employees, consultants, grantees, or their employees, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; see also 5 U.S.C. 552a(m).

7. The name and current address of an individual may be disclosed from this system of records to the parent locator service of the Department of HHS or to other authorized persons defined by Pub. L. 93–647 for the purpose of locating a parent who is not paying required child support.

8. Disclosure may be made to any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identity the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

9. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.

10. A record from any system of records set forth below may be disclosed to the Office of Management and Budget in connection with the review of private relief, legislative coordination and clearance process.

11. Disclosure may be made to a debt collection agency that the United States has contracted with for collection services to recover debts owed to the United States.

Publication of two new systems of records

DOL/OASAM–31

SYSTEM NAME:

DOL Flexible Workplace (Flexiplace) Pilot Programs Evaluation and Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

DOL/OASAM/Directorate of Personnel Management, Office of Employment and Evaluation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOL Participants in Flexiplace Pilot Programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may include characteristics of program participants, such as number of dependents and national origin, description of program activities, program outcomes and participant follow-up information obtained at six-month intervals during the first eighteen months of the individual's participation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

These records are used solely for statistical research or evaluation of the DOL Flexiplace Pilot Programs and are not used in any way for making any determination about an identifiable individual

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

None, except for those routine uses listed in the General Prefatory Statement to this document.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual files and on computer disks.

RETRIEVABILITY:

Records are retrieved by individual(s) names(s).

SAFEGUARDS:

Records are maintained on secure computer systems and can only be retrieved with the proper access code.

RETENTION AND DISPOSAL:

Records will be retained for three years after the conclusion of the studies and then destroyed. After the conclusion of the studies, the database will be retained without individual identifiers (which will be deleted from the files) for statistical purposes only.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Directorate of Personnel Management, Director, Office of Employment and Evaluation, Room N5460, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the systems manager listed above. Individuals must furnish the following information for their records to be located and identified: Name, GS grade and series, organizational unit.

RECORDS ACCESS PROCEDURES:

Individuals wishing to request access to records pertaining to them should contact the systems manager. Individuals must furnish the following information for their records to be located and identified: Name, GS grade and series, organizational unit. Individuals requesting access must also comply with DOL's Privacy Act regulations pertaining to verification of identity set forth at 29 CFR 70a.5.

CONTESTING RECORD PROCEDURE:

Individuals wishing to contest information in their files may, pursuant to Departmental regulations at 29 CFR 70a.7, write to the system manager at the specified address above, reasonably identify the records pertaining to them, the information which is being contested in those records, the corrective action(s) being sought, and the reasons for the correction(s).

RECORD SOURCE CATEGORIES:

Individual participants, their supervisors, and evaluation project files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Not applicable.

DOL/PCEPD–1

SYSTEM NAME:

Job Accommodation Network (JAN) Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Job Accommodation Network; West Virginia University; P.O. Box 6080, Morgantown, West Virginia, 26505–6080.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with disabilities and the general public who request information through the JAN system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Caller's name, address, telephone number, type of disability, functional limitations caused by the disability, accommodations discussed, type of firm or organization for whom the caller works, anecdotal information recorded by the human factors consultant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

PURPOSE(S):

System makes it possible for employers, individuals with disabilities and others to share information about job accommodations. The JAN system compiles a comprehensive resource data bank for job accommodations currently available.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None, except for those routine uses listed in the General Prefatory Statement to this document.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disks.

SAFEGUARDS:

The data is stored on computer disk, stored in central file server and is available only to those individuals with a password security clearance.

RETRIEVABILITY:

Records are retrieved by caller's name, state, disability, functional limitation, accommodation, type of company for whom individual worked, or type of information requested.

RETENTION AND DISPOSAL:

Data is maintained for 20 years and is then destroyed by deletion.

SYSTEM MANAGER(S) AND ADDRESS:

The systems manager is the Job Accommodations Network, West Virginia University, P.O. Box 6080, Morgantown, WV 26506–6080.

NOTIFICATION PROCEDURE:

Mail all inquiries or present in writing to the President's Committee on Employment of People with Disabilities,

1331 F Street NW., DC 20004 or to the Freedom of Information Act/Privacy Act Coordinator, at U.S. Department of Labor/PCEPD, 200 Constitution Avenue NW., room N4671, Washington, DC 20210.

RECORDS ACCESS PROCEDURES:

Individuals wishing to gain access shall write to the President's Committee on Employment of People with Disabilities at the above address and must meet the requirements of Departmental regulations implementing the Privacy Act, 29 CFR 70a.7.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest information in their files may, pursuant to Departmental regulations at 29 CFR 70a.7, write to the system manager at the specified address above, reasonably identify the records pertaining to them, the information which is being contested in those records, the corrective action(s) being sought, and the reasons for the correction(s).

RECORD SOURCE CATEGORIES:

Callers to the JAN system.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

Not applicable.

Signed at Washington, DC this 11th day of April, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–9144 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–23

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis–Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. the prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary tot he public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

New York
NY940070 (Apr. 15, 1994)
NY940071 (Apr. 15, 1994)

Volume II

Virginia
VA940108 (Apr. 15, 1994)

Volume III

Kentucky
KY940055 (Apr. 15, 1994)

Volume IV

Illinois
IL940021 (Apr. 15, 1994)
IL940022 (Apr. 15, 1994)
IL940023 (Apr. 15, 1994)
IL940024 (Apr. 15, 1994)
IL940025 (Apr. 15, 1994)
IL940026 (Apr. 15, 1994)
IL940027 (Apr. 15, 1994)
IL940028 (Apr. 15, 1994)
IL940029 (Apr. 15, 1994)
IL940030 (Apr. 15, 1994)
IL940031 (Apr. 15, 1994)
IL940032 (Apr. 15, 1994)
IL940033 (Apr. 15, 1994)
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IL940036 (Apr. 15, 1994)
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IL940094 (Apr. 15, 1994)
IL940095 (Apr. 15, 1994)
IL940096 (Apr. 15, 1994)
IL940097 (Apr. 15, 1994)
IL940098 (Apr. 15, 1994)
IL940099 (Apr. 15, 1994)

Indiana
IN940035 (Apr. 15, 1994)
IN940036 (Apr. 15, 1994)

Volume V

Louisiana
LA940051 (Apr. 15, 1994)
LA940052 (Apr. 15, 1994)
LA940053 (Apr. 15, 1994)
LA940054 (Apr. 15, 1994)
LA940055 (Apr. 15, 1994)
LA940056 (Apr. 15, 1994)
LA940057 (Apr. 15, 1994)
LA940058 (Apr. 15, 1994)
LA940059 (Apr. 15, 1994)

Missouri
MO940051 (Apr. 15, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA940003 (Feb. 11, 1994)

New York
NY940013 (Feb. 11, 1994)

Volume II

Virginia
VA940034 (Feb. 11, 1994)
VA940058 (Feb. 11, 1994)

Volume III

Alabama
AL940027 (Feb. 11, 1994)

Volume IV

Illinois
IL940001 (Feb. 11, 1994)

Indiana
IN940006 (Feb. 11, 1994)

Ohio
OH940001 (Feb. 11, 1994)
OH940002 (Feb. 11, 1994)
OH940003 (Feb. 11, 1994)
OH940027 (Apr. 1, 1994)
OH940028 (Feb. 11, 1994)
OH940029 (Feb. 11, 1994)
OH940034 (Feb. 11, 1994)

Wisconsin
WI940008 (Feb. 11, 1994)
WI940010 (Feb. 11, 1994)
WI940019 (Feb. 11, 1994)

Volume V

Louisiana
LA940005 (Feb. 11, 1994)
LA940009 (Feb. 11, 1994)
LA940018 (Feb. 11, 1994)

Texas
TX940073 (Feb. 11, 1994)

Volume VI

North Dakota
ND940011 (Apr. 1, 1994)
ND940027 (Apr. 8, 1994)
ND940028 (Apr. 8, 1994)
ND940051 (Apr. 1, 1994)

South Dakota
SD940011 (Apr. 1, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 8th day of April 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–8842 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 25, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 25, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 4th Day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Bus Industries of America, Inc (Wkrs).	Oriskany, NY	04/04/94	02/10/94	29,680	Transit Buses.
National Steel Pellet Co (USWA)	Keewatin, MN	04/04/94	03/10/94	29,681	Taconite Pellets.
J.C. Penney Co., Inc (Wkrs)	Newark, DE	04/04/94	03/28/94	29,682	Window Covers and Drapes.
Layne & Bowler (Wkrs)	Memphis, TN	04/04/94	03/25/94	29,683	Vertical Turbine Pumps.
Consolidated Services (Co)	Odessa, TX	04/04/94	03/21/94	29,684	Repair Oilfield Machinery.
Frigidaire Co (IUE)	Athens, TN	04/04/94	03/17/94	29,685	Gas & Electric Ranges.
Hesteco Mfg Co, #1 (Wkrs)	Elizabethtown, PA	04/04/94	03/24/94	29,686	Children's Dresses and Sportswear.
Hesteco Mfg Co, #4 (Wkrs)	Hummelstown, PA	04/04/94	03/24/94	29,687	Children's Dresses and Sportswear.
Star Street Ventures (Co)	El Dorado, KS	04/04/94	03/15/94	29,688	Geological Services.
Mantua Industries, Inc (Wkrs)	Woodbury Heights, NJ	04/04/94	03/11/94	29,689	Toy Trains.
Reuter Mfg Div., Green Island (Wkrs).	Hopkins, MN	04/04/94	03/17/94	29,690	Machining and Assembly of Disk Drives.
502 Corp (Wkrs)	Bethlehem, PA	04/04/94	03/21/94	29,691	Children's Pants, Shorts and Shirts.
Allied Signal Safety Restraints (Wkrs).	El Paso, TX	04/04/94	03/10/94	29,692	Seat Belts.
AA Production, Inc (Wkrs)	Lubbock, TX	04/04/94	03/25/94	29,693	Oil and Gas.
Fort Vancouver Plywood Co (Wkrs)	Vancouver, WA	04/04/94	03/18/94	29,694	Softwood Plywood.
Frost Co (Co)	Kenosha, WI	04/04/94	03/23/94	29,695	Plumbing Fixtures.
Allen Drilling Co (Wkrs)	Great Bend, KS	04/04/94	03/19/94	29,696	Oil and Gas.
Columbia Tanning Co (ILGWU)	Blockton, MA	04/04/94	03/22/94	29,697	Belly Leather.
Varco, Inc (Wkrs)	Paris, TX	04/04/94	03/21/94	29,698	Business Forms.
Weyerhaeuser Co (IWA)	Klamath Falls, OR	04/04/94	03/18/94	29,699	Steam.
Bretagne (Wkrs)	Leeco, KY	04/04/94	03/21/94	29,700	Crude Oil.
Consoldiation Coal Co, #31 (Wkrs)	Amonate, VA	04/04/94	03/23/94	29,701	Coal.
Crete Oil Co., Inc (Co)	Robinson, IL	04/04/94	03/17/94	29,702	Oil.
Keystone Aluminum (USA)	Mars, PA	04/04/94	03/21/94	29,703	Deox Aluminum.
Power Piping Co (PPF)	Donora, PA	04/04/94	03/23/94	29,704	Fabricated Pipe.
Wiedmer Bros Well Service, Inc (Wkrs).	Tioga, ND	04/04/94	03/21/94	29,705	Oil and Gas.
Washington Steel Corp (USA)	Massillon, OH	04/04/94	03/22/94	29,706	Stainless Steel Coils.
GTI Corp (Wkrs)	Hadley, PA	04/04/94	03/09/94	29,707	Diode Seals.
Ottehheimer & Co (Wkrs)	Rocky Mount, VA	04/04/94	03/21/94	29,708	Lab Coats.
Abbott & Company (Co)	Manchester, TN	04/04/94	03/25/94	29,709	Electrical Wiring Harnesses.
BASF (Wkrs)	Lodi, NJ	04/04/94	03/25/94	29,710	Printing Ink.
Mark Automotive Manufacturing Co (Wkrs).	Wixom, MI	04/04/94	03/25/94	29,711	Distributes Auto Parts.
Miller Shingle (Wkrs)	Granite Falls, WA	04/04/94	03/24/94	29,712	Shakes and Shingles.
Woodward Governor Co (N. 2nd St) (Wkrs).	Rockford, IL	04/04/94	03/10/94	29,713	Mechanical Prime Movers.
Woodward Governor Co (35th St) (Wkrs).	Rockford, IL	04/04/94	03/10/94	29,714	Mechanical Prime Movers.
B & B Garment Works, Inc (Co)	Parsons, TN	04/04/94	03/21/94	29,715	Ladies' & Men's Pants, Shorts and Shirts.
Armco Stainless & Products (USWA).	Bridgeville, PA	04/04/94	02/15/94	29,716	Stainless and Alloy Steel Finishing.

[FR Doc. 94–9145 Filed 4–14–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,026]

IBM Adstar, Rochester, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 10, 1993, applicable to all workers of the subject firm. The certification notice was published in the **Federal Register** on December 28, 1993 (58 FR 68669).

At the request of the workers, the Department reviewed the certification for workers of the subject firm. Some workers were laid off prior to the Department's impact date of September 1, 1993. The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification with a new impact date of January 1, 1993.

The amended notice applicable to TA–W–29,026 is hereby issued as follows:

All workers of IBM ADSTAR, Rochester, Minnesota engaged in the production of direct access storage device file assemblies (DASD) and their subassemblies who became totally or partially separated from employment on or after January 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of April 1994.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–9147 Filed 4–14–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,470]

ICI Fiberite, Greenville, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 7, 1994, in response to a worker petition which was

filed on February 7, 1994, on behalf of workers at ICI Fiberite, Greenville, Texas.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 6th day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–9148 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,218]

McDonnell Douglas Helicopter Systems (MDHS), Culver City, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at McDonnell Douglas Helicopter Systems (MDHS), Culver City, California. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,218; McDonnell Douglas Helicopter Systems (MDHS), Culver City, California (April 5, 1994).

Signed at Washington, DC, this 8th day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–9149 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,269]

Mennen Medical Corp., Clarence, NY; Affirmative Determination Regarding Application for Reconsideration

On March 11, 1994, one of the petitioners requested administrative reconsideration of the Department's denial notice for workers at the subject firm. The Department's Negative Determination was issued on March 8, 1994 and was published in the **Federal Register** on March 18, 1994 (59 FR 12983).

The petitioner stated that the company is importing medical monitoring devices.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 6th day of April 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–9150 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,350]

Sundown Operating Co.; Sundown, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Sundown Operating Company, Sundown, Texas. The review indicated that the application contained on new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,350; Sundown Operating Company
Sundown, Texas (April 6, 1994)

Signed at Washington, DC this 8th day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–9182 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,206]

Vought Aircraft Co., Dallas, TX; Affirmative Determination Regarding Application for Reconsideration

On March 17, 1994, the company and Local #848 of the United Auto Workers (UAW) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. the Department's Negative Determination was issued on February 24, 1994 and was published in the **Federal Register** on March 10, 1994 (59 FR 11326).

Its claimed that Boeing has ordered the production of major subassemblies for its commercial aircraft to be transferred to firms in selected foreign countries in order to create a "market pull" for the sale of Boeing aircraft. Data submitted by the company show that subassemblies have already been imported.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 7th day of April 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–9151 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on these organizations' attestations and they are on file with DOL.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR Parts 655, subpart D, and 29 CFR part 504, (January 6, 1994). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing and those which have been rejected.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staff. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities chief executive officer also are listed to aid public inquiries. In addition, attestations and explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the ADDRESSES section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under the attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the ADDRESSES section of this notice.

Signed at Washington, DC, this 8th day of April 1994.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS, FORM ETA–9029

CEO-name/facility name/address	State	Action date
ETA Region 10 02/28/94 to 03/06/94		
Scott T. Seamons, Central California Rehab. Hospital, 730 17th Street, Modesto, CA 95354, 209–523–9006, ETA CONTROL NUMBER—10/203874 ACTION—ACCEPTED.	CA	03/04/94
Ellen L. Kuykendall, Hilltop Manor Conv. Hospital, Inc., 12225 Shale Ridge Lane, Auburn, CA 95602, 916–885–7511, ETA CONTROL NUMBER—10/203875 ACTION—ACCEPTED.	CA	03/04/94
ETA Region 10 03/14/94 to 03/20/94		
Maryam Frazier, Rehabilitation Institute (The), Human Resources Coordinator, 427 Camino Del Remedio, Santa Barbara, CA 93110, 805–964–9460, ETA CONTROL NUMBER—10/203908 ACTION—ACCEPTED.	CA	03/16/94
Mr. David A. Seeley, Desert Hospital Corporation, 1150 N. Indian Canyon Drive, Palm Springs, CA 92262, 619–323–6487, ETA CONTROL NUMBER—203956 ACTION—ACCEPTED.	CA	03/16/94
Mr. Ralph G. Pollock, The Rehabilitation Institute at Santa Barbara, 427 Camino Del Remedio, Santa Barbara, CA 93110, 805–683–3788, ETA CONTROL NUMBER—93110 ACTION—ACCEPTED.	CA	03/16/94
Ms. Bernice Schraebeck, Westgate Gardens, 4525 W. Tulare Avenue, Visalia, CA 93277, 209–733–0901 ETA CONTROL NUMBER—203901 ACTION—ACCEPTED.		
ETA Region 10 03/07/94 to 03/13/94		
Bernice Schraebeck, Westgate Gardens, 4525 W. Tulare Avenue, Visalia, CA 93277, 209–733–0901, ETA CONTROL NUMBER—10/203901 ACTION—ACCEPTED.	CA	03/08/94
Ms. Ellen L. Kuykendall, Hilltop Manor Conv. Hospital, Inc. 12225 Shale Ridge Lane, Auburn, CA 95602, 916–885–7511, ETA CONTROL NUMBER—203875 ACTION—ACCEPTED.	CA	03/04/94
Mr. Scott T. Seamons, Central California Rehabilitation Hospital, 730 17th Street, Modesto, CA 95354, 209–523–9006, ETA CONTROL NUMBER—203874 ACTION—ACCEPTED.	CA	03/04/94
ETA Region 10 03/21/94 to 03/27/94		
Winston Wong, Joshua International Medical Group, 17370 Norwalk Boulevard, Cerritos, CA 90701, 310–809–5674, ETA CONTROL NUMBER—10/203976 ACTION—ACCEPTED.	CA	03/24/94
ETA Region 1 02/11/94 to 03/06/94		
St. Joseph Hospital, Sr. Mary Norberta, 360 Broadway, Bangor, ME 04401, 207–947–8311, ETA Control Number—210058 ACTION—ACCEPTED.	ME	02/11/94
Hamilton Plaza Nursing Center, Joseph A. Barrick, 56 Hamilton Avenue, Passaic, NJ 07055, 201–773–7070, ETA Control Number—210354 ACTION—ACCEPTED.	NJ	03/04/94
American Geri Care Inc., Meyer Bosenbaum, 40 Heyward St., Booklyn, NY, 11211, 718–858–6200, ETA Control Number—210347 ACTION—ACCEPTED.	NY	03/04/94
Beth Israel Hospital of Passaic, Jeffrey S. Moll, 70 Parker Avenue, 201–365–5000, ETA Control Number—210355 ACTION—ACCEPTED.	NY	03/04/94
Community Medical Center, Mark D. Pilla, 99 Highway 37 West, Toms River, NJ 08755, 903–240–8007, ETA Control Number—210283 ACTION—ACCEPTED.	NJ	03/03/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS, FORM ETA–9029—Continued

CEO-name/facility name/address	State	Action date
St. Patrick's Home, Sr. Patrick Michael Kane, 66 Van Cortlandt Park, South, Bronx, NY 10463, 212–519–2800, ETA Control Number—210285 ACTION—ACCEPTED.	NY	03/04/94
Cornell Hall Subacute Care Center, Mary Ann McCarty, 234 Chestnut Street, Union, NJ 07083, 908–687–7800, ETA Control Number—210356 ACTION—ACCEPTED.	NJ	03/02/94
St. Barnabas Hospital, Dr. Ronald Gade, E. 183rd Street & 3rd Avenue, Bronx, NY 10457, 718–960–6198, ETA Control Number—210348 ACTION—ACCEPTED.	NY	03/02/94
Lifeline Personnel Agency, Inc., 187–12 Hillside Avenue, Jamaica Estates, NY 11432, 718–361–7843, ETA Control Number—210306 ACTION—ACCEPTED.	NY	03/02/94
Eastwood Pines Nursing Home, Abe Treshinsky, 59 Eastwood Circle, Gardner, MA 01440–0310, 508–632–8776, ETA Control Number—210372 ACTION—ACCEPTED.	MA	03/02/94
Dellridge Care Center, Marie D. Moore, 532 Farview Avenue, Paramus, NJ 07652, 201–261–1589, ETA Control Number—07652 ACTION—ACCEPTED.	NJ	03/08/94
Beth Israel Medical Center, Robert G. Newman, First Ave @ 16th Street, New York, NY 10003, 212–420–2929, ETA Control Number—210425 ACTION—ACCEPTED.	NY	03/07/94
St. John's Episcopal Hospital, South Shore (Episcopal Health Services, Inc.), William E. McCauley, 327 Beach 19th Street, Far Rockaway, NY 11691 ACTION—ACCEPTED.	NY	03/08/94
ETA Region 5 02/28/94 to 03/06/94		
John P. Yeros, Nurse Source Health Care Services, 360 S. Garfield St., Suite #660, Denver, CO 80209, 303–394–2900, ETA CONTROL NUMBER—5/220711 ACTION—ACCEPTED.	CO	03/03/94
Laurence Carlson, St. Paul's House & Health Care Ctr, 3831 N. Mozart St., Chicago, IL 60618, 312–478–4222, ETA CONTROL NUMBER—5/220833 ACTION—ACCEPTED.	IL	03/03/94
Ardyth Ann Gilbertson, RN, B.S.N., CYGMA Health Center, 3835 Farragut Avenue, Kensington, MD 20895, 301–949–3900, ETA CONTROL NUMBER—5/220694 ACTION—ACCEPTED.	MD	03/03/94
ETA Region 5 03/07/94 to 03/13/94		
Mark C. Clement, Holy Cross Hospital, 2701 West 68th Street, Chicago, IL 60629, 312–471–8000, ETA CONTROL NUMBER—5/221535 ACTION—ACCEPTED.	IL	03/09/94
Pilar R. Oczepek, Quality Home Health Care, Inc., (also Sunrise Health Care, Inc.), 3210 Huron Road, Au Gres, MI 48703, 517–876–7373, ETA CONTROL NUMBER—5/220939 ACTION—ACCEPTED.	MI	03/08/94
ETA Region 5 03/14/94 to 03/20/94		
Marianne Scriven, Health Management, Inc., 1828 L Street NW., Suite 908, Washington, DC 20036, 202–887–8110, ETA CONTROL NUMBER—5/221558 ACTION—ACCEPTED.	DC	03/17/94
June Valentine, Layton Home for Aged Persons, 300 East Eighth Street, Wilmington, DE 19801, 302–656–6413, ETA CONTROL NUMBER—5/221546 ACTION—ACCEPTED.	DE	03/14/94
Violeta R. Lalicon, Lalicon & Associates, 33 East Congress Parkway, Suite 514, Chicago, IL 60605, 312–939–7525, ETA CONTROL NUMBER—5/221552 ACTION—ACCEPTED.	IL	03/17/94
Charles Stumpf, Sacred Heart Home, 1550 South Albany Avenue, Chicago, IL 60623, 312–277–6868, ETA CONTROL NUMBER—5/221557 ACTION—ACCEPTED.	IL	03/17/94
Eugene Caldwell, St. Agnes Health Care Center, 60 East 18th Street, Chicago, IL 60616, 312–922–2777, ETA CONTROL NUMBER—5/221545 ACTION—ACCEPTED.	IL	03/14/94
Kathleen Stumpf, St. Martha Manor, 4621 North Racine Avenue, Chicago, IL 60640, 312–784–2300, ETA CONTROL NUMBER—5/221544 ACTION—ACCEPTED.	IL	03/14/94
Jana Floyd, Morton County Hospital, 445 Hilltop, P.O. Box 937, Elkhart, KS 67950, 316–697–2141, ETA CONTROL NUMBER—5/221556 ACTION—ACCEPTED.	KS	03/17/94
Jean Newman, Hurley Medical Center, One Hurley Plaza, Flint, MI 48503, 810–257–9140, ETA CONTROL NUMBER—5/221542 ACTION—ACCEPTED.	MI	03/14/94
Elena D. Szilvagyi, Prime Care Services, Inc., 22150 W. Nine Mile Road, Southfield, MI 48034, 313–352–6082, ETA CONTROL NUMBER—5/221553 ACTION—ACCEPTED.	MI	03/17/94
ETA Region 5 03/21/94 to 03/27/94		
Howard L. Wengrow, All American Nursing Home, 5448 N. Broadway, Chicago, IL 60640, 312–334–2224, ETA CONTROL NUMBER—5/222023 ACTION—ACCEPTED.	IL	03/23/94
Jeffrey Webster, Arbour Health Care Center, 1512 W. Estes, Chicago, IL 60626, 312–465–7751, ETA CONTROL NUMBER—5/222048 ACTION—ACCEPTED.	IL	03/23/94
Jeffrey Webster, Atrium Health Care Center, 1425 W. Estes, Chicago, IL 60626, 312–973–4780, ETA CONTROL NUMBER—5/222049 ACTION—ACCEPTED.	IL	03/23/94
Jacqueline L. Mason or JoAnne Fishe, Burgess Square Healthcare Ctr., 5801 S. Cass Avenue, Westmont, IL 60559, 708–971–2645, ETA CONTROL NUMBER—5/222019 ACTION—ACCEPTED.	IL	03/22/94
Howard L. Wengrow, Hickory Nursing Pavilion, Inc., 9246 S. Roberts Road, Hickory Hills, IL 60457, 708–598–4040, ETA CONTROL NUMBER—5/222047 ACTION—ACCEPTED.	IL	03/23/94
Filipinas Madriaga, Nursing Resource Group, Inc., 7256 W. Olive, Chicago, IL 60631, 312–763–4134, ETA CONTROL NUMBER—5/222051 ACTION—ACCEPTED.	IL	03/23/94
Jewell S. Thompson, Roseland Community Hospital, 45 West 111th Street, Chicago, IL 60628, 312–995–3000, ETA CONTROL NUMBER—5/222052 ACTION—ACCEPTED.	IL	03/23/94
Bradley A. Appl, M.D., Appl, M.D., 1420 South 42nd Street, Kansas City, KS 66106, 913–831–1100, ETA CONTROL NUMBER—5/222050 ACTION—ACCEPTED.	KS	03/23/94
Janet Hunter, Washington Adventist Hospital, 7600 Carroll Avenue, Takoma Park, MD 20912, 301–891–7600, ETA CONTROL NUMBER—5/222058 ACTION—ACCEPTED.	MD	03/23/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS, FORM ETA–9029—Continued

CEO-name/facility name/address	State	Action date
ETA Region 6 02/21/94 to 02/27/94		
Mr. Marcus E. Drewa, Methodist Medical Center, 580 West 8th Street, Jacksonville, FL 32209, 904–798–8188, ETA CONTROL NUMBER—6/215015 ACTION—ACCEPTED.	FL	02/24/94
Ms. Julia D. George, Starmount Villa, 109 S. Holden Road, Greenboro, NC 27407, 919–292–5390, ETA CONTROL NUMBER—6/214877 ACTION—ACCEPTED.	NC	02/23/94
Ms. Betty S. Leake, Your Home Visiting Nurse Serv.,Inc., 5703A Broadway, Knoxville, TN 37918, 615–688–1159, ETA CONTROL NUMBER—6/214968 ACTION—ACCEPTED.	TN	02/24/94
Mr. Michael C. Waters, Hendrick Medical Center, 1242 North 19th Street, Abilene, TX 79601–2316, 915–670–2290, ETA CONTROL NUMBER—6/214969 ACTION—ACCEPTED.	TX	02/24/94
Ms. Rosie Rendon, Heritage Home, 2510 West 24th Street, Plainview, TX 79072–1884, 806–296–5584, ETA CONTROL NUMBER—6/214876 ACTION—ACCEPTED.	TX	02/23/94
Mr. William D. Poteet, III, Methodist Hospital, 3615 19th Street, Lubbock, TX 79410, 806–792–1011, ETA CONTROL NUMBER—6/214913 ACTION—ACCEPTED.	TX	02/23/94
ETA Region 6 03/07/94 to 03/13/94		
Mr. Walter M. Lawson III, Georgia Reg. Hospital at Savannah, 1915 Eisenhower Drive P.O. Box 13607, Savannah, GA 31416, 912–356–2011 ETA CONTROL NUMBER—6/215139 ACTION—ACCEPTED.	GA	03/10/94
Mr. Kyle Deshotels, Heritage Manor of Baton Rouge, 9301 Oxford Place Drive, Baton Rouge, LA 70809, 504–291–8474, ETA CONTROL NUMBER—6/214965 ACTION—ACCEPTED.	LA	03/07/94
Mr. Donald J. Fisher, The King's Daughters Hospital, 300 S. Washington Ave., P.O. Box 1857, Greenville, MS 38701, 601–378–2020, ETA CONTROL NUMBER—6/215042 ACTION—ACCEPTED.	MS	03/07/94
Mr. Louis Milite, Brian Center of Columbia, 2451 Forest Drive, Columbia, SC 29204, 803–254–5960, ETA CONTROL NUMBER—6/215135 ACTION—ACCEPTED.	SC	03/10/94
Mr. Mike Miller, Beaumont Regional Medical Center, 3080 College Street, Beaumont, TX 77726–5817, 409–833–1411, ETA CONTROL NUMBER—6/215044 ACTION—ACCEPTED.	TX	03/07/94
Mr. Gary M. Moore, Maverick County Hospital District, 350 South Adams St., Eagle Pass, TX 78852, 210–757–7512, ETA CONTROL NUMBER—6/215013 ACTION—ACCEPTED.	TX	03/10/94
Ms. Florita C. Tolentino, Omni Health Ser., 2600 N. Gessner Suite 280, Houston, TX 77080, 713–690–1971, ETA CONTROL NUMBER—6/215138 ACTION—ACCEPTED.	TX	03/10/94
Mr. Rod Seidel, San Jacinto Methodist Hospital, 4401 Garth Road, Baytown, TX 77521, 713–420–8690, ETA CONTROL NUMBER—6/215134 ACTION—ACCEPTED.	TX	03/07/94
Mr. Michael J. Jhin, St. Luke's Episcopal Hospital, 6720 Bertner Avenue, Houston, TX 77030, 713–794–6339, ETA CONTROL NUMBER—6/215141 ACTION—ACCEPTED.	TX	03/10/94
ETA Region 6 03/14/94 to 03/20/94		
Ms. Sherry L. Brunner, Bon Secours Hospital, Villa Maria Nursing Center 1050, N.E. 125 Street, North Miami, FL 33161, 305–891–8850, ETA CONTROL NUMBER—6/215302 ACTION—ACCEPTED.	FL	03/15/94
Ms. Sharon Harris, Drew Village Rehab. & Nursing Ctr., 401 Fairwood Avenue, Clearwater, FL 34619, 813–797–6313, ETA CONTROL NUMBER—6/215254 ACTION—ACCEPTED.	FL	03/17/94
Ms. Ira Clark, Jackson Memorial Hospital, 1611 N.W. 12th Avenue, Miami, FL 33136, 305–585–7143, ETA CONTROL NUMBER—6/215182 ACTION—ACCEPTED.	FL	03/17/94
Mr. Glenn Potter, Britthaven of Madison, 1721 Bald Hill Loop, Madison, NC 27025, 910–548–9658, ETA CONTROL NUMBER—6/215382 ACTION—ACCEPTED.	NC	03/16/94
Mr. Jim White, Marlboro Park Hospital, P.O. Box 738, Bennettsville, SC 29512, 803–479–2881, ETA CONTROL NUMBER—6/215434 ACTION—ACCEPTED.	SC	03/16/94
Mr. Kirit Cl. Daftary, Bellmead Family Care, 4601 Wisconsin, Bellmead, TX 76705, 817–799–5581, ETA CONTROL NUMBER—6/215436 ACTION—ACCEPTED.	TX	03/16/94
Mr. Douglas Langley, Memorial Hospital, Highway 90–A Bypass Box 587, Gonzales, TX 78629, 210–672–7581, ETA CONTROL NUMBER—6/215251 ACTION—ACCEPTED.	TX	03/14/94
ETA Region 6 03/21/94 to 03/27/94		
Mr. James S. Elmslie, MRA Staffing Systems, Inc., 7771 W. Oakland Park Blvd., Suite 100, Ft. Lauderdale, FL 33351, 305–748–3300, ETA CONTROL NUMBER—6/215242 ACTION—ACCEPTED.	FL	03/23/94
Mr. Milton R. Kelley, Villa Nursing Center, 2003 N. Edwards, Mt. Pleasant, TX 75455, 903–572–5511, ETA CONTROL NUMBER—6/215303 ACTION—ACCEPTED.	TX	03/23/94

[FR Doc. 94–9152 Filed 4–14–94; 8:45 am]
BILLING CODE 4510–30–P

[TA–W–29,663]

F.E. Cooper Lumber Corp., Johnstown, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 28, 1994 in response to a worker petition which was filed on March 28, 1994 on behalf of workers at F.E. Cooper Lumber Corporation, Johnstown, Pennsylvania.

All workers engaged in employment related to the production of creosoted railroad ties and bridge timbers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 7th day of April 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–9146 Filed 4–14–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94–025)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Materials and Structures

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space administration announces a NAC, Aeronautics Advisory Committee meeting on materials and structures.

DATES: May 12, 1994, 8:30 a.m. to 5 p.m.; and May 13, 1994, 8 a.m. to 12 Noon.

ADDRESSES: National Aeronautics and Space Administration , Lewis Research Center, room 215, Building 3, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Gray, National Aeronautics and Space Administration, Lewis Research Center, Cleveland, OH 44135 (216/433–3230).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of NASA's Initiative on Manufacturing.

—Status of NASA Focused/Base Programs.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: April 12, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–9172 Filed 4–14–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Council on the Humanities

April 11, 1994.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on May 5–6, 1994.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on May 5–6, 1994, will not be open to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on May 5, 1994, will be as follows:

8:30–9 a.m.

Coffee for Council Members—Room 527

(Open to the Public)

Committee Meetings

(Open to the Public)

Policy Discussion

9–10 a.m.

Education Programs—Room M–14
Fellowship Programs—Room 315
Public Programs—Room 415
Research Programs/Preservation and Access—Room M–07
State Programs and Office of Outreach—Room 507

10 a.m. until adjourned

(Closed to the Public)

Discussion of specific grant applications before the Council 3 p.m. until adjourned

(Closed to the Public)

Jefferson Lecture Committee—Room 430

Discussion of Jefferson Lecture Nominees

The morning session on May 6, 1994, will convene at 9 a.m., in the First Floor Council Room, M–09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council Members will be served from 8:30–9 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Dates of Future Council Meetings
E. Budget Report
F. Legislative Report
G. Committee Reports on Policy and General Matters
   1. Overview
   2. Education Programs
   3. Fellowship Programs
   4. Preservation and Access Programs
   5. Research Programs
   6. Public Programs
   7. State Programs and Office of Outreach
   8. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–9121 Filed 4–14–94; 8:45 am]

BILLING CODE 7536–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended notice is hereby given that a meeting of the Music Advisory Panel (Solo Recitalist Fellowships Section) to the National Council on the Arts will be held on April 27–29, 1994. The panel will meet from 9 a.m. to 5:30 p.m. on April 27–28, and from 9 a.m. to 4 p.m. on April

29, in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2:30 p.m. to 4 p.m. on April 29, for a Policy and Guidelines Discussion.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on April 27–28, and 9 a.m. to 2:30 p.m. on April 29, and 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 February 8, 1994, 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 person may observe meeting, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: April 12, 1994.

Yvonne M. Sabine,

Dierctor, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–9170 Filed 4–14–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Sculpture Fellowships Section) to the National Council on the Arts will be held on May 16–20, 1994. The panel will meet from 9 a.m. to 8 p.m. on May 16–19, and from 10 a.m. to 4 p.m. on May 20, in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public from 2:30 p.m. to 4 p.m. on May 20, for a Policy and Guidelines Discussion.

The remaining portions of this meeting from 9 a.m. to 8 p.m. on May 16–19 and 10 a.m. to 2:30 p.m. on May 20, 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 February 8, 1994, 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 person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: April 12, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–9171 Filed 4–14–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INDIAN GAMING COMMISSION

Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice of approval of class III gaming ordinances.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632–7003 ext. 34, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in an unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1850 M St., NW., suite 250, Washington, DC 20036.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Barona Band of Mission Indians
Cabazon Band of Mission Indians
Chickasaw Nation of Oklahoma
Cocopah Indian Tribe
Gila River Indian Community
Jamestown S'Klallam Tribe
Kaibab Band of Paiute Indians
Muckleshoot Indian Tribe
Quileute Indian Tribe
San Carlos Apache Tribe
Southern Ute Indian Tribe
Tunica-Biloxi Indian Tribe of Louisiana
Twenty Nine Palms Band of Mission Indians
Winnebago Tribe of Nebraska

Signed,

Anthony J. Hope,

Chairman.

[FR Doc. 94–9097 Filed 4–14–94; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8584]

Kennecott Uranium Co.; Sweetwater Uranium Mill

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA–1350 to authorize disposal of additional byproduct material at Kennecott Uranium Company's Sweetwater Mill.

1. Proposed Action

By letter dated July 21, 1993, Kennecott Uranium Company, Holder of Source Material License SUA–1350, for the Sweetwater Uranium Mill, requested an amendment to their license to allow for disposal of byproduct material from U.S. Energy's Green Mountain Ion Exchange (GMIX) facility, which is being decommissioned. The Sweetwater Mill has not operated since 1983 and is currently in a standby status. Under the current license, discharge to the tailings impoundment is limited to byproduct material in the form of debris generated by routine site maintenance. Since byproduct material from the GMIX facility is not debris from routine site maintenance, Kennecott has requested an amendment to the license to allow for disposal of this material.

Kennecott proposes to dispose of about 12,000 tons of material. Compared to the existing storage capacity in the Sweetwater tailings impoundment of about 1.8 million tons, this volume is insignificant.

Kennecott tested the GMIX material as per the RCRA Toxicity Characteristic Leaching Procedure. This testing determined that the materials are not hazardous wastes. Kennecott also performed radiological testing of the material to be placed in the tailings system. These tests showed a maximum Ra-226 concentration of 8.6 picocuries per gram (pCi/g). This compares with a Ra-226 concentration in the Sweetwater tailings impoundment of about 64.3 pCi/g. Since the Ra-226 concentration of the sludges is much lower than the concentration in the impoundment, it is concluded that the impact of disposing of material from the GMIX facility will be insignificant.

Kennecott also provided a Disposal Plan which provides the details of how byproduct materials will be loaded, covered, transported, and disposed. In addition, Kennecott has a Standard Operating Procedure for reducing voids in materials placed in the tailings cell. Based on a review of the information provided by Kennecott, the NRC concludes that the disposal of byproduct material from the GMIX facility at the Sweetwater tailings impoundment will not result in significant impacts to either to the environment or to the public health and safety. Further, the proposed action is consistent with Criterion 2 of appendix A to 10 CFR part 40 to avoid proliferation of small waste disposal sites which would be necessary if disposal in the large tailings system were not authorized.

Paragraph 10 CFR 51.22 (c)(11), categorically excludes the requirement for an environmental assessment for this licensing action. That paragraph states that categorical exclusion applies to the issuance of amendments to licenses for uranium mills provided that (1) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (2) there is no significant increase in individual or cumulative occupational radiation exposure, (3) there is no significant construction impact, and (4) there is no significant increase in the potential for or consequences from radiological accidents.

This licensing action meets these criteria as the proposed amendment will result in only a small increase in the byproduct material to be disposed of in the Sweetwater Tailings impoundment.

2. Notice of Intent to Amend License

The licensee's request for a license amendment to authorize disposal of byproduct material from U.S. Energy's GMIX facility was noticed in the **Federal Register** on February 28, 1994 (59 FR 9502). This notice offered an opportunity to request a hearing pursuant to title 10, Code of Federal Regulations, part 2, subpart L. This subpart permits interested parties to request a hearing within thirty (30) days of the publication of the notice. No requests were received; therefore, Source Material License SUA–1350 will be amended coincident with this Notice.

Signed in Denver, Colorado this 5th day of April 1994.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 94–9104 Filed 4–14–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Use of Past Performance Information in the Source Selection Process

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: The OFPP is requesting comments and suggestions on the use of past performance information in contractor source selections.

BACKGROUND: On December 17, 1993, (58 FR 66039) OFPP announced its intention to establish a pilot program to increase the use of past performance information in the selection of Government contractors. A public meeting was held on January 13, 1994 to obtain views and comments on the pilot program. On January 26, 1994, representatives from twenty agencies and departments identified sixty-one specific contracts to be awarded under the pilot program.

Request for Proposals (RFPs) have now been issued on several of the contracts pledged under the pilot program. During the preparation of the RFPs, and in the development of other aspects of the program, several topics have surfaced on a recurring basis. These topics are summarized below and OFPP is interested in obtaining views and suggestions on the specific topics as well as on general features of the past performance program:

1. *Distinction between past performance and past experience.* There is no uniformity in present agency practices with regard to distinguishing between past performance and past experience. Sometimes the terms are used interchangeably, in other instances they have different definitions. For purposes of the pilot program, OFPP is distinguishing between past performance and past experience. Past performance is viewed as relating to "quality" and how well a contractor performed. Past experience, in comparison, is viewed as pertaining to the types and amounts of work previously performed by a contractor.

2. *Responsibility Determinations vs. Source Selection Decisions.* Some confusion exists because past performance is used in making responsibility determinations as well as contract award decisions. Federal Acquisition Regulation (FAR) 9.104–3(c) requires a satisfactory *performance* record before a contractor can be determined to be responsible. Similarly,

FAR 9.104–1(e) requires that the contractor "have the necessary organization, *experience*, accounting and operational controls . . .," in order to be determined responsible. If an agency determines that a small business is "not responsible" (i.e., not capable of performing) that determination may be appealed to the Small Business Administration (SBA), under "Certificate of Competency" (COC) procedures.

Contract award or evaluation decisions are (in comparison to responsibility determination), made pursuant to evaluation criteria stated in the RFP. When treated as an evaluation factor, past performance information is used to make comparisons among competing firms to determine relative ratings or rankings; e.g., firm A is better (presents less risk to the government) then firm B; firm B is better than firm C, etc. Evaluation decisions assess the relative capability of firms. They are not "go/no go" decisions and are not subject to the COC process or referral to the SBA.

3. *Past Performance As An Evaluation Factor or Subfactor.* In developing the RFPs for the past performance pilot program, some agencies have treated past performance as an independent "factor" and require offerors to submit a separate performance proposal distinct from other common proposals; e.g., price, technical, management, etc. Other agencies treat past performance as a subfactor to be dealt with in the technical or management proposal. There is no single best way to include past performance requirements in an RFP, and OFPP does not plan to dictate a specific methodology. The main goal for each agency should be to stress the interrelationship in the RFP among the statement of work, the section L (instructions to bidders) and the section M (evaluation criteria). This interrelationship should be clear and should provide a rational basis for conducting the evaluation and award process.

4. *"New" Firms.* One of the most frequently asked questions about using past performance information in source selections is, "How are new firms to be treated?" In OFPP's view, new firms should be neither rewarded nor penalized as a result of their lack of performance history. If, for example, past performance is to be rated on a scale of one to ten, a new firm should be given the average score of the other competing offerors. Unless the RFP contains a specific requirement for prior performance based on safety, health, national security, or mission essential considerations, agencies should "neutralize" the past performance factor and evaluate the merits of proposals received from new firms in accordance with other stated evaluation criteria.

5. *Credit for the Past Performance and Experience of Employees and Subcontractors?* Offerors should generally be given credit (or lack of credit, as appropriate) for the past performance and experience of employees, subcontractors, and affiliates. Agencies may, however, depending upon the nature of the work requirements, limit consideration to the corporate entity receiving the contract. Agencies should craft their evaluation criteria to apply to specific requirements. If a unique or special corporate experience or capability is required, an agency may appropriately determine that it is necessary for the contractor to possess the particular capability.

6. *Discussions of An Offeror's Past Performance During Source Selection.* Except where award is intended to be made without discussions, OFPP generally encourages agencies to discuss past performance information with offerors during contract negotiations. Discussions about past performance may serve to help validate the accuracy of past performance data and give offerors an opportunity to fully explain the nature of any prior problems.

7. *Should Past Performance Be Scored or Not Scored?* The evaluation of past performance is a subjective assessment based on specific facts and circumstances. Past performance evaluations are not generally based on absolute standards of acceptable performance and there is no requirement that such assessments be scored. The decision of whether to score past performance or to use other assessment methods such as color codings, adjectival descriptions or rankings is a determination that must be made by each procuring agency.

8. *Reference Checks.* The checking of references from previously performed contracts is the most common way of ascertaining an offeror's performance record. Accordingly, RFPs should not give offerors total discretion in selecting which of the offeror's prior contracts the government will evaluate. RFPs should be structured to require an offeror to submit references from a series of completed or ongoing contracts; e.g., "the last five completed contracts" not just "the last five contracts that the offeror considers relevant." References should not be limited, without reason, to just government sector contracts. Agencies are encouraged to check information from sources other than those provided by the offerors (e.g. the Federal Procurement Data System or private sector sources) and to use both contracting and program personnel in conducting reference checks and in making performance assessments.

9. *Questionnaires vs. Structured Telephone Interviews.* Written questionnaires and structured telephone interviews are two of the most common ways of checking references. Both procedures rely on standard questions which must be tailored to reflect general performance as well as the specific skills and talents necessary to perform the statement of work. Sample questions on general performance include the following:

—Would you do business with the contractor again?
—Did the contractor meet scheduled milestones on time?
—What was the overall quality of the work performed?
—Was the contractor cooperative?
—Did the contractor show business-like concern for the customer's interest?
—Was the work performed in accordance with the basic contract?
—If there were problems with contractor performance, how responsive was the contractor's management team in addressing them?

Agencies should not accept simple "yes" or "no" answers in response to questionnaires or to telephone questions. Instead, they should strive to obtain a complete picture and a full understanding of the contractor's performance.

10. *Sharing of Evaluations With Contractors.* OFPP believes that performance evaluations conducted under an ongoing contract or at the time of completion should be shared with the contractor. The contractor should have an opportunity to provide comments and rebuttals back to the agency. OFPP Policy Letter 92–5 provides that a vendor be permitted to discuss any evaluation with the contracting officer of if the contracting officer does the evaluation with the head of the contracting activity. It also provides for making any rebuttals part of the evaluation file. The intent of that policy is to provide for openness and fairness without establishing a new formal-type appeals process.

11. *Availability of Performance Assessments.* Questions have been asked at several meetings and other occasions, whether agencies will release past performance information to parties outside the government. Absent the contractor's consent, past performance information should not be released except where the agency determines that such information must be provided

under the Freedom of Information Act (5 U.S.C. 552).

12. *Incumbents.* Some have expressed concern that incumbent contractors may have an unfair advantage in the award of a follow-on contract where past performance is used as a selection criteria. To the extent that an incumbent has performed well, that performance should be recognized and given favorable treatment over another contractor whose past performance history is not as strong. Similarly, if an incumbent has more relevant experience for a follow-on contract than a competitor, that should be reflected in the comparative scoring of the offerors. Conversely, poor performance should work against an incumbent being selected for a follow-on contract, particularly where an offer has been received from a contractor with a stronger record of past performance. Agencies should rate past performance on work actually performed and an offeror's status as an incumbent should not guarantee a higher past performance rating.

13. *Databases.* OFPP is not advocating that agencies or contracting activities establish past performance information databases. Information about a contractor's performance should be a matter of record for the agency to consider in later source selections. Whether such records are retained in contract files or in separate databases is a decision that must be made by the agency or contracting activity. Agencies are encouraged to share performance information with other agencies. First-hand information is, however, better than second-information. If an agency has first hand information about a contractor's performance it should give that information (whether good or bad) preference over information obtained from other sources.

14. *Customer Satisfaction Survey.* A separate initiative is being developed by OFPP to ask agencies to conduct "customer satisfaction surveys" on a number of ongoing contracts. A subsequent **Federal Register** notice is planned to explain the initiative, and opportunities will be provided to all interested parties to discuss various issues associated with it. The **Federal Register** notice is scheduled for issuance within the next four to six weeks.

PUBLIC MEETING: A public meeting will be held in the White House Conference Center, Truman Room, 3rd floor, 726 Jackson Place, NW., Washington, DC at 10 a.m., May 6, 1994. Persons or organizations wishing to present ideas or suggestions on how past performance information can be used in the source selection process are encouraged to attend the meeting. Written statements will be accepted by OFPP at the public meeting and persons or organizations wishing to make oral statements will be given five minutes each to present their views. Persons and organizations with similar positions are encouraged to select a common spokesman for the presentation of their views. Persons wishing to attend and/or present statements at the public meeting should contact Ms. Margaret B. Davis at 202–395–6803 before 3:30 p.m., May 5, 1994, in order to be cleared for the meeting.

DATES: Comments and suggestions in response to this **Federal Register** notice including statements to be presented at the public meeting, should be received in OFPP by 5 p.m., May 4, 1994.

ADDRESSES: Comments, suggestions, and statements should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, room 9013, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, Office of Federal Procurement Policy, Washington, DC 20503, 202–395–6805.

Steven Kelman,

Administrator.

[FR Doc. 94–9115 Filed 4–14–94; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, May 12, 1994,
Thursday, May 26, 1994,
Thursday, June 09, 1994,
Thursday, June 23, 1994.

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: April 8, 1994.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 94–9081 Filed 4–14–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33899; File No. SR–NASD–94–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Part II, Sections 1, 2, and 3 of Schedule D to the NASD By-Law

April 12, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 6, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized

Schedule D to the NASD By-Laws, Part II, Qualification Requirements for NASDAQ Securities

Sec. 1. Qualification Requirements for Domestic and Canadian Securities

The Association, as operator of the NASDAQ System, is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The NASDAQ System stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. NASDAQ System issuers, from new public companies to companies of international stature, by being included in the NASDAQ System, are publicly recognized as sharing these important objectives of the NASDAQ System.

The Association, therefore, in addition to applying the enumerated criteria set forth in Parts II and III hereof, will exercise broad discretionary authority over the initial and continued inclusion of securities in the NASDAQ System in order to maintain the quality of and public confidence in its market. Under such broad discretion and in addition to its authority under Subsection 3(a) hereof, the Association may deny initial inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes initial or continued inclusion of the securities in the NASDAQ System inadvisable or unwarranted in the opinion of the Association, even though the securities meet all enumerated criteria for initial or continued inclusion in the NASDAQ System.

[Other provisions of Section 1 remain unchanged]

* * * * *

Sec 2. Qualification Requirements for Non-Canadian Foreign Securities and American Depository Receipts

The Association, as operator of the NASDAQ System is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The NASDAQ System stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. NASDAQ System issuers, from new public companies to companies of international stature, by being included in the NASDAQ System, are publicly recognized as sharing these important objectives of the NASDAQ System.

The Association, therefore, in addition to applying the enumerated criteria set forth in Parts II and III hereof, will exercise broad discretionary authority over the initial and continued inclusion of securities in the NASDAQ System in order to maintain the quality of and public confidence in its market. Under such broad discretion and in addition to its authority under Subsection 3(a) hereof, the Association may deny initial inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes initial or continued inclusion of the securities in the NASDAQ System inadvisable or unwarranted in the opinion of the Association, even though the securities meet all enumerated criteria for initial or continued inclusion in the NASDAQ System.

[Other provisions of Section 2 remain unchanged]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Proposed Discretionary Authority Regarding Inclusion of Securities in the Nasdaq System

Background

Prior Rule Filing Proposal

In recent years, the NASD has received an increasing number of applications for inclusion in the Nasdaq System from companies in which an officer, director, controlling shareholder, or other person in a position to influence management decisions has been enjoined, barred or suspended from participation in the securities industry for violations(s) of state or federal securities laws, self-regulatory organizations ("SRO") rules and regulations, or convicted of any felony involving the purchase or sale of any security arising out of such person's participation in the securities or commodities industry. On a case-by-case basis, the NASD has denied the applications of such issuers for inclusion in the Nasdaq system pursuant to its authority under Part II, Subsection 3(a)(3) of Schedule D where the NASD formed a reasonable belief that enumerated persons connected with the issuer might engage in additional violative conduct contrary to the interests of the investing public. In such cases, the NASD's rationale has been that any adjudicated prior violative conduct raises concerns regarding the continuing potential for conduct in connection with the operation of the company or the market for its securities that would be considered fraudulent and manipulative, contrary to just and equitable principles of trade, or otherwise raise investor protection concerns. The NASD has been concerned that such person(s) may seek to continue their violative conduct in the securities markets through the

[1] 15 U.S.C. 78s(b)(1) (1988).

management, control or influence of publicly-held company. More recently, the NASD has had concerns and denied inclusion in the Nasdaq System if persons in a position of management, control or influence of an issuer are the subject to pending proceedings for violations of state or federal securities laws.

As a result of these concerns, the NASD filed with the SEC SR–NASD–93–32 on June 2, 1993. SR–NASD–93–32 proposed to amend Part II, Section 3(a) to Schedule D by adding new subsection 3(a)(3) to clarify the NASD's authority, on a case-by-case basis, to either deny inclusion or apply additional or more stringent criteria for the initial or continued inclusion of a particular securities, or to suspend or terminate the inclusion of an otherwise qualified security if any officer, director, controlling shareholder, or other person in a position to influence management decisions of the issuer has been: (i) Barred or suspended from participating in the securities industry by the SEC or any self-regulatory organization; (ii) permanently enjoined by order, judgment or decree of any court of competent jurisdiction from participating in the securities industry, or from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security; or (iii) convicted of any felony involving the purchase or sale of any security arising out of such person's participation in the securities or commodities industry.[2] In response to the SEC's publication for comment of the proposed NASD rule change,[3] the SEC received one comment letter submitted by members of a Task Force of the American Bar Association ("ABA Task Force") dated August 30, 1993 (the "comment letter").[4] The comment letter referenced the criteria in the proposed rule change as "bad boy criteria" and stated:

We generally do not object to specific "bad boy" criteria. We believe, however, that such criteria themselves should be subject to standards consistent with the NASD's discretionary authority under existing Subsection 3(a)(3), namely, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest. The "bad boy" criteria in proposed Subsection 3(a)(3) standing along would apply to an unduly broad range of vioaltions, some of which would not be appropriate bases for denying initial inclusion or suspension or termination of continued inclusion of the securities of an issuer in the Nasdaq System.[5]

The comment letter also noted that a number of the ABA members that reviewed the comment letter in draft form strongly preferred that the NASD rely solely on the discretionary standards contained in existing Part II, Section 3(a)(3) of Schedule D to avoid the potential for "abuse that may derive from the inclusion of specific "bad boy" criteria" in that Section.[6] In response to the comment letter, the NASD filed on September 29, 1993, Amendment No. 2 to SR–NASD–93–32. In this amendment, the NASD noted it had not intended for the criteria to stand alone without reference to the current requirements set forth in Part II, Section 3(a)(3) of Schedule D. The text of the proposed rule change, therefore, was amended to clarify this issue.

Review of Association's Discretionary Authority

The NASD recognized, however, that the ABA Task Force comment letter raised important questions regarding the scope of the NASD's discretionary authority over the inclusion of securities in the Nasdaq System. The NASD, therefore, commenced an additional review of the scope of its discretionary authority under Part II, Section 3(a)(3) of Schedule D and under the Act, and also compared such authority to the rules of the New York Stock Exchange ("NYSE") and American Stock Exchange ("AMEX") providing discretionary authority with respect to listings on such exchanges.

Section 3(a)(3)—Section 3(a)(3) of Part II to Schedule D ("Section 3(a)(3)") provides that the Association may, in accordance with Article IX of the NASD's Code of Procedure, apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if the Association deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.[7]

The NASD has always believed that Section 3(a)(3) provides broad discretionary authority in order to allow the Association to fulfill the statutory policies contained in this Section of Schedule D and in Section 15A(b)(6) of the Act. The policy goals of Section 3(a)(3) to Part II of Schedule D are based on the statutory requirements contained in Section 15A(b)(6) of the Act which requires, in part, that the rules of the Association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest. Identical statutory mandates are imposed on the exchanges pursuant to Section 6(b)(5) of the Act. Compliance by the NASD and exchanges with these statutory mandates is central to the concept of self-regulation.

The breadth of the NASD's discretionary authority under Section 3(a)(3) was clearly intended and is necessary to fulfill the regulatory purpose of this Section to Schedule D and Section 15A(b)(6) of the Act. Without such broad discretionary authority to make determinations based on any issuer-related matter, the investor protection and public interest goals contained in Section 3(a)(3) and Section 15A(b)(6) of the Act, would be severely compromised. Limitations on the NASD's authority under Section 3(a)(3) could, in fact, result in circumstances where the NASD would be prevented from excluding an issuer from the Nasdaq System even if the Association deemed such action necessary to protect investors and the public interest.

Tassaway Decision—The importance of the NASD's authority to exclude, in general, non-complying securities from the Nasdaq System was addressed by the SEC in *In the Matter of Tassaway, Inc.*[8] ("*Tassaway*"). In *Tassaway*, the SEC stated:

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[2] The adoption section 21(d)(2) of the Act, as part of the Remedies Act of 1990, demonstrates congressional concern regarding the potential abuse that may exist where a company i managed by such person(s) with a history of adjudicated violative conduct. Section 21(d)(2) authorizes a federal court to bar or suspend an individual from serving as an officer or director of a public company as a sanction for securities law violations. Thus, Congress recognized that individuals may use public companies to manipulate the equity markets and harm investors.

In the first U.S. District Court decision imposing a sanction under section 21(d)(2), the Court also required that all seucrities holdings of the respondents be placed in a voting trust to divest them of any control of any public company. The Court explicitly recognized that ownership of a controlling interest in a public company provides an opportunity for an individual to use a company as a vehicle for future securities violations *SEC* v. *Drexel Burnham Lambert Incorporated*, 1993 WL 496837 (S.D.N.Y.) (December 1, 1993). *See*, Washington Post, December 2, 1993, at 13, col. #3.

[3] Securities Exchange Act Release 32605 (July 9, 1993), 58 FR 38150 (July 15, 1993).

[4] See, Amendment No. 2 to SR–NASD–93–32 which includes the NASD's response to all of the comments of the ABA Task Force.

[5] Comment letter at 3.

[6] *Id.* at n. 7.

[7] Any denial by the Association of initial or continued inclusion in the Nasdaq System is subject to review by the SEC and the Courts by request of the aggrieved party.

[8] Securities Exchange Act Release No. 11291 (Mar. 13, 1975), 45 SEC 706, 6 SEC Docket 427

Though exclusion from the system may hurt existing investors, primary emphasis must be placed on the interests of prospective future investors. The latter group is entitled to assume that the securities in the system meet the system's standards.

Hence the presence in NASDAQ of non-complying securities could have a serious deceptive effect.[9]

The Commission in *Tassaway* also articulated its review standards regarding the Association's discretionary authority with respect to inclusion criteria in the Nasdaq System. The Commission stated:

To the extent that discretion enters into the matter—and it very often does—the discretion in question is the NASD's not ours. Hence, we are not at liberty to substitute our discretion for that of the Association.[10]

The above statements in *Tassaway* were made prior to adoption of Section 3(a)(3) to Part II of Schedule D, and, therefore, did not address the NASD's discretion to deny or terminate inclusion in the Nasdaq System pursuant to Section 3(a)(3) to Part II of Schedule D, that authorizes the NASD to use discretion to fulfill the investor protection and public interest standards contained in Section 15A(b)(6) of the Act. The Association believes, however, that the Commission's statements in *Tassaway* are none-the-less valid with respect to the investor protection, public interest and other policy standards contained in Section 3(a)(3) of Part II to Schedule D and Section 15A(b)(6) of the Act. Relying on the reasoning of *Tassaway*, the NASD believes that prospective future investors are entitled to assume that the securities in the Nasdaq System are subject to the Association's broad discretionary authority to deny or terminate inclusion when the Association deems it necessary to protect the public interest and the interests of potential future investors and other market participants, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, regardless of whether the issuer is in compliance with the inclusion criteria of Schedule D.

The *Tassaway* decision affirms the NASD's long-held position that an issuer's access to the Nasdaq System is not an incontrovertible right but a privilege.[11]

Section 11A—The investor protection, public interest and other statutory policies mandated by Section 15A(b)(6) of the Act (which are embodied in Section 3(a)(3) to Part II of Schedule D) were expanded by Congress in the Securities Exchange Act Amendments of 1975 ("1975 Amendments") through the adoption of Section 11a(a)(1)(A) of the Act ("Section 11A(a)(1)(A)"). As stated in Section 11A(a)(1)(A), "Congress finds that the securities markets are an important national asset which must be preserved and strengthened." The NASD believes that Congress thereby acknowledged that there is a general public interest in strong securities markets that is consistent, yet identifiably separate from the transaction-related investor protection and public interest policies previously addressed under Section 15A(b)(6) of the Act. The NASD believes that the Congressional Joint Statement of the Committee of Conference to the 1975 Amendments emphasized this distinction when stating:

The securities markets of the United States are indispensable to the growth and health of this country's and the world's economy. In order to raise the enormous sums of investment capital that will be needed in the years ahead and to assure that capital is properly allocated among competing uses, these markets must continue to operate fairly and efficiently. The increasing tempo and magnitude of the changes are occurring in our domestic and international economy make it clear that the securities markets are due to be tested as never before. Unless these markets adapt and respond to the demands placed upon them, there is a danger that America will lose ground as an international financial center and that the economic, financial and commercial interests of the Nation will suffer. The rapid attainment of a national market system as envisaged by this bill is important, therefore, not simply to provide greater investor protection and bolster investor confidence but also to assure that the country maintains a strong, effective and efficient capital arising and capital allocating system in the years ahead.[12]

In describing the securities markets of the United States as national assets, Congress envisioned that the NASD and exchanges would be increasingly responsible for advancing this public interest, as well as other statutory obligations. Senator Harrison A. Williams, Jr., during Senate consideration of the 1975 Amendments, specifically addressed the increased role of the self-regulatory organizations as envisioned in the 1975 Amendments when stating:

Self-regulation should be preserved in the securities industry, but the self-regulatory organizations must display a greater responsiveness to their statutory obligations and to the need to coordinate their functions and activities.[13]

In addition, Sections 15A(b)(6) and 6(b)(5) of the Act require that the rules of the NASD and the exchanges be designed to perfect the mechanism of a national market system. The rules of the NASD and exchanges are, therefore, required to further all statutory policies underlying a national market system, including the Section 11A(a)(1)(A) policy to preserve and strengthen the securities markets.

As the operator of the second largest securities market in the U.S. and the world, the NASD believes that the general legislative intent of the 1975 Amendments and the express findings of Congress set forth in Section 11A(a)(1)(A) of the Act, expand the investor and public interest policies contained in Section 15A(b)(6) of the Act and support the Association's position that it has broad discretionary authority to make issuer inclusion determinations based on broad concerns regarding any event, circumstance or condition in order to protect the Nasdaq System as a national asset.

Discretionary Listing Authority of the National Exchanges

The NASD also compares its discretionary authority under Section 3(a)(3) to Part II of Schedule D to the discretionary authority contained under comparable rules of the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") (together, the

[9] *Tassaway* 45 SEC 706 at 709. See also, *In the Matter of OBS Automatic, Inc.* 48 SEC 490, 493 (1986) wherein the Commission stated that the policy enunciated in *Tassaway* with regard to inclusion in the Nasdaq System is equally applicable to the Nasdaq National Market segment of the Nasdaq System.

[10] Id at 710. In a footnote to this statement, the Commission stated that the Nasdaq System's rules, like those of the exchanges do not lend themselves to mechanical and inflexible administration. The Commission noted that this is an area for "pragmatic business judgments based on a kaleidoscopic variety of factors."

[11] In 1957, the Commission stated that the use of the facilities of a national securities exchange by an issuer is a privilege involving important responsibilities under the Act. The Commission noted that when those responsibilities are abused, the integrity of the exchange market is vitiated. *In the Matter of Great Sweet Grass Oils Ltd.*, 37 SEC 683, 698 (1957); aff'd per curiam sub nom. *Great Sweet Oils, Ltd. v. SEC*, 256 F.2d 893 (D.C. Cir. 1958); see also *Kroy Oils, Ltd.*, 37 SEC 683, 698 (1957).

[12] Introduction to the Joint Explanatory Statement of the Committee of Conference on the amendments of the House to the bill (S. 249), submitted to the House and Senate. See, Federal Securities Laws, Legislative History, (1933–1988) Vol. III at 3128.

[13] Federal Securities Laws, Legislative History (1933–1988), Vol. III, Item 159 at 2949.

"national exchanges"). The reason for this comparison is twofold. First, as noted above, the investor protection and public interest mandates imposed on the exchanges pursuant to Section 6(b)(5) [14] of the Act are identical to the mandates imposed on the Nasdaq System pursuant to Section 15A(b)(6) of the Act. The NASD, therefore, concludes that the discretionary authority to fulfill such identical statutory mandates should be similar. Second, the Commission also expressly stated, in *Tassaway*, that the governing legal standards of both are the exchanges and the Nasdaq System should be the same. The Commission stated:

So we think this is a suitable occasion on which to state the Standards by which we shall be guided when asked to review the NASD's actions with respect to [the Nasdaq System]. The NASD's role in Nasdaq is the same as that of the organized exchanges with respect to the lists of securities traded on them. It follows that the governing legal standards should also be the same.[15]

Pursuant to the Commission's determination in *Tassaway*, the NASD has concluded that the scope of its discretionary authority with respect to listings in the Nasdaq System can be no less than that of the national exchanges. The NASD's review of the exchanges' rules is as follows.

AMEX Discretionary Authority—AMEX rules describe their numerical initial listing criteria as "numerical guidelines" and the exchange is provided with sole discretion to approve or disapprove a listing application. The AMEX rule states:

The approval of an application for the listing of securities is a matter solely within the discretion of the Exchange. To assist companies interested in applying for listing, the Exchange has established certain numerical guidelines, outlined below, which will be considered in evaluating listing eligibility. Other factors which will also be considered include the nature of a company's business, the market for its products, the reputation of its management, its historical record and pattern of growth, its financial integrity, its demonstrated earning power and its future outlook. The fact that an applicant may meet the Exchange's numerical guidelines does not necessarily mean that its application will be approved. On the other hand, an application may be approved even though the company does not meet all of the numerical guidelines.[16]

The rules of the AMEX regarding continued listing criteria (including their corporate governance criteria) are also stated to be only guidelines that in no way limit or restrict the exchange decision on continued listing or delisting determinations. The first three sections of Part 10 of the AMEX Manual regarding Suspension Delisting provide for such broad discretionary authority.[17] Section 1001 entitled "General" states:

In considering whether a security warrants continued trading and/or listing on the Exchange, many factors are taken into account, such as the degree of investor interest in the company, its prospects for growth, the reputation of its management, the degree of commercial acceptance of its products, and whether its securities have suitable characteristics for auction market trading. Thus, any developments which substantially reduce the size of a company, the nature and scope of its operations, the value or amount of its securities available for the market, or the number of holders of its securities, may occasion a review of continued listing by the Exchange. Moreover, events such as the sale, destruction, loss or abandonment of a substantial portion of its business, the inability to continue its business, steps towards liquidation, or repurchase or redemption of its securities, may also give rise to such a review.

Section 1002 entitled "Policies With Respect to Continued Listing" first outlines the AMEX's discretionary authority to delist or suspend, and then outlines the AMEX's policy on when it will generally consider suspension or removal. This Section states:

The Constitution of the Exchange provides that the Board of Governors may, in its discretion, at any time, and without notice, suspend dealings in, or may remove any security from, listing or unlisted trading privileges. The Exchange, as a matter of policy, will consider the suspension of trading in, or removal from listing or unlisted trading of, any security when in the opinion of the Exchange: (a) the financial condition and/or operating results of the issuer appear to be unsatisfactory; or

(b) it appears that the extent of public distribution or the aggregate market value of the security has become so reduced as to make further dealings on the Exchange inadvisable; or

(c) the issuer has sold or otherwise disposed of its principal operating assets, or has ceased to be an operating company; or

(d) the issuer has filed to comply with its listing agreements with the Exchange; or

(e) any other event shall occur or any condition shall exist which makes further dealings on the Exchange unwarranted.

While the discretionary authority of the AMEX to list or delist is clearly stated in the first sentence of the above Section 1002, the AMEX strongly emphasizes its discretionary authority in the introductory paragraphs to the following Section 1003 entitled, "Application of Policies." Section 1003 begins as follows:

The determination as to whether a security warrants continued trading on the Exchange is not based on any precise mathematical formula. Each case is considered on the basis of all relevant facts and circumstances and in light of the objectives of the Exchanges policies regarding continued listing (See also § 1004). To assist in the application of these policies, the Exchange has adopted certain guidelines, outlined below, under which it will normally give consideration to suspending dealings in, or removing, a security from listing or unlisted trading. However, these guidelines in no way limit or restrict the Exchange in applying its policies regarding continued listing, and the Exchange may at any time, in view of the circumstances in each case, suspend dealings in, or remove, a security from listing or unlisted trading when in its opinion such security is unsuitable for continued trading on the Exchange. Such action will be taken regardless of whether the issuer meets or fails to meet any or all of the guidelines discussed below.

Section 1003 also enumerates numerous quantitative and non-quantitative guidelines, including corporate governance criteria. These guidelines include Subsection (e)(iii) that provides that the exchange will normally consider suspending dealings in, or removing from the list, a security "if the company or its management shall

[14] Section 6(b)(5) provides:

The rules of the exchange are 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, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

[15] 45 SEC 706 at 709.

[16] Part 1, section 101 of the Manual.

[17] See, Part 10 entitled 'Section and Delisting' of the AMEX Manual and Specifically Subsections 1001, 1002 and 1003 entitled 'General'; Policies With Respect to Continued listing; and 'Application of Policies' respectively.

engage in operations which, in the opinion of the exchange, are contrary to the public interest."

NYSE Discretionary Authority—Unlike the AMEX's "guidelines," the NYSE initial and continued listing requirements are described as "criteria." NYSE rules, however, provide the Exchange with broad discretionary authority to list, suspend or delist securities.

Section 1, Subsection 101 of the NYSE Listed Company Manual provides initial numerical listing criteria. In addition, the introductory language of this Section stresses that an NYSE listing must meet more than just the enumerated listing criteria, it must merit the recognition of the NYSE. The Rule specifically states:

A listing on the New York Stock Exchange is internationally recognized as signifying that a publicly owned corporation has achieved maturity and front-rank status in its industry—in terms of assets, earnings, and shareholder interests and acceptance. Indeed, the Exchanges's listing standards are designed to assure that every domestic or non-U.S. company whose shares are admitted to trading in the Exchange market merit that recognition.

This introductory language is followed by numerical criteria and additional language that provides the NYSE with discretionary authority to ensure that each issuer does "merit that [international] recognition." The Rule states:

Aside from the minimum numerical standards listed above, other factors are taken into consideration. The company must be a going concern or be the successor to a going concern. Although the amount of assets and earnings and the aggregate market value are considerations, greater emphasis is placed on such questions as the degree of national interest in the company, the character of the market for its products, its relative stability and position in its industry, and whether or not it is engaged in an expanding industry with prospects for maintaining its position. The Exchange is also concerned with such matters as voting rights of shareholders, voting arrangements and pyramiding of control, and related party transactions. When there is an indication of a lack of public interest in the securities of a company evidenced, for example, by low trading volume on another exchange, lack of dealer interest in the over-the-counter market, unusual geographic concentration of holders of shares, slow growth in the number of shareholders, low rate of transfers, etc., higher distribution standards may apply. In this connection, particular attention will be directed to the number of holders of from 100 to 1,000 shares and the total number of shares in this category.

With respect to discretionary authority to delist securities, Section 802.00 of the NYSE Company Manual provides that the NYSE will "give consideration to delisting a security of a company" when the company falls below certain numerical and corporate governance related criteria (listed in this Section), or when the NYSE makes certain other "determinations" or "appraisals." This NYSE section provides the NYSE with broad discretionary authority by stating:

The Exchange is not limited by the criteria set forth above. Rather, it may make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issuer in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets or fails to meet any enumerated criteria. Other factors which may lead to a company's delisting include:

- The failure of a company to make timely, adequate, and accurate disclosures of information to its shareholders and the investing public.
- Failure to observe good accounting practices in reporting of earnings and financial position.
- Other conduct not in keeping with sound public policy.
- Unsatisfactory financial conditions and/or operating results.
- Inability to meet current debt obligations or to adequately Finance operations.
- Abnormally low selling price or volume of trading.
- Unwarranted use of company funds for the repurchase of its equity securities.
- Any other event or condition which may exist or occur that makes further dealings or listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange.

Proposed Rule Change

In the NASD's review of the rules of the national exchanges, the Association noted an important difference between the language contained in Part II, Section 3(a)(3) of Schedule D and the national exchanges' more extensive rule language that emphasizes each exchanges' broad discretionary authority to make determinations over the listing of securities on their markets. Whereas Section 3(a)(3) of Schedule D relies on investor protection and public interest rule language set forth in Section 15A(b)(6) of the Act, the exchange rules expressly reserve discretionary authority to the respective exchanges without tracking the identical investor protection and public interest rule language of Section 6(b)(5) of the Act.

The NASD notes that the AMEX listing rules are emphasized to be only guidelines and Part I, Section 101 of the AMEX Manual provides that the approval of an application for listing is a matter solely within the discretion of the Exchange. In a similar manner, Section 802.00 of the NYSE Company Manual specifically provides the exchange with discretionary authority to determine the suitability of continued listing of an issuer in light of all pertinent facts whenever it deems such action appropriate, even though a security meets or fails to meet any enumerated criteria. Section 802.00 also provides that a company may be delisted based on any other event or condition that may exist or occur that makes dealings or listing of the securities on the NYSE inadvisable or unwarranted in the opinion of the Exchange. The NYSE also utilizes its discretionary authority to maintain high non-quantitative standards for its securities markets by stating, under Section 1, Subsection 101 of the NYSE Company Manual, that a listing on its market is internationally recognized and that its rules are designed to assure that every company admitted to trading on the NYSE merits such recognition.

The NASD believes that the exchange rules that reserve to the exchanges discretionary authority over their respective listings, and the NYSE's merit of international recognition standard, reflect the interest of the exchanges' in preserving and strengthening the quality of their markets as a commercial service. The exchanges reservation of discretionary authority over listings is, therefore, intended to improve the quality of its commercial service in order to make the service more attractive to current and future customers (as well as regulate securities transactions). The NASD believes, therefore, as an operator of a securities market that is a commercial service, that its rules should similarly reserve discretionary authority over listings to the Association for the purpose of preserving and strengthening the quality of the Nasdaq System to the benefit of its customers, *i.e.* present and prospective investors, issuers, brokers, and dealers.

Description of Proposed Rule Change

The NASD has determined that its rule applicable to the Nasdaq System

must clearly and unambiguously reserve discretionary authority to the Association with respect to the initial or continued inclusion of particular securities that is comparable to that of the national exchanges. Such discretionary authority is necessary in order to preserve and strengthen the Nasdaq System as a national asset. The NASD also believes that such discretionary authority over inclusion in the Nasdaq System reflects the natural interest of the NASD, as operator of the market, in preserving and strengthening the quality of the Nasdaq System in order to increase the attractiveness of this market to all customers, *i.e.* present and prospective investors, issuers and broker/dealers. In addition, the NASD believes such discretionary authority is necessary in order to ensure that securities which would otherwise be subject to the Penny Stock Rules (discussed below) merit this exemption when entering the Nasdaq System and continue to merit this exemption thereafter.

The NASD is, therefore, proposing to amend Sections 1 and 2 of Part II to Schedule D [18] to add an introduction to each section that states that: (1) the Association, as operator of the Nasdaq System, is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market; (2) the Nasdaq System stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy, and supporting the capital formation process; and (3) Nasdaq System issuers, from new public companies to companies of international stature, by being included in the Nasdaq System, are publicly recognized as sharing these important objectives of the Nasdaq System.

The introduction then sets forth that as a result of the foregoing policy statement, the Association, in addition to applying the enumerated criteria set forth in Parts II and III hereof, will exercise broad discretionary authority over the initial and continued inclusion of securities in the Nasdaq System in order to maintain the quality of and public confidence in its market. Under such board discretion and in addition to its authority under Section 3(a), the introduction states that the Association may deny initial inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes initial or continued inclusion of the securities in the Nasdaq System inadvisable or unwarranted in the opinion of the Association, even though the securities meet all enumerated criteria for initial or continued inclusion in the Nasdaq System.[19]

The proposed rule change would provide broad discretionary authority that is separate and distinct from the authority currently provided under Section 3(a)(3) of Part II to Schedule D. Section 3(a)3 would not be deleted under the proposed rule change. The NASD would continue to rely on Section 3(a)(3) when appropriate.

The proposed rule change is a single statement of discretionary authority in contrast to the rules of the national exchanges which also include statements of many enumerated factors that may be considered by each exchange in making a determination as to listing, delisting or suspension of a security. The NASD does not intend by proposing such a statement of discretionary authority that the scope of its authority with respect to listings in the Nasdaq System be narrower than the scope of authority of the NYSE and AMEX with respect to listings. To the contrary, the NASD intends, by this proposal, to make clear that its discretionary authority over listings is no less than that of the exchanges.

The NASD believes the proposed rule change provides important guidance to investors, issuers and the general public that the NASD is authorized pursuant to the Act to make determinations over inclusion in the Nasdaq System to preserve and strengthen the quality of the Nasdaq System.

Penny Stock Sales Practice and Disclosure Rules

The NASD believes the proposed rule change will enhance the Association's ability to oversee the initial and continued inclusion of securities that are exempted from the Penny Stock Sales Practice and Disclosure Rules of the Act [20] ("Penny Stock Rules") by virtue of inclusion in the Nasdaq System. The NASD believes that the clarity provided by the proposed rule change regarding the NASD's discretionary authority to deny or terminate such securities sends a strong message to those who would consider evading and abusing these statutory provisions. Such guidance enhances the continued vigilance required to ensure that inclusion in the Nasdaq System is not used as a vehicle to avoid compliance with the Penny Stock Rules by the very persons for whom compliance is so essential.

In a letter from the Securities and Exchange Commission to the President of the NASD, the SEC stated:

In providing an exclusion for quotation on the Nasdaq System [from Rule 15c2–6],[21] the Commission was relying on the NASD's ability to screen issuers and to authorize for quotation only legitimate companies whose quotation on the Nasdaq System would be in the public interest. The Division is concerned that certain promoters may attempt to circumvent the requirements of Rule 15c2–6 by seeking Nasdaq authorization. This situation demands extra caution in authority for quotation securities that otherwise would be subject to Rule 15c2–6. Before authorizing one of these securities, the NASD should assure itself of the *bona fides* of the company and its past trading market.[22]

The NASD, therefore, believes the proposed rule change is an indispensable and clear regulatory statement to public customers, issuers and other market participants that the NASD has the broad discretionary authority and will use such

[18] The Nasdaq System includes both The Nasdaq SmallCap Market and Nasdaq National Market. Sections 1 and 2 to Part II of Schedule D include the qualification requirements for domestic and Canadian securities and for non-Canadian foreign securities and American Depositary Receipts, respectively. The qualification requirements in Sections 1 and 2 of Part II to Schedule D apply to both the Nasdaq SmallCap Market and the Nasdaq National Market.

[19] Simultaneously, with the filing of this proposal, the NASD is withdrawing SR–NASD–93–32.

[20] The Penny Stock Sales Practice and Disclosure Rules of the Act are comprised of Rule 3a51–1 providing definitions of penny stocks and Rules 15g–1 to 15g–6, 15g–8 and 15g–9. In general, the Penny Stock Rules have been enacted to require more stringent regulation of broker/dealers that recommend penny stock transactions to customers. Under Rule 3a51–1 of the Act, Nasdaq System securities are excluded from the scope of the Penny Stock Disclosure Rules, except that Nasdaq SmallCap securities under $5.00 are deemed penny stocks for purposes of Section 15(b)(6) of the Act.

[21] In August of 1989, the SEC adopted Rule 15c2–6 to address sales practice abuses in low priced over-the-counter ("OTC") securities which, in general, prohibits a broker-dealer from selling to or effecting the purchase of a "designated security" by any person, unless the broker-dealer has approved the purchaser's account for such transactions and received from the purchaser a written agreement to the transaction. The Commission later amended Rule 15c2–6 and redesignated it as Rule 15g–9 of the Act. In the amendment, the Commission also conformed the definition of "designated security" in Rule 15c2–6 to the definition of "penny stock" in Rule 3a51–1 of the Act, and, with certain exceptions, replaced the transactional exemption under the rule with the exemptions contained in Rule 15g–1 of the Act. *See*, Securities Exchange Act Release No. 32576 (July 2, 1993), 58 FR 37413 (July 12, 1993).

[22] *See*, January 10, 1990 letter from the Director, SEC Division of Market Regulation the President of the NASD.

discretionary authority to ensure that securities which would otherwise be subject to the Penny Stock Rules merit this exemption when entering the Nasdaq System and continue to merit this exemption thereafter.

Proposal To Clarify the NASD Authority To Deny Inclusion of Particular Issuers in the Nasdaq System Under Part II, Section 3(a) of Schedule D

Part II, Section 3(a) of Schedule D provides the NASD, under certain circumstances, with authority to apply additional or more stringent criteria for the initial or continued inclusion of particular securities or to suspend or terminate the inclusion of a security otherwise qualified for inclusion in the Nasdaq System. The NASD has for many years interpreted Part II, Section 3(a) as providing the Association with the authority to "deny inclusion" of a security in the Nasdaq System. Authority to deny inclusion is inherent in Part II, Section 3(a) otherwise the NASD would be required to include a security in the Nasdaq System in order to terminate the security's inclusion, which procedure was never the intent of the Association.

The NASD has determined that its authority to deny inclusion of particular securities in the Nasdaq System in compliance with the enumerated provisions of Part II, Section 3(a) should be expressly stated. The proposed rule change would, therefore, amend Part II, Section 3(a) of Schedule D to clarify such authority.

Statutory Authority

The NASD believes that the proposed rule change is in furtherance with the purposes of Sections 15A(b)(6) and 11A of the Act in that the proposed rule change provides the Association with discretionary authority to preserve and strengthen the Nasdaq System as a national asset.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act which requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest in that the rule change: (1) Clarifies the NASD's authority to deny inclusion under the criteria under Section 3(a) to Part II to Schedule D; and (2) establishes the NASD's broad discretionary authority under Part II, Sections 1 and 2 of Schedule D to deny initial inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes initial or continued inclusion of the securities in the Nasdaq System inadvisable or unwarranted in the opinion of the Association, even though the securities meet all enumerated criteria for initial or continued inclusion in the Nasdaq System.

The NASD believes that the proposed rule change is in furtherance of Section 15A(b)(11) of the Act in that clarification of the NASD's authority to deny inclusion of securities under Section 3(a) to Part II of Schedule D, and also providing the Association with board discretion over the initial or continued inclusion of securities in the Nasdaq System under Sections 1 and 2 to Part II of Schedule D, is intended to enhance the ability of the NASD to prevent fictitious and misleading quotations in securities included in the Nasdaq System.

The NASD believes that, with respect to securities that are designated in the Nasdaq Small Cap Market, the proposed rule change is in furtherance of the purposes of the Penny Stock Rules adopted under the Act in that the proposed rule change will provide the NASD with authority to ensure that securities which would otherwise be subject to the Penny Stock Rules merit this exemption when entering the Nasdaq System and continue to merit this exemption thereafter.

The NASD believes that the proposed rule change is consistent with the purposes of the Act and, to the extent the proposed rule change imposes any burden on competition, the NASD believes that such burden on competition is in furtherance of the purposes of the Act is required by Section 15A(b)(9) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Providing broader discretion to the NASD over the inclusion of securities in the Nasdaq System may result in the denial or termination of certain securities that would otherwise be eligible for inclusion, yet such action does not result in an inappropriate competitive disadvantage to an issuer as there currently exist alternative electronic markets such as the NASD's OTC Bulletin Board which as of December 20, 1993 provides not only real time quotations but last sale trade reporting for companies whose securities are not traded in the Nasdaq System. Furthermore, the securities of the issuers would generally be eligible for inclusion on regional stock exchanges.

Moreover, as set forth in *Tassaway*, the SEC stated that while exclusion from the Nasdaq System may hurt existing investors, the primary emphasis must be placed on the interest of prospective investors and that this latter group is entitled to assume that the securities in the Nasdaq System meet the system's standards.

The NASD does not believe, therefore, that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received in the proposed rule change. The SEC published for comment SR–NASD–93–32, a related proposed rule change,[23] and received one comment letter from members of the Task Force on Listing Standards of Self-Regulatory Organizations of the Federal Regulation of Securities Committee, Section of Business Law of the American Bar Association ("Task Force"). On September 29, 1993, the NASD responded to the comment letter in Amendment No. 2 to SR–NASD–93–32. The NASD believes it appropriate to respond again to one issue raised in the comment letter as it remains applicable to the proposed rule change.

The Task Force recommended that the securities of issuers already included in The Nasdaq System should not be suspended or terminated for "bad boy" conduct that is known or disclosed prior to the adoption of the "bad boy" criteria contained SR–NASD–93–32 unless there is a change of control or influence or other meaningful change in circumstances with respect to such issuers. The Task Force expanded on this recommendation, in part, by arguing that application of the proposed rule change to all current Nasdaq issuers would be unfair to current security holders who relied on the fact that such securities were included or about to be included in the Nasdaq System. The NASD has reviewed this comment with respect to the proposed rule change and has determined that such a limitation on NASD authority would impose an arbitrary restriction on the NASD's oversight of the Nasdaq System that could undermine public confidence in the Nasdaq System as a securities market and be contrary to interests of

[23] Securities Exchange Act Release No. 32605 (July 9, 1993); 58 FR 38150 (July 15, 1993).

retail and institutional investors, issuers, broker/dealers and the public in the Nasdaq System. Any determination to delist an issuer will be made on a case-by-case basis in accordance with Article IX of the NASD's Code of Procedure.

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 Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-9215 Filed 4-13-94; 9:20 am]

BILLING CODE 8010-01-M

[24] 17 CFR 200.30-3(a)(12) (1993).

[Release No. IC-20209; 812-8836]

ML Venture Partners II, L.P. et al.; Notice of Application April 8, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: ML Venture Partners II, L.P. ("MLVP II"), ML Oklahoma Venture Partners, Limited Partnership ("ML Oklahoma," and, together with MLVP II, the "Partnerships"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), and Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ").

RELEVANT ACT SECTIONS: Exemption requested under section 57(c) from the provisions of section 57(a)(2).

SUMMARY OF APPLICATION: Applicants seek an order relating to the sale of shares of common stock of (i) Eckerd Corporation ("Eckerd"), Borg-Warner Security Corporation ("B-W Security") and Borg-Warner Automotive, Inc. ("B-W Automotive") by MLVP II in an underwriting in which Merrill Lynch and/or DLJ are members of the underwriting syndicate, and (ii) Eckerd by ML Oklahoma in an underwriting in which Merrill Lynch is a member of the underwriting syndicate.

FILING DATE: The application was filed on February 18, 1994. By supplemental letter dated April 8, 1994, counsel, on behalf of applicants, agreed to file an amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such amendment.

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 2, 1994, and should be accompanied by proof of service on the 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. MLVP II and Merrill Lynch, North Tower, World Financial Center, New York, New York 10281. ML Oklahoma, 6100 South Yale, One Warren Place, Suite 2019, Tulsa, Oklahoma 74136. DLJ, 140 Broadway, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, (202) 504-2259, or Barry D. Miller, Senior Special Counsel, (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. MLVP II, a Delaware limited partnership, is a business development company under the Act. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments. The General Partners of MLVP II consist of the MLVP II Individual General Partners and the MLVP II Managing General Partner. The MLVP II Individual General Partners include the three MLVP II Independent General Partners (defined to be individuals who are not "interested persons" of MLVP II) and one general partner who is an individual and who is an affiliated person of the MLVP II Managing General Partner MLVP II Co., L.P., the MLVP II Managing General Partner, is a limited partnership controlled by its general partner, Merrill Lynch Venture Capital Inc. (the "Management Company"). The Management Company, an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."), performs, or arranges for the performance of, the management and administrative services necessary for the operation of MLVP II. On May 23, 1991, MLVP II, the MLVP II Managing General Partner, and the Management Company retained DLJ Capital Management Corporation (the "Sub-Manager"), an indirect wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., to provide management services in connection with the venture capital investments of MLVP II pursuant to a Sub-Management Agreement dated as of that date (the "Sub-Management Agreement"). Under the Sub-Management Agreement, the Sub-Manager is primarily responsible for the venture capital investments of MLVP II. The agreement provides that the Sub-Manager shall, subject to the overall supervision of the MLVP II Individual General Partners, "make all decisions regarding Venture Capital Investments and, among other things, find, evaluate,

structure, monitor and liquidate such investments."

2. ML Oklahoma, an Oklahoma limited partnership, is a business development company under the Act. The investment objective of ML Oklahoma is to seek long-term capital appreciation by making venture capital investments. ML Oklahoma has been organized to qualify as a "qualified venture capital company" under Oklahoma law and intends to invest at least 55% of its capitalization in companies that constitute "Oklahoma business ventures" under Oklahoma law. The General Partners of ML Oklahoma consist of the ML Oklahoma Individual General Partners and the ML Oklahoma Managing General Partner. The ML Oklahoma Individual General Partners include the three ML Oklahoma Independent General Partners (defined to be individuals who are not "interested persons" of ML Oklahoma) and one general partner who is an individual and who is an affiliated person of the ML Oklahoma Managing General Partner. MLOK Co., Limited Partnership, the ML Oklahoma Managing General Partner, is responsible for identification and management of ML Oklahoma's venture capital investments. The general partner of the ML Oklahoma Managing General Partner is the Management Company, which performs, or arranges for the performance of, the management and administrative services necessary for ML Oklahoma.

3. Merrill Lynch, a Delaware corporation, is the principal subsidiary of ML & Co., Inc. ML & Co., a Delaware corporation, is a diversified financial services holding company which, through its subsidiaries, provides investment and financing, insurance, real estate, and related services.

4. DLJ, a Delaware corporation, is a wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., a holding company which through its subsidiaries engages in the following activities: investment banking, merchant banking, public finance, trading, distribution, and research. Donaldson, Lufkin & Jenrette, Inc. is a subsidiary of The Equitable Companies Incorporated.

5. Eckerd, a Delaware corporation, operates the Eckerd Drug Store chain, which is the third largest drug store chain in the United States. Eckerd was formed in 1985 for the purposes of effecting the leveraged buyout of Jack Eckerd Corporation, a Florida corporation. The $1.43 billion leveraged buyout was structured by Merrill Lynch Capital Partners, Inc. ("MLCP"), a Delaware corporation and wholly-owned subsidiary of ML & Co., on April 30, 1986.

6. In early 1990, Eckerd negotiated the acquisition of 223 drugstores from Revco D.S. Inc. and Revco Discount Drug Centers, Inc. (collectively, "Revco"). Eckerd Holdings II, Inc. ("Eckerd II"), a Delaware corporation, was formed for the purpose of completing the acquisition of the 223 drug stores. Eckerd II was initially financed by Merrill Lynch Interfunding, Inc. ("MLIF"), an indirect wholly-owned subsidiary of ML & Co. specializing in leveraged buyouts, bridge loans, and other short-term financings, and other affiliates of ML & Co. (the "Merrill Lynch Investors"). MLIF and the other Merrill Lynch Investors subsequently exchanged their shares of Eckerd II for shares of common stock of EDS Holdings, Inc., a newly formed Delaware corporation ("EDS Holdings"), and Eckerd II became a wholly-owned subsidiary of EDS Holdings. Pursuant to a management agreement, Eckerd operated the drugstores owned by Eckerd II from 1990 to 1993. As of November 20, 1990, MLIF owned 484,877 shares of EDS Holdings Class A voting common stock and certain other affiliates of ML & Co. owned 1,663,920 shares of EDS Holding Class A voting common stock.

7. In February 1991, MLIF offered to sell 71,417 shares of its EDS Holdings common stock to MLVP II at its original cost of $12.00 per share or $857,004, plus reimbursement for its costs of carrying such investment from July 23, 1990 until the date of acquisition by MLVP II. Also in February 1991, MLIF offered to sell 11,916 shares of its EDS Holdings common stock to ML Oklahoma at its original cost of $12.00 per share or $142,992, plus reimbursement for its costs of carrying the investment from July 23, 1990 until the date of acquisition by ML Oklahoma. Since MLVP II, ML Oklahoma and MLIF may have been deemed to be under the control of ML & Co., MLVP II and ML Oklahoma refrained from purchasing the shares of EDS Holdings common stock from MLIF pending the receipt of an exemptive order from the Commission.

Accordingly, MLIF granted MLVP II an option to purchase the 71,417 shares of EDS Holdings common stock at $12.00 per share or $857,004, plus reimbursement for MLIF's costs of carrying the investment from July 23, 1990 until the date of acquisition by MLVP II. Similarly, MLIF granted ML Oklahoma an option to purchase the 11,916 shares of EDS Holdings common stock at $12.00 per share or $142,992, plus reimbursement for MLIF's costs of carrying the investment from July 23, 1990 until the date of acquisition by ML Oklahoma.

8. On May 29, 1992, the Commission issued an order (the "Eckerd Order") pursuant to sections 6(c) and 57(c) of the Act exempting the purchase by MLVP II and ML Oklahoma of the common stock of EDS Holdings from MLIF from the provisions of section 57(a)(1) of the Act and authorizing such purchase pursuant to sections 57(i) and 17(d) of the Act and rule 17d–1 thereunder.[1]

9. On July 20, 1992, in accordance with the terms of the Eckerd Order, MLVP II acquired 71,417 shares of common stock of EDS Holdings. MLVP II's cost of such acquisition aggregated $857,004, or $12.00 per share, plus carrying costs of $106,522, or $1.49 per share. On July 22, 1992, in accordance with the terms of the Eckerd Order, ML Oklahoma acquired 11,916 shares of common stock of EDS Holdings. ML Oklahoma's cost of such acquisition aggregated $142,992 or $12.00 per share, plus carrying costs of $17,804, or $1.49 per share.

10. On August 5, 1993, 4,500,000 shares of common stock of Eckerd were offered to the public in an underwritten offering lead-managed by Merrill Lynch. Prior to such offering, the holders of EDS Holdings common stock, including MLVP II and ML Oklahoma, exchanged their shares for shares of common stock of Eckerd pursuant to an Exchange Agreement with Eckerd under which the shareholders of EDS Holdings had the right to exchange their shares for shares of Eckerd on a one-for-one basis. Subsequent to such exchange, EDS Holdings was merged into Eckerd with Eckerd II becoming a wholly-owned subsidiary of Eckerd. Since the initial public offering, the common stock of Eckerd has traded on the New York Stock Exchange (the "NYSE") under the symbol "ECK." In addition to the purchasers in the public offering and in subsequent secondary market transfers, the stockholders of Eckerd include MLVP II, ML Oklahoma, certain affiliates of ML & Co., members of management, and other institutional investors.

11. As of January 31, 1994, MLVP II owned 92,843 shares, or 0.3%, of the outstanding common stock of Eckerd. At such date, ML Oklahoma owned 15,491 shares, or 0.05%, of such common stock. At such date, affiliates of ML & Co. (excluding MLVP II and ML Oklahoma) owned 14,588,770 shares, or

[1] ML Venture Partners II, L.P. (Investment Company Act Release Nos. 18687 (April 30, 1992) (notice) and 18740 (May 29, 1992) (order).

approximately 47.03%, of such common stock.

12. B–W Security, a Delaware corporation, is engaged in the business of providing protective services, including guard, alarm, armored transport, and courier services. B–W Automotive, a Delaware corporation, develops, manufactures and markets highly engineered components primarily for automotive powertrain applications.

13. During 1987, MLCP structured a leveraged buyout of Borg-Warner Corporation ("Old Borg-Warner"), a predecessor of B–W Security and B–W Automotive. As a result of such leveraged buyout, all of Old Borg-Warner's equity securities were owned by Borg-Warner Holdings Corporation ("Borg-Warner Holdings"). Pursuant to a series of transactions, ML & Co. and its affiliates acquired 10.2 million shares of Borg-Warner Holdings common stock at $10.00 per share.

14. At the time such shares were acquired by ML & Co. and its affiliates, MLCP offered 500,000 shares to MLVP II. The investment by MLVP II could not be made concurrently with the other ML & Co. affiliated entities without obtaining exemptive relief from the Commission with respect to certain provisions of the Act. Accordingly, the Management Company agreed to purchase and hold the 500,000 shares offered to MLVP II and to sell such shares to MLVP II at a price determined as described below following the granting of such exemptive relief. The purchase price to be paid by MLVP II to the Management Company for the Borg-Warner Holdings common stock was calculated based on a formula of the lower of (i) the value of the investments on the date MLVP II acquired such common stock (as determined by the MLVP II Independent General Partners) or (ii) the cost to the Management Company of purchasing and holding the investment.

15. On September 1, 1988, the Commission issued an order exempting the purchase by MLVP II of the common stock of Borg-Warner Holdings from the provisions of section 57(a)(1) of the Act and authorizing such purchase pursuant to sections 57(i) and 17(d) of the Act and rule 17d–1 thereunder.[2] On September 9, 1988, the MLVP II Individual General Partners approved the acquisition by MLVP II of 500,000 shares of Class A common stock of Borg-Warner Holdings. The cost of such acquisition aggregated $5,000,000, or $10.00 per share, plus carrying costs of $427,231, or $.85 per share. Borg-Warner Holdings subsequently changed its name to Borg-Warner Corporation ("Borg-Warner").

16. In January 1993, Borg-Warner spun-off B–W Automotive to its existing shareholders, giving each shareholder, including MLVP II, one share of B–W Automotive for each share of Borg-Warner owned at such date. Borg-Warner subsequently changed its name to B–W Security.

17. On January 19, 1993, 3,300,000 shares of common stock of B–W Security were offered to the public at $18.50 per share in an underwritten offering lead-managed by Merrill Lynch. On August 12, 1993, 3,500,000 shares of common stock of B–W Automotive were offered to the public at $25.00 per share in an underwritten offering lead-managed by Merrill Lynch. The common stock of both B–W Security and B–W Automotive trade presently on the NYSE under the symbols "BOR" and "BWA," respectively. In addition to purchasers in the public offerings and in subsequent secondary market transfers, the stockholders of B–W Security and B–W Automotive include MLVP II, certain affiliates of ML & Co., members of management, and other institutional investors.

18. As of January 31, 1994, MLVP II owned 500,000 shares or approximately 2.48% of the outstanding common stock of each of B–W Security and B–W Automotive. At such date, affiliates of ML & Co. (excluding MLVP II) owned 9,700,000 shares or approximately 48.2% of the outstanding common stock of each of B–W Security and B–W Automotive.

19. Although MLVP II has made no determination as to the time at which it would like to sell its investments in Eckerd, B–W Securities, and B–W Automotive, MLVP II is now considering alternative methods of disposing of such investments. One of these companies has made an initial filing with respect to a proposed secondary offering of its securities.

Applicants' Legal Analysis

1. MLVP II, ML Oklahoma, Merrill Lynch, and DLJ request an order of the Commission pursuant to section 57(c) exempting from the provisions of section 57(a)(2) sales of shares of common stock of (i) Eckerd, B–W Securities, and B–W Automotive, MLVP II in underwritings in which Merrill Lynch and/or DLJ are members of the underwriting syndicate, and (ii) Eckerd by ML Oklahoma in underwritings in which Merrill Lynch is a member of the underwriting syndicate.[3]

2. Section 57(a)(2) prohibits certain affiliates of a business development company from purchasing any security or other property on a principal basis from the business development company or from any company controlled by the business development company, except securities of which the seller is the issuer. Section 57(b) provides, in part, that the affiliates affected by section 57(a) include any "person directly or indirectly either controlling, controlled by or under common control with" the business development company. Section 57(c) provides that a person may file an application with the Commission for an order exempting a proposed transaction from one or more provisions of section 57(a) (1)–(3), and that the Commission shall issue such an order if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the business development company or its shareholders or partners on the part of any person concerned; (b) the proposed transaction is consistent with the policy of the business development company as recited in the filings made by such company with the Commission under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its report to shareholders or partners; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants believe that the Management Company is controlled by ML & Co. and that ML & Co. might be deemed to exercise a controlling influence over MLVP II, ML Oklahoma and Merrill Lynch since the general partner of the MLVP II Managing General Partner and ML Oklahoma Managing General Partner is an indirect subsidiary of ML & Co. and Merrill Lynch is an indirect wholly-owned subsidiary of ML & Co. Likewise, applicants believe that the Sub-Manager Is controlled by Donaldson, Lufkin & Jenrette, Inc. and that Donaldson, Lufkin & Jenrette, Inc. might be deemed to exercise a controlling influence over MLVP II and DLJ since the Sub-Manager has primary control over the venture capital investments of MLVP II and DLJ

[2] ML Venture Partners II, L.P., Investment Company Act Release Nos. 16517 (Aug. 8, 1988) (notice) and 16545 (Sept. 1, 1988) (order).

[3] Applicants do not believe that the proposed transactions would constitute joint transactions under section 57(a)(4) and rule 17d–1 and therefore have not requested that the order include relief under that section and rule. Applicants recognize that the Commission expresses no opinion on this issue.

is a wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc. As a result of these affiliations, sales of securities on a principal basis by MLVP II to Merrill Lynch and/or DLJ and ML Oklahoma to Merrill Lynch are prohibited by section 57(a) of the Act and cannot be effected unless an order is obtained pursuant to section 57(c) of the Act.

4. Applicants submit that the statutory standards set forth above will be satisfied with respect to the relief requested under section 57(c) of the Act. In this connection, applicants believe that the structure of the proposed transaction has been designed to insure that the terms of the transaction will be fair and reasonable, will not involve overreaching on the part of any person concerned, and will eliminate the possibility of abuses of the potential conflict of interest. The terms of the proposed transaction provide that the Partnerships will only sell shares in an underwritten offering in which Merrill lynch and/or DLJ (in the case of MLVP II) are members of the underwriting syndicate if certain conditions are met. The Sub-Manager for MLVP II and the ML Oklahoma Managing General Partner must initially evaluate the proposed transaction and determine to recommend the sale of the investments.

5. The abuses that section 57(a)(2) is designed to deter are limited with respect to the proposed transactions. The shares of each of Eckerd, B–W Securities, and B–W Automotive are traded on the NYSE and the price to be paid for shares in an underwritten offering will approximate the trading price of such shares on the NYSE less an underwriting discount. The underwriting terms with respect to the Partnerships' sale of shares must be on the same terms applicable to any selling shareholder participating in the offering, including terms applicable to affiliates of ML & Co. and/or DLJ (with respect to sales by MLVP II). The underwriting terms and arrangements, including the underwriting discount, will be reviewed and passed upon by the NASD and by the Individual General Partners, and separately by the Independent General Partners.

6. Liquidity in portfolio investments is becoming increasingly important as MLVP II and ML Oklahoma approach their eighth and sixth year, respectively, of their ten year terms. The ability to sell shares in an underwritten offering in which Merrill Lynch and/or DLJ (in the case of MLVP II) are acting as underwriters may provide liquidity not otherwise available to the Partnerships. With respect to ML Oklahoma and MLVP II's investments in Eckerd and MLVP II's investments in B–W Security and B–W Automotive, the Partnerships are significantly restricted in the number of shares they can sell in the public market. Due to their affiliation with such companies through Merrill Lynch, sales by the Partnerships in the public market of shares of such companies are subject to the volume limitations contained in rule 144 under the Securities Act of 1933. In this regard, the Partnerships' sales may be subject to further aggregation with sales by affiliates of Merrill Lynch, further limiting the Partnerships' ability to liquidate their investments. Given the substantial holdings of affiliates of Merrill Lynch in Eckerd, B–W Security and B–W Automotive, and the fact that Merrill Lynch acted as lead managing underwriter for such companies in their respective initial public offerings, it is likely that Merrill Lynch will be the lead managing underwriter or otherwise a member of the underwriting syndicate in future offerings of such companies' securities. Thus, in the absence of the requested relief, MLVP II and ML Oklahoma will be at a substantial disadvantage because they will be unable to liquidate their holdings at a time when other Merrill Lynch affiliates are selling shares in an underwritten offering for which Merrill Lynch and/or DLJ (in the case of MLVP II) are members of the underwriting syndicate.

7. MLVP II and ML Oklahoma believe that the relief requested is consistent with the purpose of MLVP II and ML Oklahoma, their stated policies and the disclosure made to their prospective investors. Applicants also believe that the proposed transactions are in the best interests of MLVP II and ML Oklahoma to the extent that such transactions permit the Partnerships to liquidate portfolio securities on favorable terms and in a more expeditious manner than would otherwise be available.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:[4]

1. If the Partnership is offered the opportunity to sell shares of an Investment in an underwritten offering in which Merrill Lynch and/or DLJ is a member of the underwriting syndicate, the Sub-Manager will review the terms of the proposed offering. The Sub-Manager will provide a written report to the Independent General Partners which will set forth the Sub-Manager's recommendation as to whether the Partnership should sell shares in such underwritten offering based on the Sub-Manager's analysis of all factors it deems relevant, including the terms of the proposed underwritten offering.

2. The Partnership will be given the opportunity to sell shares in such underwritten offering on at least a proportionate basis with affiliates of Merrill Lynch and DLJ (if any), and on the same terms applicable to any selling shareholders participating in the offering, including terms applicable to affiliates of ML & Co. and DLJ (if any) selling shares in such offering. In this regard, the underwriting discount with respect to such offering will be no larger than the customary underwriting discount charged by underwriters for equity securities in similar transactions.

3. The Partnership will only participate in such underwritten offering if the shares to be sold continue to be traded on the NYSE as of the date of the offering and if the offering price is determined by reference to, and approximates, the price of the shares on the NYSE at the time the offering price is determined.

4. The underwriting terms and arrangements with respect to the proposed transaction must be determined by the Individual General Partners, and a majority of the Independent General Partners, to be fair and reasonable.

5. If the Sub-Manager, on the basis of its evaluation described above, recommends that the Partnership sell shares in such underwritten offering the Individual General Partners shall then determine whether, in their view, it is in the best interests of the Partnership to sell shares in such underwritten offering. The Partnership shall only sell shares in such underwritten offering if the Individual General Partners, including a majority of the Independent General Partners, determine that:

(i) The terms of the proposed transaction, including the consideration to be paid to the Partnership, are reasonable and fair and to not involve overreaching of the Partnership or its partners on the part of any person concerned;

(ii) The proposed transaction is consistent with the policy of the Partnership as indicated in its filings under the Securities Act of 1933 and the

[4] The conditions with respect to the sale of the Partnerships' respective investments in Eckerd, and MLVP II's investments in B–W Security and B–W Automotive (the "Investments") are identical for MLVP II and ML Oklahoma, except that references to the Sub-Manager are to be considered references to the ML Oklahoma Managing General Partner in the case of ML Oklahoma, and references to Merrill Lynch and/or DLJ are to be considered references to Merrill Lynch alone in the case of ML Oklahoma. References to the "Partnership" refer to either MLVP II or ML Oklahoma.

Securities Exchange Act of 1934, and its reports to its partners; and

(iii) Participation by the Partnership in the proposed transaction is in the best interests of the Partners of the Partnership.

6. The Partnership will maintain the records required by section 57(f)(3) of the Act as if each of the transactions permitted under these conditions were approved by the Independent General Partners under section 57(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9114 Filed 4–14–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 8, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49498.
Date filed: April 6, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 4, 1994.
Description: Application of Cleare Air Limited, pursuant to section 402 of the Act and subpart Q of the Regulations applies for a foreign air carrier permit to engage in on-demand charter foreign air transportation between various points in the Commonwealth of the Bahamas and various points in Florida, in the United States.

Docket Number: 49500.
Date filed: April 6, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 4, 1994.
Description: Application of Air South, Inc., pursuant to section 401(d)(1) of the Act, and subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation.

Docket Number: 49501.
Date filed: April 6, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 4, 1994.
Description: Application of Tatonduk Outfitters Ltd. d/b/a Tatonduk Flying Service pursuant to section 401 of the Act and subpart Q of the Regulations, requests amendment of condition (4) of its certificate (1) to the extent necessary to authorize Tatonduk to provide all-cargo service within the state of Alaska using "large aircraft" as defined in CFT 298.2(i), limited to propeller-driven aircraft powered by reciprocating engines, and (ii) removal from Condition (4) of the limitation to perations with fewer than five pilots and five aircraft.

Docket Number: 49502.
Date filed: April 7, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 5, 1994.
Description: Application of Bavaro Sunflight, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to authorize service between the Dominican Republic and the United States.

Docket Number: 49504.
Date filed: April 8, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 6, 1994.
Description: Application of Exec Express II, d/b/a Lone Star Airlines, pursuant to section 401(d)(1) of the Act, and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing interstate, overseas and foreign scheduled air transportation.

Docket Number: 49307.
Date filed: April , 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 2, 1994.
Description: Amendment to the Application of All-America-Airlines, Inc., pursuant to section 401(d)(1) of the act and subpart Q of the Regulations, requests (a) change the name in which the Certificate would be issued (Jet USA Airlines, Inc.); (b) change one of the proposed flight routes, and (c) submit new exhibits supporting the Application and the new proposed flight routes.

Docket Number: 45001.
Date filed: April 6, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May , 1994.
Description: Application of Lineas Aereas Mayas, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, requests renewal and Amendment of its Foreign Air Carrier Permit to include Miami, Florida as a coterminal point.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–9108 Filed 4–14–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 8, 1994.

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 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0887.
Form Number: IRS Form 8281.
Type of Review: Revision.
Title: Information Return for Publicly Offered Original Issue Discount Instruments.
Description: Form 8281 is filed by the issuer of a publicly offered debt instrument having Original Issue Discount (OID) Instruments.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hrs., 16 min.
Learning about the law or the form—18 min.
Preparing, copying, assembling, and sending the form to the IRS—23 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 2,975 hours.

OMB Number: 1545–1254.
Regulation ID Number: FI–34–91 Final.
Type of Review: Extension.
Title: Conclusive Presumption of Worthlessness of Debt Held by Banks.

Description: Paragraph (d)(3) of § 1.166–2 of the regulations allows banks and thrifts to elect to conform their tax accounting for bad debts with their regulatory accounting. An election, or revocation thereof, is a change in method of accounting. The collection of information required in § 1.166–2(d)(3) is necessary to monitor the elections.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 50 hours.

OMB Number: 1545–1260.

Regulation ID Number: CO–62–89 Final.

Type of Review: Extension.

Title: Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

Description: The reporting requirement concerns the election a taxpayer may make to treat as the change date the effective data of a plan of reorganization in a title 11 or similar case rather than the confirmation date of a plan.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Other (Once).

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear (202) 622–3869, 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. 94–9139 Filed 4–14–94; 8:45 am]

BILLING CODE: 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

April 11, 1994.

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1312.

Regulation ID Number: INTL–15–91 NPRM.

Type of Review: Extension.

Title: Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

Description: Certain taxpayers are allowed to elect a mark to market method of accounting for foreign currency gains and losses and to integrate certain foreign currency denominated dividend, rent and royalty payments with hedges thereof.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear, (202) 622–3869, 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. 94–9140 Filed 4–14–94; 8:45 am]

BILLING CODE: 4830–01–M

UNITED STATES INFORMATION AGENCY

Foreign Language and Area Studies—U.S. Students and Scholars; Request for Proposals

AGENCY: United States Information Agency.

ACTION: Notice—Amendment to Announcement in **Federal Register**, Vol. 59, No. 42, Thursday, March 3, 1994.

SUMMARY: The United States Information Agency (USIA) is amending the request for proposals for "Foreign Language and Area Studies—U.S. Students and Scholars" announced in **Federal Register**, Vol 59, No. 42, Thursday, March 3, 1994, pages 10220, 10221 and 10222. This amendment changes the deadline date proposals are due and the duration of the grant.

DATES: Deadline for proposals—One original and 14 copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, May 6, 1994. Faxed documents will not be accepted, nor will documents postmarked on May 6, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the above deadline. The duration of the grant may be for at least 12 months, but not more than 24 months, beginning September 1, 1994. The budget is not to exceed $350,000 for the duration of the proposed grant period.

NOTIFICATION: All applicants will be notified of the results of the review of full proposals on or about July 15, 1994. Grant awards will be subject to standard periodic reporting and evaluation requirements.

Dated: April 8, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–9090 Filed 4–14–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 73
Friday, April 15, 1994

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).

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND PLACE: Tuesday, April 19, 1994, at 4:00 p.m. The meeting will be held at Eximbank in Room 1141, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA:

1. Medium-Term Insurance;
2. Small Business Insurance.

PUBLIC PARTICIPATION: The meeting will be open to public observation. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Loretta Carrier, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 566–8893, not later than Monday, April 18, 1994. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to April 18, 1994, Loretta Carrier, Room 1112, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 566–8893 or TDD: (202) 535–3913.

FURTHER INFORMATION: For further information, contact Loretta Carrier, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 566–8893.

[FR Doc. 94–9314 Filed 4–13–94; 4:00 pm]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:04 a.m. on Tuesday, April 12, 1994, the Corporation's Board of Directors determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution regarding: (1) The Federal Deposit Insurance Corporation and the Resolution Trust Corporation entering into a general agreement that sets forth a plan for the orderly unification of the activities and responsibilities of their respective affordable housing programs; and (2) authorization for the Director, Division of Depositor and Asset Services, or his designee, with the concurrence of the General Counsel, or his designee, to execute supplemental Memoranda of Understanding that would be treated as an integral part of the general agreement.

By the same majority vote, the Board further determined that no notice earlier than April 7, 1994, of the change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: April 12, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–9216 Filed 4–13–94; 9:14 am]

BILLING CODE 67–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

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 meetings during the week of April 18, 1994.

An open meeting will be held on Tuesday, April 19, 1994, at 10:00 a.m., in Room 6059. A closed meeting will be held on Tuesday, April 19, 1994, at 2:30 p.m.

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 to 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 scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, April 19, 1994, at 10:00 a.m., will be:

As part of its ongoing effort to address the special needs of foreign companies entering the U.S. public markets, the Commission will consider whether to adopt proposals to: (1) Streamline reporting and registration requirements for foreign private issuers; (2) address certain issues raised by communications in connection with offerings by foreign companies and exempt and offshore offerings by U.S. companies; and (3) expand safe harbor protection for certain analyst reports.

For further information, please contact Sandra F. Kinsey or Annemarie Tierney at (202) 272–3246.

The Commission will also consider proposals to streamline financial statement requirements for U.S. issuers relating to significant foreign equity investees and business acquisitions, proposals to streamline financial schedule requirements for all issuers and proposals with respect to foreign issuers reporting currency and operations in hyperinflationary economies.

For further information, please contact Wayne Carnall at (202) 272–2553.

Consideration of a proposal to streamline the financial statement reconciliation requirements for foreign private issuers that have entered into business combinations.

For further information, please contact Wayne Carnall at (202) 272–2553.

Consideration of whether to authorize publication of a concept release requesting comment on the Commission's rules governing manipulative conduct during securities offerings, particularly Rules 10b–6, and 10b–7, and 10b–8 under the Securities and Exchange Act of 1934. The Commission is conducting this review in light of the significant changes in the securities markets and in distribution practices that have occurred since the rule's adoption.

For further information, please contact David A. Hebner, Alexander Dill, or K. Susan Grafton at (202) 942–0772.

Consideration will be given to whether to adopt amendments to Form ADV and related rules under the Investment Advisers Act of 1940 that would require investment advisers sponsoring wrap fee programs to prepare a separate disclosure document or "brochure" for wrap fee program clients, and specify the information required in the brochure.

For further information, please contact Eric C. Freed at (202) 272–2107.

The subject matter of the closed meeting scheduled for Tuesday, April 19, 1994, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Regulatory matter regarding financial institutions.
Settlement of injunctive actions.
Opinions.

At times, changes in the 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: John Ramsay (202) 272–2100.

Dated: April 13, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–9267 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

federal register

Friday
April 15, 1994

Part II

Department of Health and Human Services

Social Security Administration

Disability Reengineering Project Proposal; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Process Reengineering Program; Disability Reengineering Project Proposal

AGENCY: Social Security Administration, HHS.

ACTION: Announcement of proposal and request for comments.

SUMMARY: The Disability Process Reengineering Team of the Social Security Administration (SSA) announces a proposal to redesign the disability claims process for Social Security Disability Insurance and Supplemental Security Income (SSI) Disability and Blindness benefits. This notice contains the Proposal (as well as background information) of the Disability Process Reengineering Team (composed of SSA and State Disability Determination Service (DDS) employees). The aim of the proposal is to achieve dramatic improvements in customer service to the public. Accordingly, we seek comments on the proposal to ensure that it meets the needs of the public. The comments will be weighed in the Agency's subsequent decisions on implementation.

DATES: To be sure that your comments are considered we must receive them no later than May 27, 1994.

ADDRESSES: Submit your comments as follows: (1) Mail them to the Social Security Administration, PO Box 17052, Baltimore, MD 21235, or (2) telefax them to (410) 966–9884, or (3) deliver them to 4–N–3 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. If you telefax your comments, please do not also mail a hard copy document.

FOR ADDITIONAL COPIES CONTACT: Social Security Administration, PO Box 17052, Baltimore, MD 21235, (410) 966–8255. The Proposal is available in alternative formats for visually impaired individuals. Please use this same telephone number to request the document in an alternative format

SUPPLEMENTARY INFORMATION:

Background—What is the Reengineering Program?

SSA began an Agency-wide program of Process Reengineering in the summer of 1993. The Process Reengineering Program is one way SSA is seeking to improve its overall service delivery process.

The Process Reengineering Program essentially asks the question, "If SSA had the opportunity today to design the processes, what would they look like?" In other words "how would we design a process if we were starting over?" The Program's objective is to fundamentally rethink and radically redesign SSA's work processes to achieve dramatic improvements in critical measures of performance. In this rethinking and redesign process, the ultimate aim is to achieve dramatically improved levels of service from the customer's perspective while enriching and improving the work lives of employees.

The Process Reengineering Program is the culmination of an investigation by SSA of the reengineering efforts conducted by companies, public organizations, academic institutions, and consulting firms with "hands on" experience. The very positive findings from that investigation, combined with our concerns about our ability to provide the very best service to the public, led to the conclusion that a process reengineering effort was absolutely critical to SSA's objective of providing "world class" service to the American public.

Based on analysis of what has worked best in other organizations, SSA developed a customized reengineering methodology. This methodology uses a reengineering team approach and combines a strong customer focus with classic management analysis techniques and computer modeling and simulation to intensely review a single business process. While the reengineering team is comprised of employees and experts who are very knowledgeable about the SSA process being redesigned, the methodology focuses heavily on obtaining the views of a broad segment of the public.

What Does the Disability Project Address?

Despite the outstanding efforts of SSA and State DDS employees throughout the country, we continue to have difficulty providing a level of service to claimants for disability benefits that approaches what would be considered "good" service. The steps in the current disability process have not changed in any important way since the beginning of the Disability Insurance program in the 1950s. Yet case loads, types of disabilities, and the demographic characteristics of individuals with disabilities who are potentially eligible for benefits have changed radically.

The State DDSs make the initial decisions about whether an applicant for Disability Insurance or SSI benefits is disabled. In 1989, SSA forwarded to the State DDSs 1.6 million claims for disability benefits in the Disability Insurance and SSI programs. Claims have increased significantly in every year since that time. In 1994, the number of disability claims we will forward to the State DDSs is expected to reach about 2.7 million. The number of requests for hearings on denied claims is expected to reach 522,000—an increase of about 60 percent in the last 3 years. The result is that many claimants have to wait much too long at each stage in the process. SSA and State DDS employees are working longer and harder, while becoming increasingly frustrated about their inability to provide the type of service the public deserves.

For these reasons, the first SSA reengineering project focuses on the process for claiming benefits—beginning with the initial claim and continuing through the payment of benefits or the final administrative appeal—under both the Disability Insurance program and the disability component of the SSI program.

The scope of the assignment to the disability reengineering project team did not include making any changes to the statutory definition of disability or the amount of benefits for which individuals are eligible. Other issues relating to the disability programs are being addressed by SSA in other ways, including the continuing disability review process and the referral of individuals for vocational rehabilitation services.

What the Proposal Contains

The proposal contained in this announcement is the product of the disability reengineering team. It begins by providing background on the current disability determination process. It discusses input received in person, by telephone and by mail, from almost 3,000 Social Security and State DDS employees, 750 members of the external community of individuals and organizations interested in SSA's disability programs, and from focus groups conducted with members of the public.

We next provide a conceptual proposal for a new disability claims process; it gives a view of how the new process will work from the applicant's perspective. Many readers will want to know how these concepts will actually work in detail. However, the development of that level of information will not be done until SSA is confident that the basic concepts presented here have the potential to achieve the level of service we seek to provide. We are committed to extensive future dialogue on the next level of detail once we make the final decision on these concepts.

The proposal contains many charts, some of which may be difficult to read in the **Federal Register** format. We considered deleting some of them but decided that the greater public interest was served by publishing the entire proposal as it was presented on March 31, 1994, to the Executive Steering Committee.

How Should Comments Be Presented to the Project Team?

The Project Team seeks public reaction to the concepts in the proposal. We are particularly interested in your response to the following questions concerning the proposal's goals:

- Does the proposal have the potential to provide a process that is easy for claimants and those who assist claimants to access and understand?
- Will it enable SSA and the State DDS to make the right decision the first time a case is adjudicated?
- Will it result in dramatically improved process times?
- Will it result in a more efficient use of SSA and State DDS personnel?
- Will it create jobs for employees in the process that are satisfying?

In considering these questions, you are encouraged to identify factors that would assure that the concepts presented will achieve these goals. To the extent that the proposal is not seen as achieving these goals, alternative suggestions about how to do so will be welcome.

What Happens Next?

The Project Team will receive all comments from the public and employees. The comments will be analyzed and used to revise and/or refine the proposal. The final proposal of the team will be presented to the Executive Steering Committee for the project for its review and recommendations. Members of this committee include SSA and HHS General Counsel executives, the presidents of the 8 union locals/councils that represent SSA employees, a State DDS Administrator, and the presidents of 6 associations of SSA and State DDS employees that work in the disability process.

The Commissioner of Social Security will seek the advice and recommendations of the Executive Steering Committee in making her decisions on how SSA will proceed.

Dated: March 29, 1994.

Rhoda M. G. Davis,

Director, Process Reengineering Program.

Introduction

A claimant for disability benefits from the Social Security Administration faces a lengthy, bewildering process. An initial decision from SSA will likely take more than three months. Anywhere from 16 to 26 employees will handle the claim before the initial decision is reached. If that decision is a denial, and the request for reconsideration is also denied, chances are the claimant will hire an attorney. It will likely be an additional eight months or more before a response on the hearing is received, and even longer before a check is issued or eligible dependents' benefits are paid. As many as 45 employees could handle the claim.

If the claim for benefits is approved after a hearing, the claimant will view the SSA disability application process as one which requires jumping through lengthy bureaucratic hoops. Dealing in person or on the telephone with SSA field office staff and, possibly, the State disability determination service (DDS) staff at the initial and reconsideration levels, the claimant must appear at a hearing and finally talk to a person in a position to make a decision on the claim. The claimant will rate SSA employees as courteous and knowledgeable, but the disability determination process as bureaucratic and unresponsive.

Congress agrees with this assessment; in May 1991, the House Ways and Means Committee cited SSA for an excellent job of delivering retirement benefits, but gave SSA a failing grade for the way it processes applications for disability benefits, with Chairman Dan Rostenkowski stating, "* * * those who are unfortunate enough to become disabled find their problems compounded by inefficiencies at SSA."

SSA employees reiterate this belief, as illustrated in the following statement by a claims representative, "I wish we could stop shuffling all this stuff back and forth. I don't really know what the DDS is looking for, so I try to do the best generic job I can on these forms."

The report of the National Performance Review reflected Administration concern by directing SSA to "Improve Social Security disability claims processing to better serve people with disabilities * * *".

SSA has reached a critical juncture; disability claims receipts at the initial claims and appeals levels have reached all time highs—Fiscal Year (FY) 1995 claims requiring a disability determination will increase 69 percent over FY 1990 levels; appeals workloads will increase 75 percent over FY 1990 receipt levels; employees in field offices, DDSs and hearing offices are overburdened despite recent significant increases in productivity. As an agency, SSA must vie for scarce administrative resources in an era of spending limitations and competing social spending priorities. The ability of SSA to cope with further workload increases is questionable; it is clear that only radical change can address the disability service delivery problems facing the Agency today.

SSA is meeting this challenge with an unprecedented effort to reengineer the entire disability process—from the point a potential claimant first contacts the Agency to file for disability benefits, through the disability allowance or final administrative appeal. Reengineering the disability process involves asking the question, "Given what we know about technology and resources available to us today, how can we best design a disability process for the 1990s and beyond?" This report will answer that question by proposing a radical redesign of disability program policies and procedures, to ensure dramatic improvements in the way the entire process works and is managed to serve the American public.

The report represents the collective efforts and recommendations of the 18-member Disability Reengineering Team, composed of Federal and State DDS employees, operating under the auspices of the Director of the SSA Process Reengineering Program, and the SSA Executive Steering Committee formed to provide advice to the Commissioner on the disability reengineering process change proposal development.

The Executive Steering Committee provided the following parameters for the disability reengineering proposal: "Every aspect of the process except the statutory definition of disability, individual benefit amounts, the use of an administrative law judge as the presiding officer for administrative hearings and vocational rehabilitation for beneficiaries is within the scope of this reengineering effort."

The recommendations in this report represent the Team proposal to SSA for reengineering the disability process; this is not a final SSA proposal. The Commissioner of SSA asks interested parties to comment on the proposal within the next 60 days. The Team looks forward to receiving comments from the community concerned with the delivery of disability benefits.

Current Process

The procedures in the current process have not changed in any significant way since the Social Security Disability Insurance (DI) program began in the 1950s, a time when caseloads, demographic characteristics of claimants, types of disabilities, and

available technology were radically different.

In the 1970s, Congress federalized State programs of cash assistance to the aged, blind and disabled into the Supplemental Security Income (SSI) program and added this to the responsibilities of SSA. SSA then adopted the DI disability determination procedures for SSI blind and disabled claims.

Overview

A claim must now pass through from 1 to 4 decisional paths within SSA to receive a favorable disability decision. The initial claim, reconsideration, administrative law judge (ALJ) hearing and Appeals Council review levels all involve multi-step uniform procedures for evidence collection, review, and decisionmaking.

The process starts at the initial level when an individual first applies for DI or SSI disability benefits on the basis of a disabling physical or mental condition. An individual calls the national toll-free telephone number and is referred to a local SSA field office or visits or calls one of 1,300 local field offices to apply for benefits. Field office personnel assist with application completion, obtain detailed medical and vocational history and screen nonmedical eligibility factors. Field office personnel forward the claim to 1 of 54 State disability determination services where medical evidence is developed and a final determination is made regarding the existence of a medically determinable impairment which meets the definition of disability.

After possible quality assurance review in the DDS or in the SSA regional Disability Quality Branch, the claim is returned to the field office. Thirty-nine percent of these claims were paid in FY 1993; denials are retained pending possible appeal. Allowed DI claims are sent to one of 7 processing centers (which include the Office of Disability and International Operations and the 6 Program Service Centers) for final processing and storage, as well as adjudication of claims for dependents. Allowed SSI claims remain in the field office for payment and retention.

An initial claim currently takes an average of 100 days to process from the time it is filed until a final decision is made according to SSA's computer-based processing time measurements. However, a better understanding of how long the process takes from the claimant's perspective comes from a 1993 study conducted by SSA's Office of Workforce Analysis, which showed that an average claimant waits up to 155 days from the initial contact with SSA until receiving an initial claim decision notice. Sixteen to 26 employees will handle the claim during this period.

BILLING CODE 4190–29–P

Figure 1

Initial Claim Process

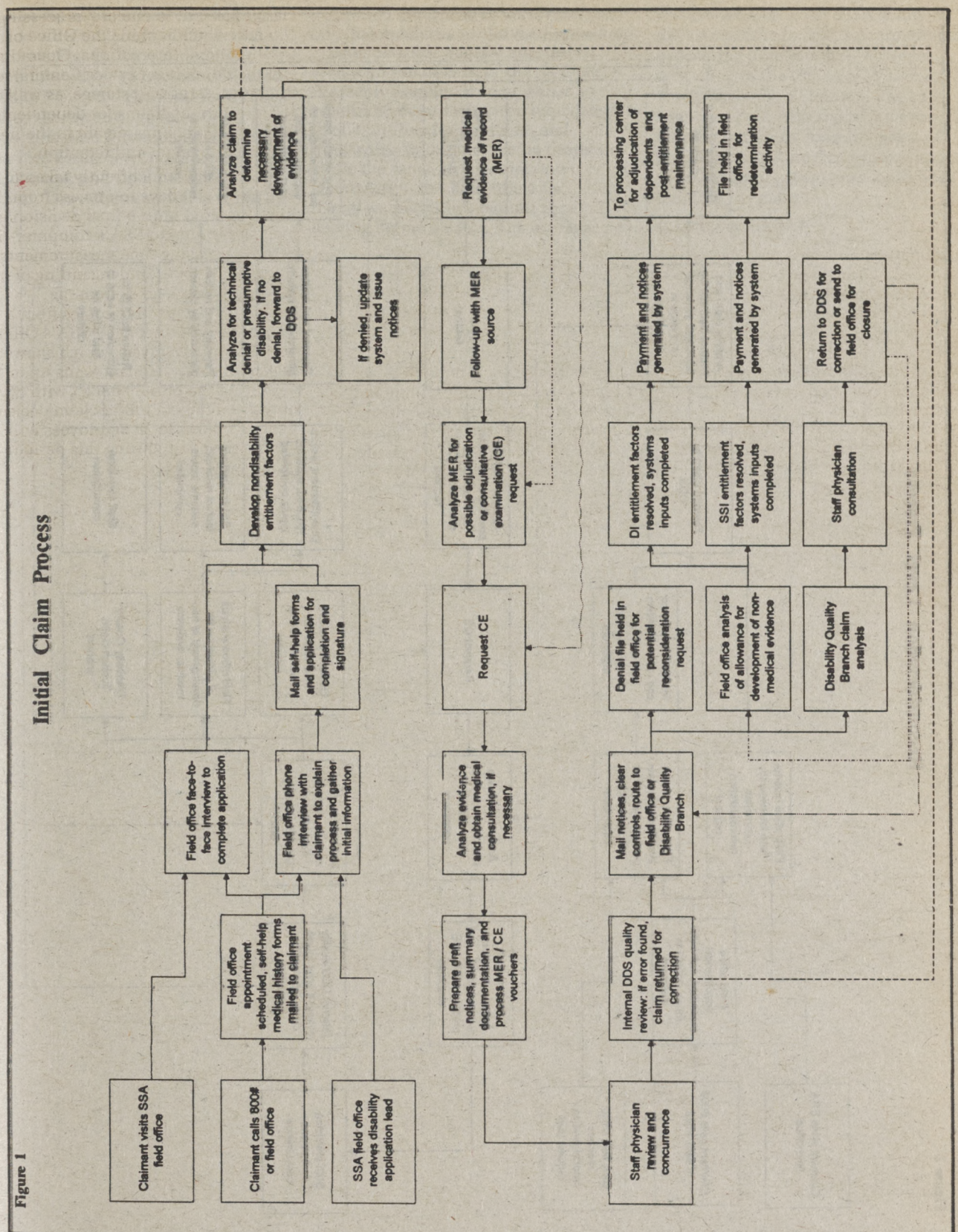
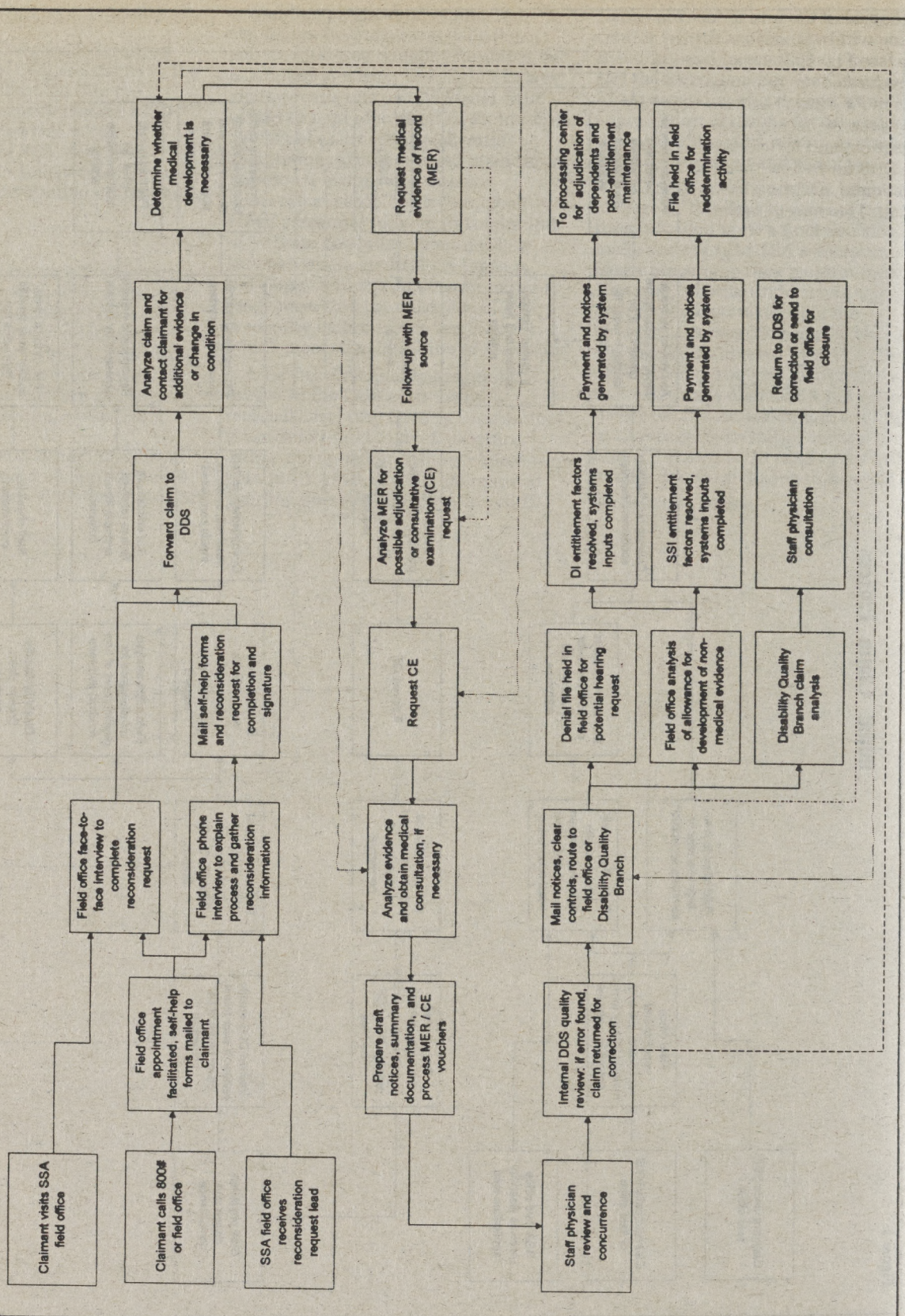


Figure 2

Reconsideration Level Process



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An appeal of the initial decision can be made within 60 days of the denial notice (see Fig. 2). Reconsiderations were requested on 48 percent of denied claims in FY 1993. The local field office receives the request, updates the information, and forwards the claim file to the DDS for review, possible medical development, and final medical decision. The determination is made by a different adjudicative team than the one that made the initial determination.

After possible quality assurance review in the DDS or in the regional Disability Quality Branch, about 14 percent of these claims are returned to the field office for payment, and forwarding to the processing centers, while the remaining denials are forwarded to the field office for retention, pending a request for a hearing before an ALJ. The average reconsideration itself takes about 50 days according to SSA's computer-based processing time reports—however, according to the Office of Workforce Analysis study, a claimant has now been involved with the SSA process for roughly 8 months from the point of initially contacting the Agency, and up to 36 different employees could have handled the claim.

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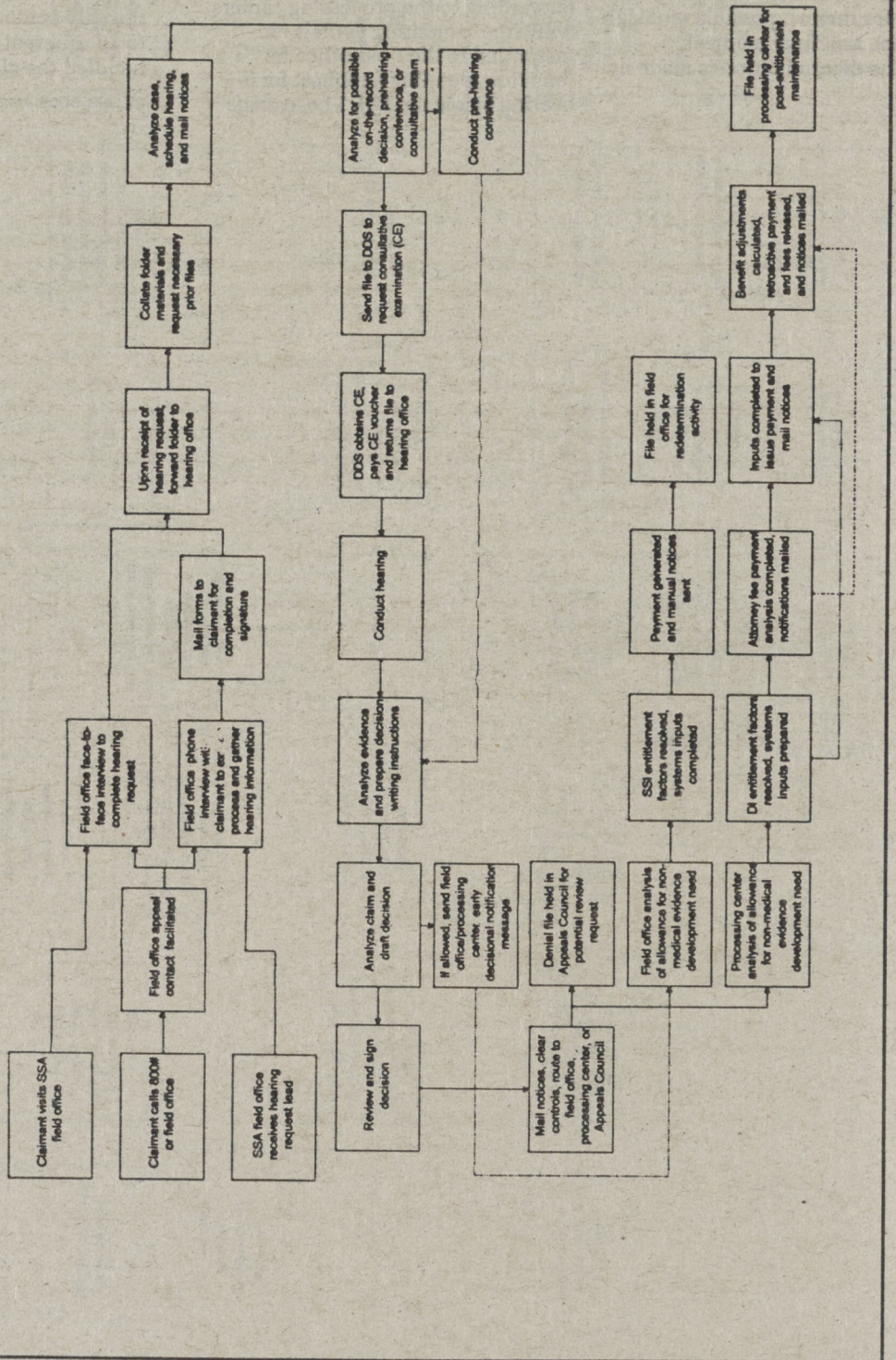
Figure 3

Hearing Level Process



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Within 60 days of receiving an unfavorable reconsideration decision, a claimant can request a hearing before an ALJ (Fig. 3). In FY 1993, about 75 percent of all reconsideration denials were appealed to ALJs. At this point, a claimant has usually retained an attorney or other representative to assist in pursuing the claim for benefits. About 75 percent of all claimants retain a representative at the hearing. The local field office receives the request for hearing and forwards it with the claim file to one of 132 local SSA hearings offices. Hearing office personnel review the file for possible additional development, conduct a hearing, and render a final decision.

Allowed DI claims are sent to a processing center for final action and storage, as well as adjudication of claims for dependents. Allowed SSI claims are returned to the local field office for income and resource development, and payment. Denied claims are forwarded to the Appeals Council for retention in case a request for review is filed. The hearing process itself takes about 265 days according to computer-based reports. However, according to the Office of Workforce Analysis study, a claimant has been dealing with SSA for over a year and a half at this point in the process.

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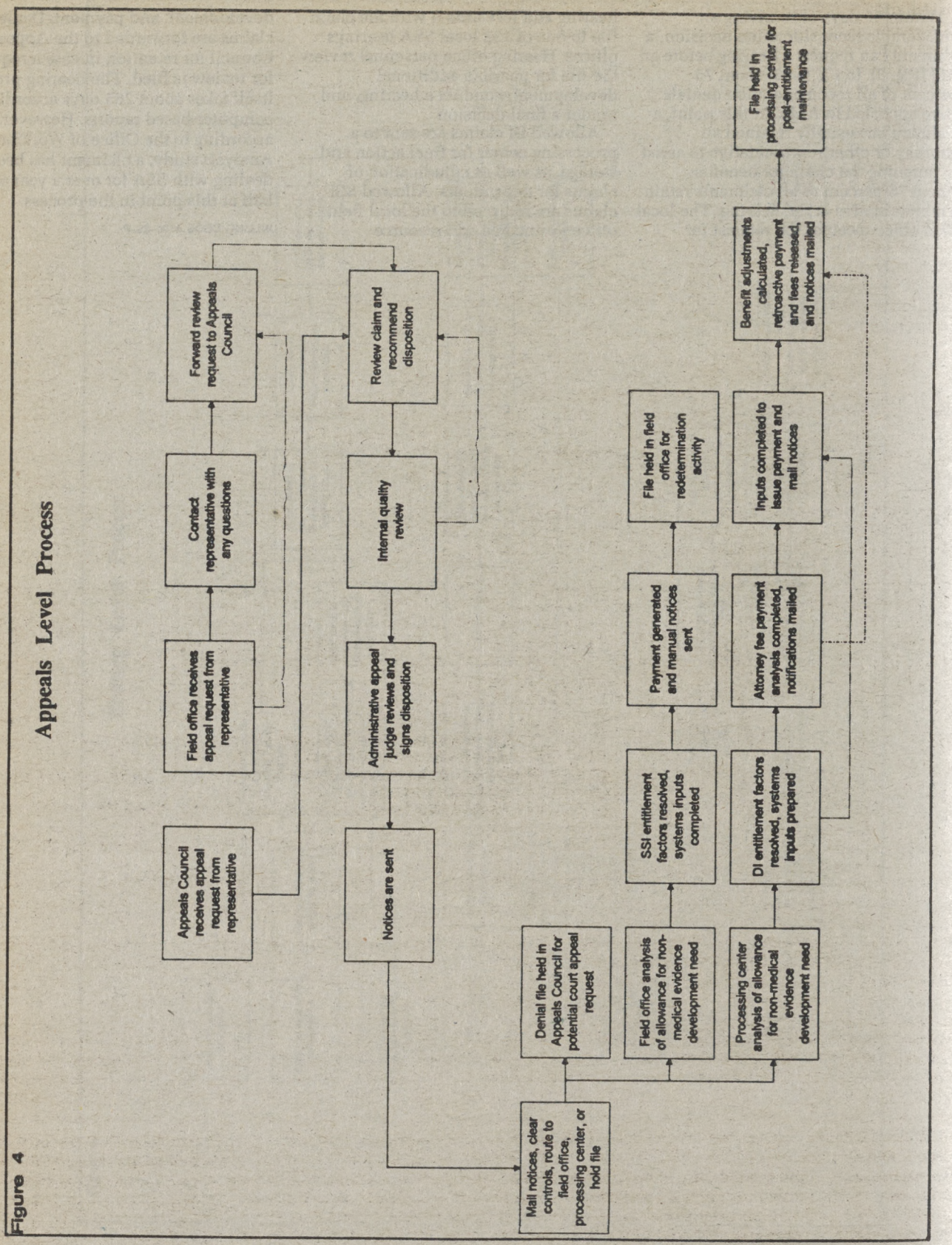

Figure 4

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If still dissatisfied with an unfavorable decision, a claimant or representative has 60 days to request a review of the ALJ decision by the Appeals Council (Fig. 4). About 23 percent of hearing decisions are unfavorable and forwarded to the Appeals Council pending possible appeal. The Appeals Council considers about 18 percent of all ALJ dispositions, including cases it reviews on its own motion.

Requests for Appeals Council review are typically received directly from the claimant's representative. The Appeals Council may either deny review, issue a decision, or remand the claim to an ALJ. The Appeals Council remands claims to the ALJ level about 27 percent of the time for subsequent development and decision. Denied claims, representing about 70 percent of the Appeals Council dispositions, are held in the Appeals Council for possible appeal to Federal District court.

Allowed DI claims are sent to a processing center for final action and storage, as well as adjudication of claims for dependents. Allowed SSI claims are returned to the local field office for income and resource development, and payment. According to processing time reports, this part of the process takes on average about 100 days; however, according to the Office of Workforce Analysis study, a claimant has spent almost 2 years dealing with SSA since initially contacting the Agency.

Trends

The current disability process served SSA and the public well for a number of years. However, over the last several years, as workloads have increased dramatically, the current process has been placed under increasing stress. The upward trend in the number of claims for benefits SSA has received is reflected as follows:

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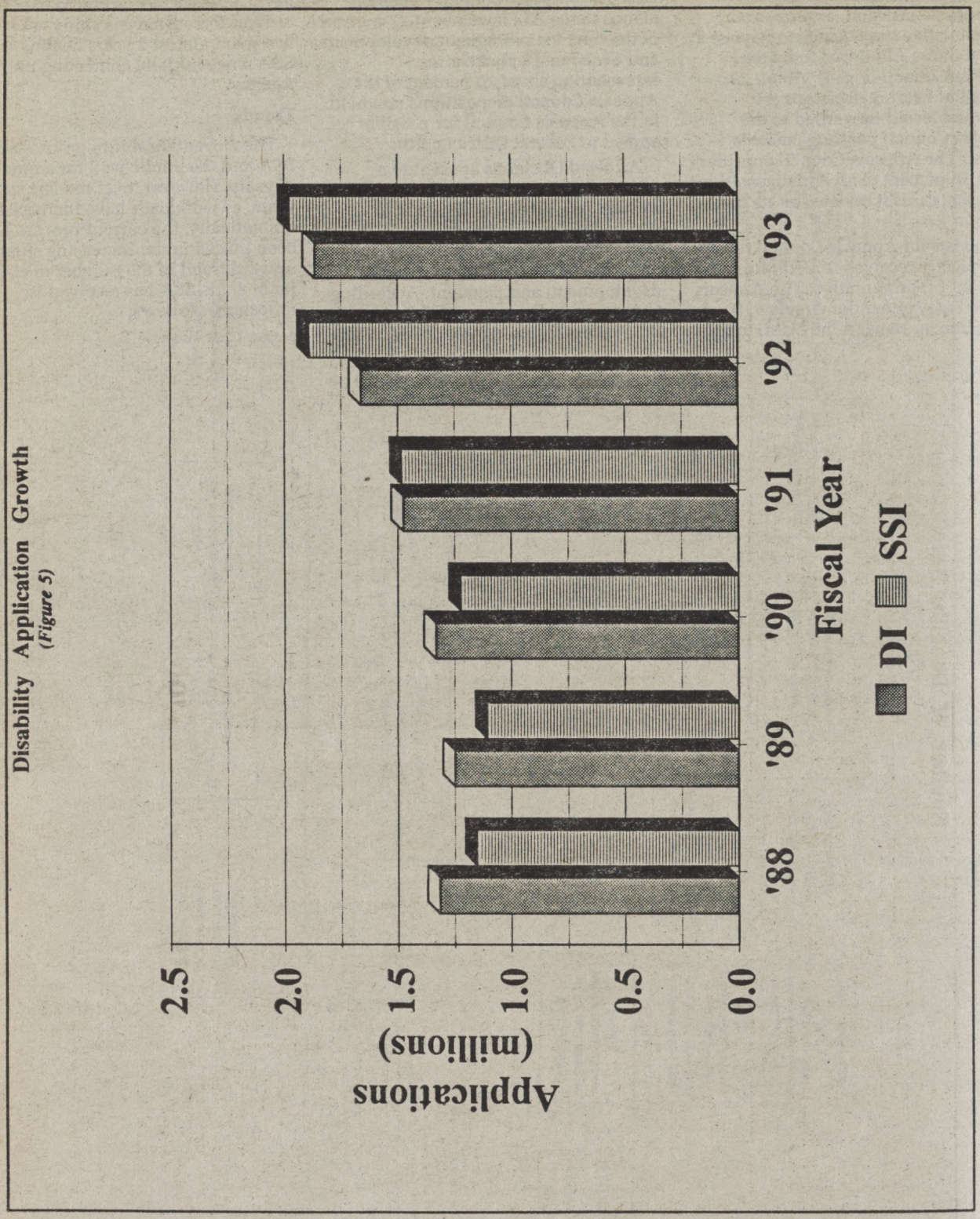

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The growth in claims and benefits awarded is reflected in increases in the number of beneficiaries SSA pays and the growth in Federal program outlays over recent years.

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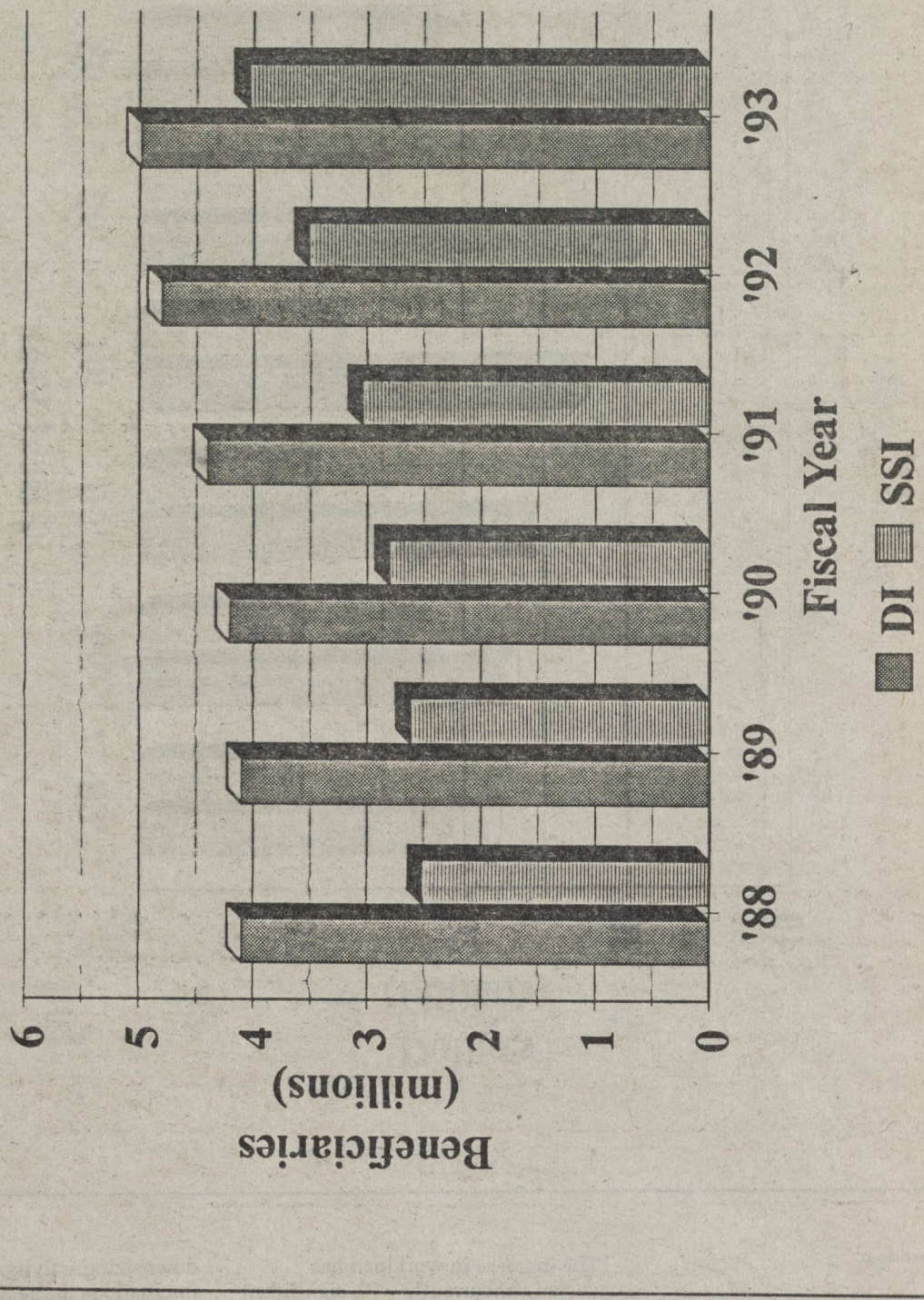
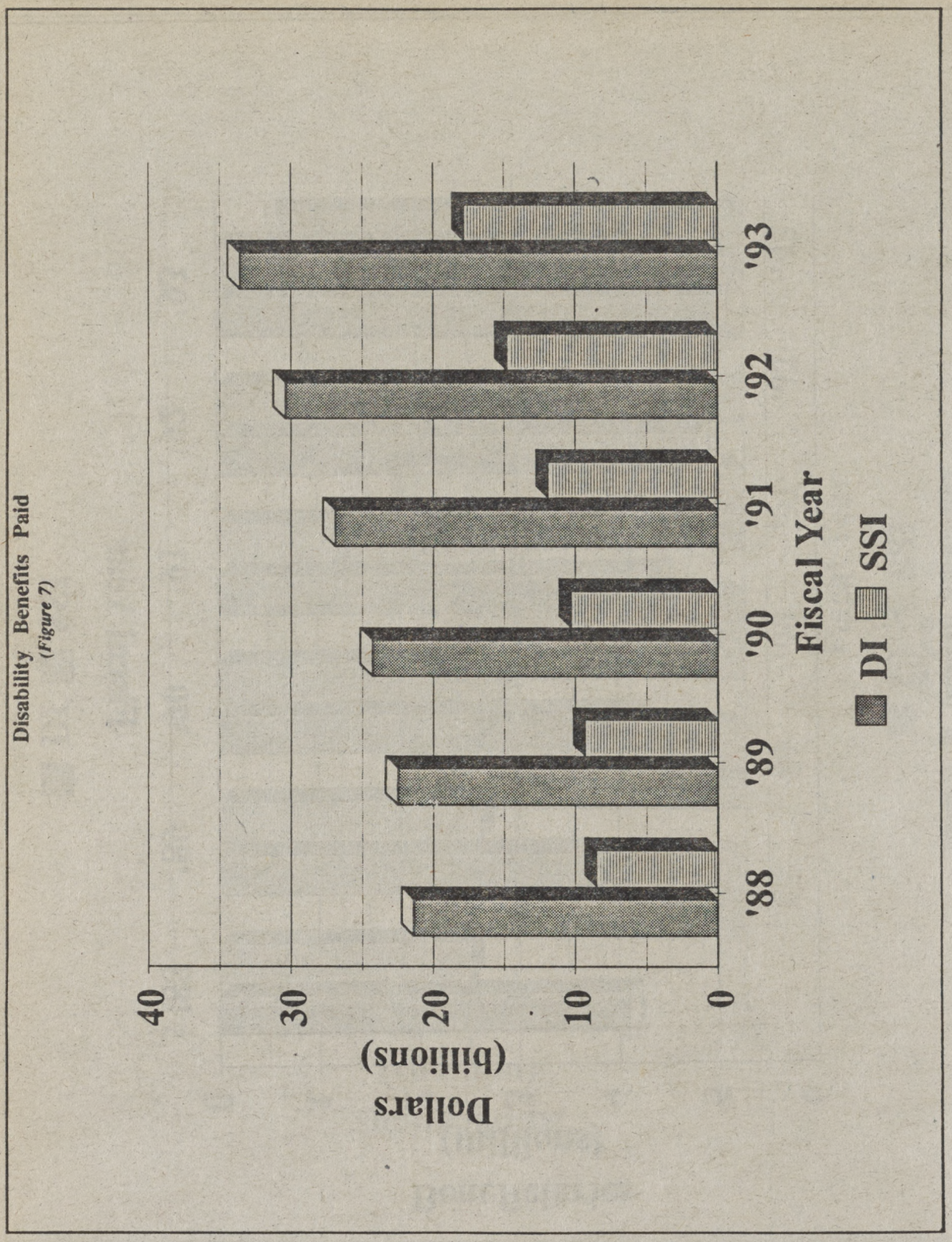
Number of Disability Beneficiaries
(Figure 6)





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The increase in workload has occurred concurrently with significant downsizing activity in SSA and staffing fluctuations in the State DDSs.

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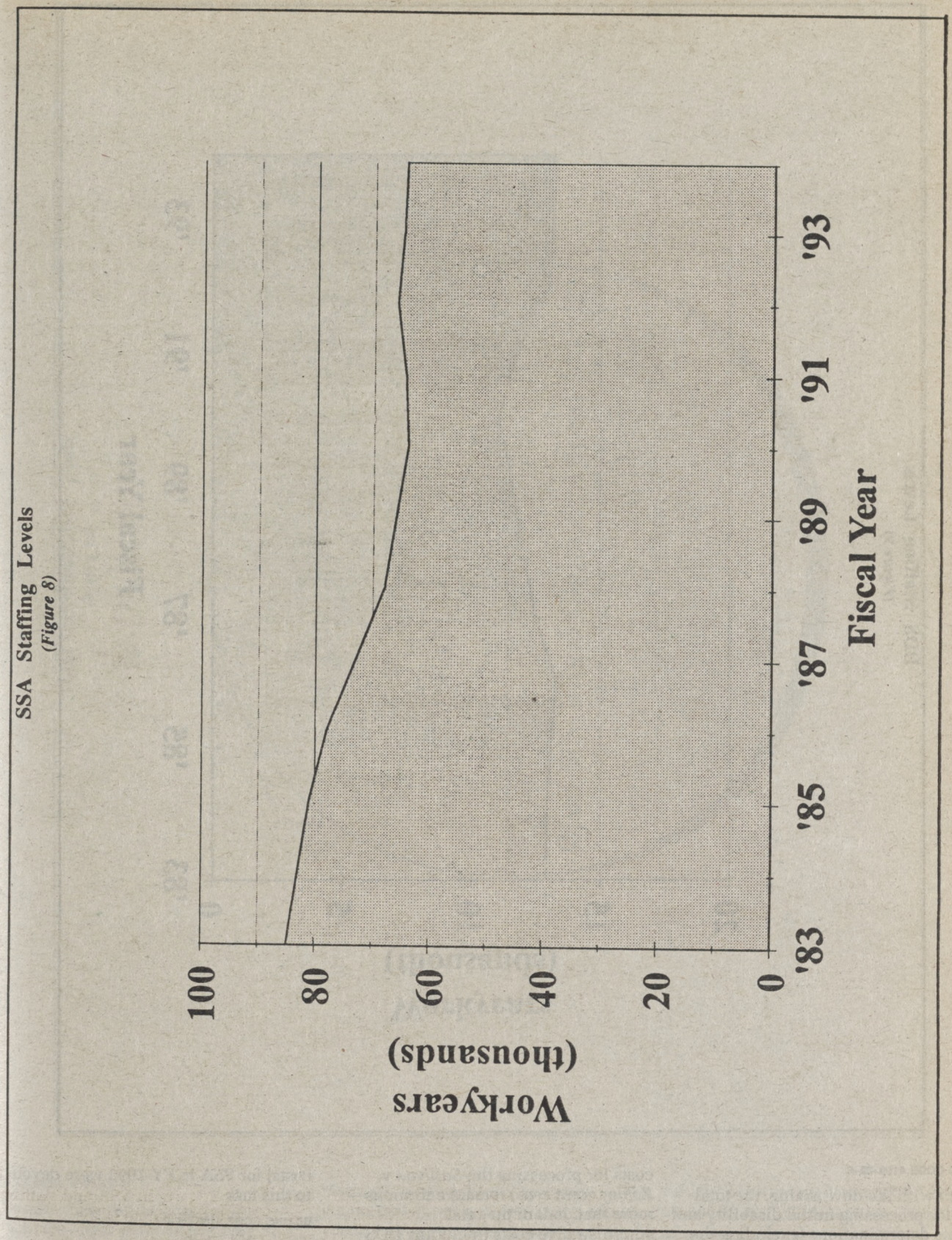
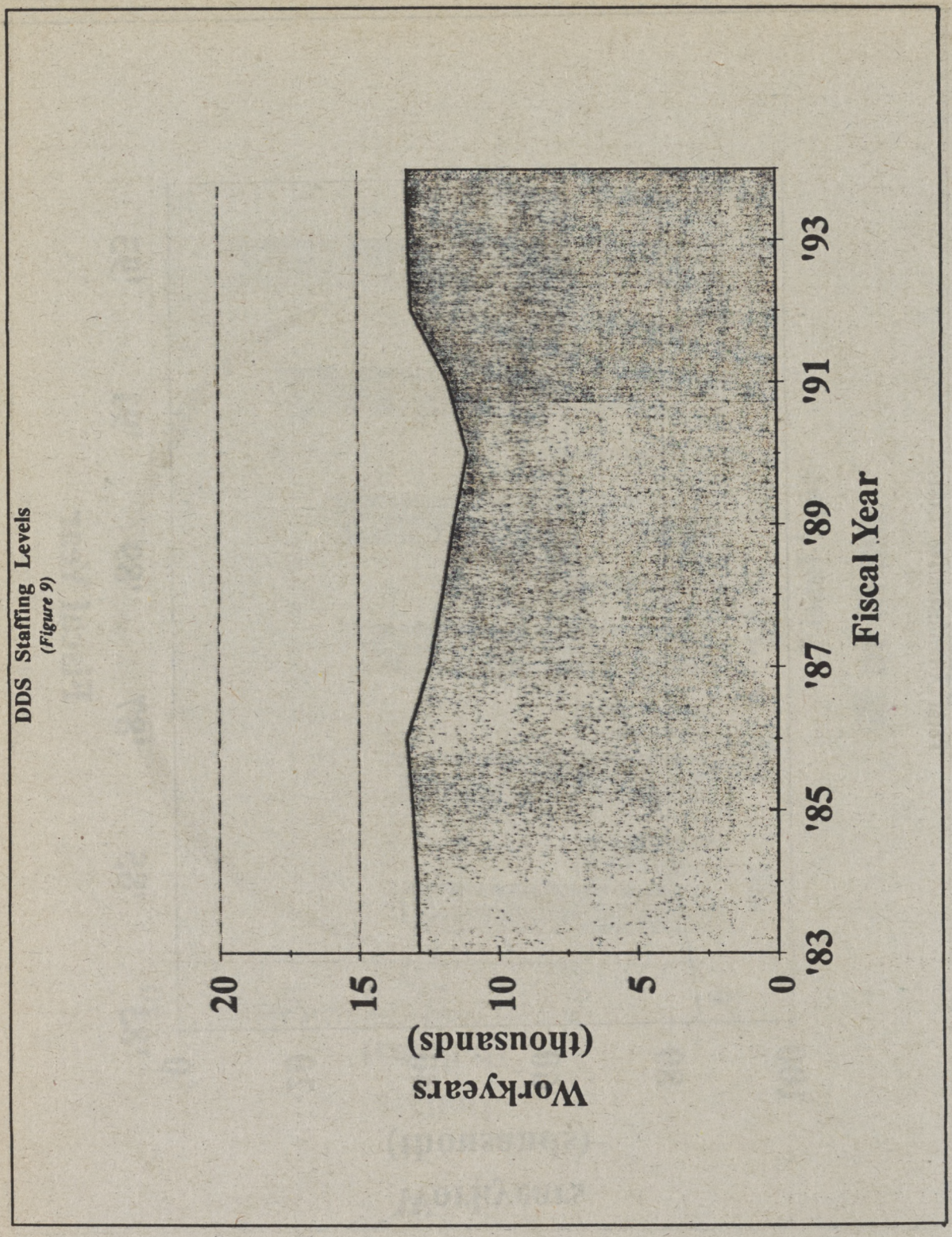

SSA Staffing Levels
(Figure 8)
Workyears
(thousands)
100
80
60
40
20
0
'83
'85
'87
'89
'91
'93
Fiscal Year



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Even with the downsizing, the total costs for processing initial disability and appeals determinations (excluding the costs for processing the *Sullivan* v. *Zebley* court case) remain enormous—more than half of the total administrative costs (including DDS costs) for SSA in FY 1993 were devoted to this task.

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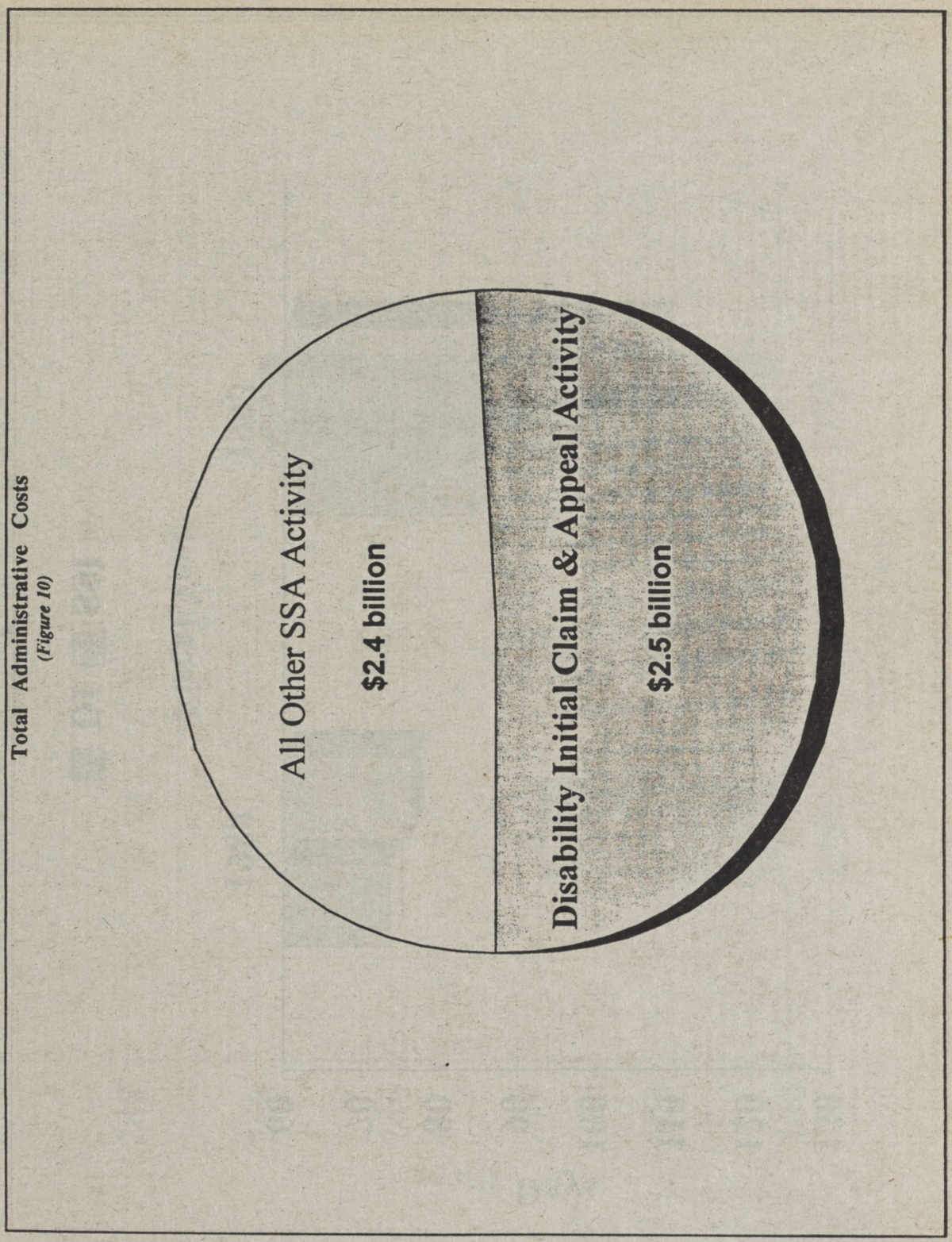

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Despite these funds, and despite directing a larger percentage of the SSA resources toward disability initial claims and appeals processing in recent years, average processing times for initial claims, as well as appeals, have escalated dramatically since 1988.

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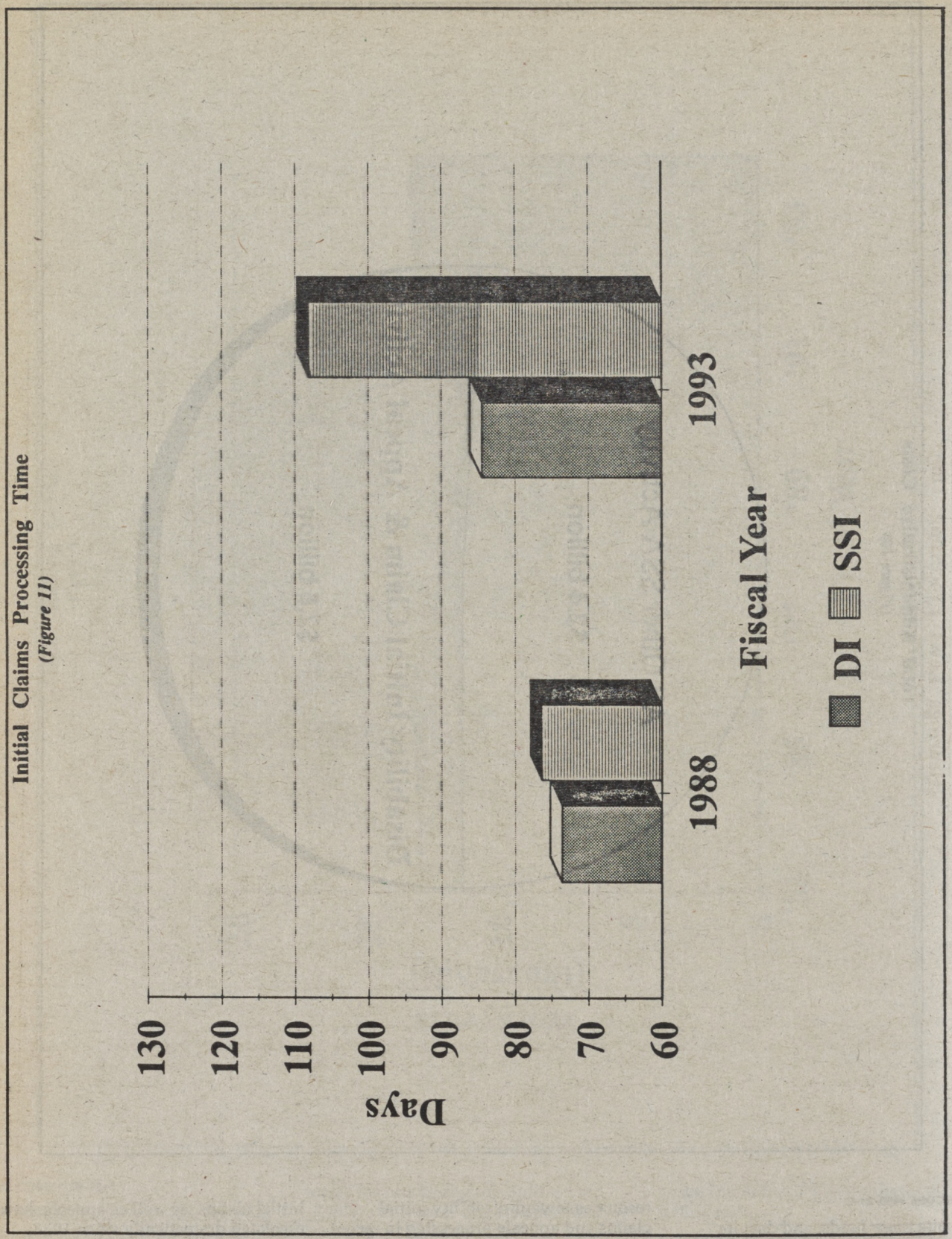
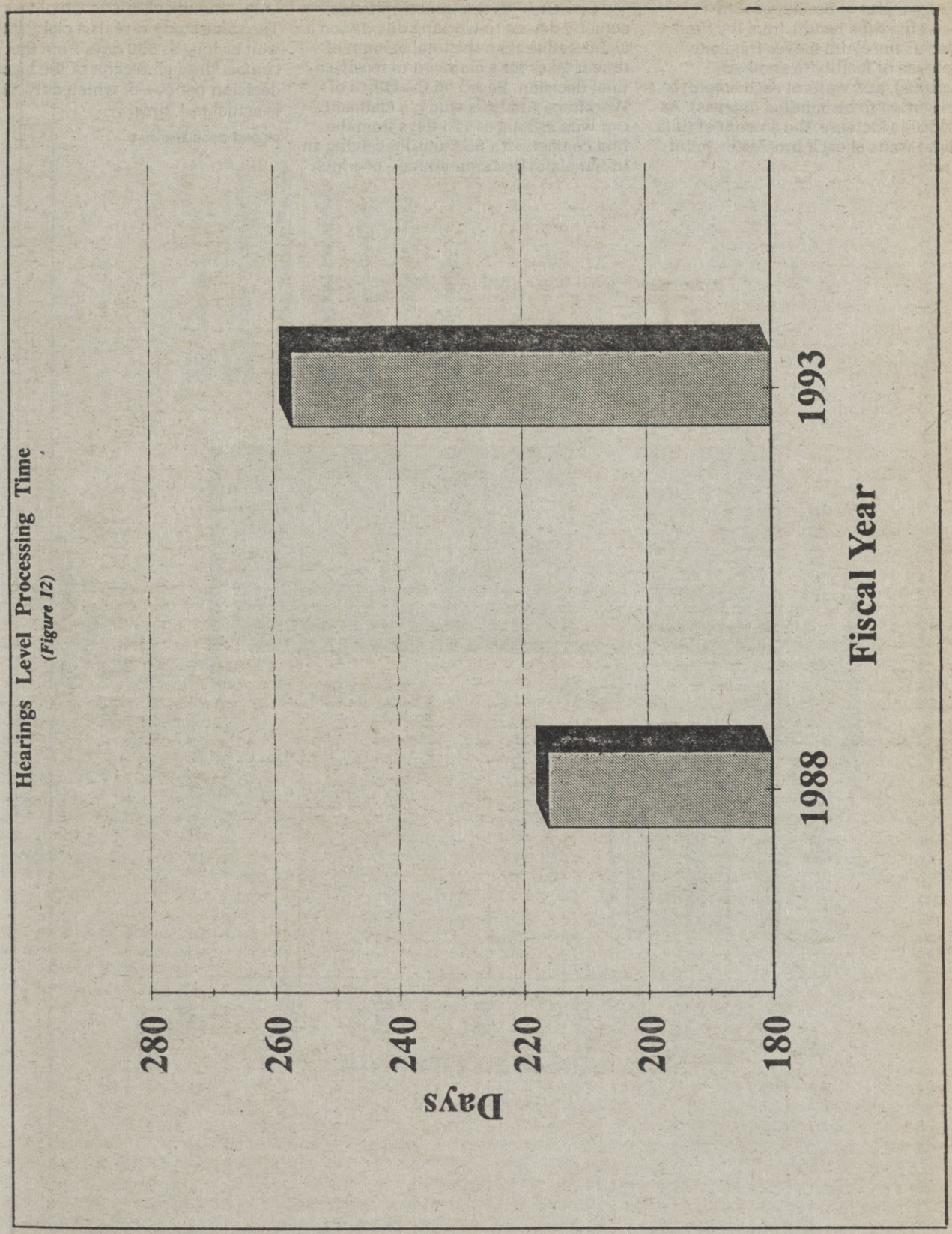

Initial Claims Processing Time
(Figure 11)
Days
130
120
110
100
90
80
70
60
1988
1993
Fiscal Year
DI
SSI



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At least part of the increase in processing time results from the time added as the claim moves from one employee or facility to another (handoffs), and waits at each employee's workstation to be handled (queues). As workloads increase, the amount of time a claim waits at each processing point grows.

"Task time" is the time employees actually devote to working directly on a claim, rather than the total amount of time it takes for a claimant to receive a final decision. Based on the Office of Workforce Analysis study, a claimant can wait as long as 155 days from the first contact with SSA until receiving an initial claim decision notice—of which only 13 hours of this is actual task time. The same study reveals a claimant can wait as long as 550 days from that initial contact through receipt of the hearing decision notice—of which only 32 hours is actual task time.

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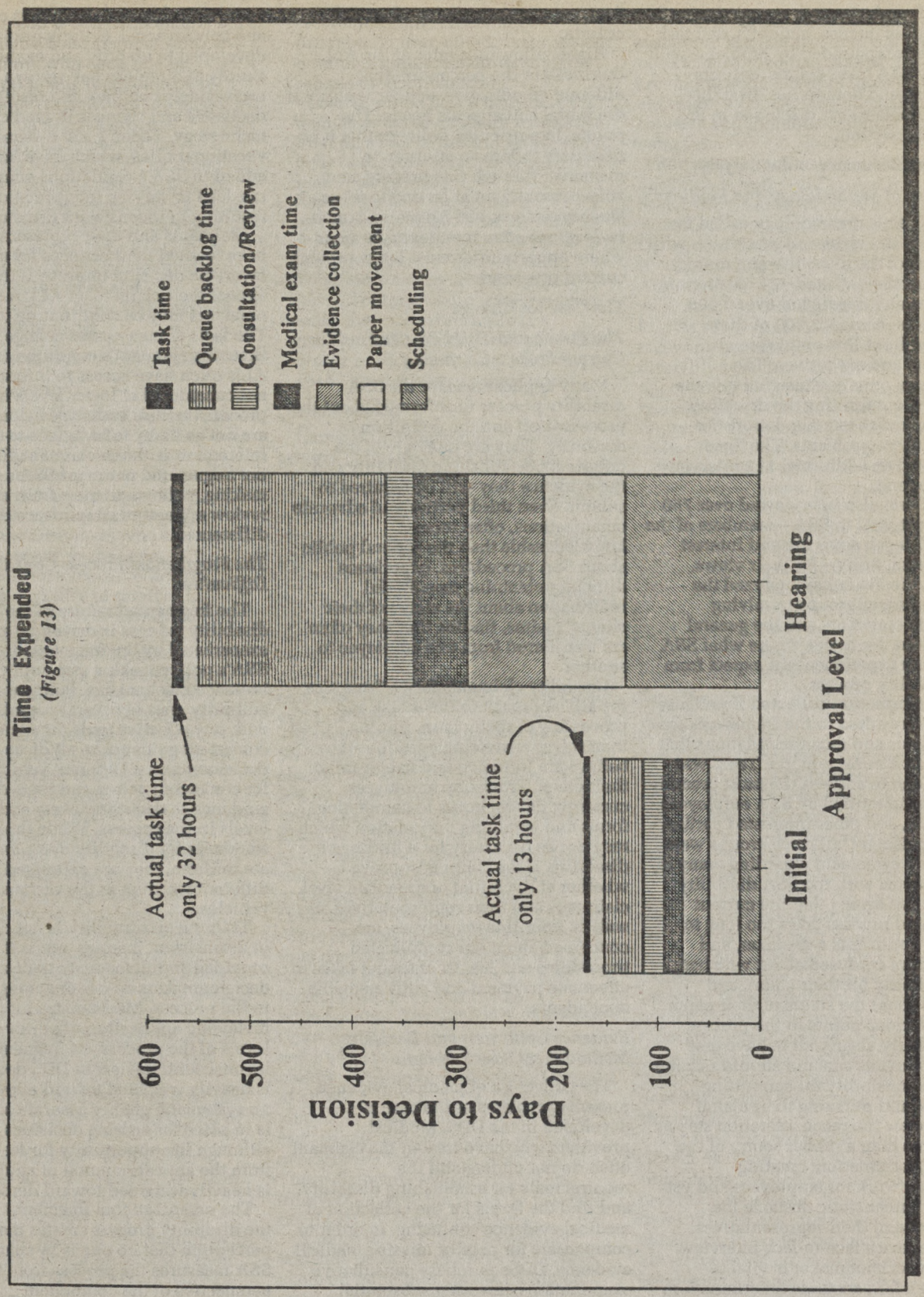

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The Team's research revealed that the problems of queues, handoffs, and task time are compounded by problems with the way SSA takes claims, collects evidence, and determines disability. These problems are discussed in the following section.

Research Summary and Analysis

Overview of Methodology and Findings

The Team's methodology called for extensive site visits and interviews with members of the disability community. Team members visited 421 locations in 33 States and conducted over 3,600 interviews. Almost 2,900 of these involved front-line employees, managers and executives. The interviews provided insights into the problems confronting the disability program and recommendations for solving these problems. The Team conducted an additional 111 interviews by telephone.

The Team also interviewed over 750 parties external to SSA—members of the medical, legal, advocate and interest group community—for their views. Finally, the Team has analyzed the results of focus groups involving disability claimants and the general public in order to determine what SSA customers experience and expect from the disability process.

The information collected from these activities resulted in the framework for the analysis and recommendations that follow. At a minimum, the Team was determined to address the most pressing problems identified by SSA employees, claimants, and other interested parties. Not surprisingly, all three groups were in general agreement regarding many of the problems with the SSA disability process. All agreed that the current fragmented process takes too long to provide applicants a decision, and leaves them confused about who has responsibility for their claim, and puzzled about the status of their claim during various points in the process. Additionally, nearly all believe that many claimants can and should assume more responsibility for submitting evidence and pursuing their claim.

Most view the reconsideration step as little more than a rubber stamp of the initial determination, creating additional work for employees and yet another bureaucratic obstacle for claimants and their representatives. Some believe a face-to-face interview with the decisionmaker is vital to reaching a fair, accurate determination; others believe just as strongly that the decision should be reached on the basis of a paper review, and that a face-to-face interview can lead to subjective decisions that are not based on objective criteria.

Higher allowance rates at the ALJ level lead to the perception that different adjudicative standards apply at the initial and appeals levels. The public, in particular, believes that it is necessary to hire an attorney to maneuver through this process, and voices resentment at having to do so. Quality reviews and Appeals Council reviews are often mentioned as areas where opportunities exist for improving current processes.

The Case for Change

The Public and Third Parties Find the Current Process Confusing

Many applicants enter the SSA disability process uninformed about the process itself and the definition of disability. They are unaware of the criteria for establishing disability and the evidence they will be required to submit. Even third parties and advocate organizations, often more knowledgeable than the general public about SSA procedures, experience difficulty obtaining meaningful information about the status of their clients' claims, finding that they often are transferred from one employee to another.

Disability claimants face a "one size fits all" approach to the intake and processing of their claim, finding themselves answering questions they believe are intrusive and irrelevant to their claim. Front-line employees currently devote hours to completing forms and obtaining information which may not be necessary for a finding of disability. If the claim is approved, whether at the initial or appellate level, claimants and their representatives, as well as front-line employees, are concerned about the complicated procedures and length of time it takes to effectuate payment and entitle eligible dependents.

Evidence Collection and Decision Methodology Pose Problems

The collection of medical evidence presents problems as the case is developed in the DDS. Medical providers who have treated the claimant often do not understand the requirements for establishing disability, and find the forms for the collection of medical evidence confusing. In order to compensate for poor or missing medical evidence, DDSs purchase consultative examinations, devoting substantial resources to scheduling, purchasing, and processing these examinations.

Once the medical evidence has been collected, the methodology used to reach a decision on the case is complex and controversial. Criteria originally developed to identify and evaluate cases simply and rapidly have grown increasingly complex as a result of court decisions and changes in medical technology. Today's 330 different vocational rules, which have been added to SSA's regulations since 1980, can lead to varying interpretations resulting in inconsistent decisions.

Claimants and their representatives have learned their chances for a favorable decision improve if they appeal their claim to an ALJ. A variety of factors may be contributing to this. The facts of many cases change over time as a claimant's condition changes. ALJs often have access to information not considered at lower levels in the process because earlier decisionmakers are not as likely to have face-to-face interaction with the claimant. Finally, the fragmented nature of SSA's policy making, policy issuance, training and review apparatus all reinforce the differences.

The Fragmented Process Contributes to Difficulties

The fragmented nature of the disability process is driven by and exacerbated by the fragmentation in SSA's policy making and policy issuance mechanisms. Policy making authority rests in several organizations with few effective tools for ensuring consistent guidance to all disability decisionmakers. Different vehicles exist for conveying policy and procedural guidance to decisionmakers at different levels in the process. While the standards for disability decisionmaking are uniform, they are expressed in different wording in the various policy vehicles.

Training on disability is not delivered in a consistent manner, nor is it provided simultaneously to disability decisionmakers across or among levels in the process. Mechanisms for reviewing application of policy among levels of the process are fragmented and inconsistent. Review of DDS decisions is heavily weighted toward allowances; no systematic quality assurance program is in place for hearing decisions although the opportunity for feedback from the appeals council or court cases is heavily weighted toward denials.

The organizational fragmentation of the disability process creates the perception that no one is in charge of it. SSA measures the process from the perspective of the component organizations involved, rather than the perspective of the claimant. Multiple organizations (field offices, DDSs, hearings offices, Appeals Council

operations, and processing centers) have jurisdiction over the claim at various points in time, with each line of authority managing toward its own goals without responsibility to the overall outcome of the process. Additionally, the impact of one component's work product on other components is not measured, further contributing to the fragmentation of the process. Each component's narrow responsibilities reinforce a lack of understanding among component employees of the roles and responsibilities of other employees in different components.

Customer Research and Demographics

Customer Research

The National Performance Review report, released in the fall of 1993, calls upon agencies to establish customer service standards *equal to the best in the business* to guide their operations. Federal agencies are encouraged to identify "the customers who are, or should be served by the agency," and survey these customers "to determine the kind and quality of services they want and their level of satisfaction with existing services."

SSA customers include the individuals who file for social security or supplemental security income disability benefits, or who are potential filers for these benefits. They were surveyed through a series of 12 focus groups conducted throughout the country last fall. Participants represented a demographically diverse cross-section of current claimants, including those who had been initially denied, and who filed for a reconsideration or hearing; new beneficiaries; and the general public. Two focus groups were conducted with non-English speaking participants.

Focus group participants were quick to offer their frank opinions; the general view was that they:

—Wait too long for a decision—this is the most common complaint; the claim process is a struggle characterized by stress, fear, and the anger associated with running out of funds;

—Do not understand the program or process—what happens to the claim after initial contact with SSA is unclear, they view SSA multiple requests for medical information with skepticism, do not understand their decision and believe it was reached arbitrarily;

—Want more information and personal contact—while they would prefer to deal with one person for all claim business, their major preference is to receive accurate, consistent information from all SSA sources and to be provided substantive status reports on their claim;

—View the initial and reconsideration denials as bureaucratic precursors to final approval at the ALJ level—they believe the process is designed "to make you go away";

—Resent the need for attorney assistance to obtain benefits—the process should not be so complicated that an attorney is needed; and

—Want more active involvement in pursuit of their claim—they want to make their case directly to the decisionmaker, and would personally obtain needed additional evidence to speed the decision on their claim.

Demographics

Changes in demographics of the general population and in SSA's claimant population present challenges as well as opportunities for SSA as it focuses on claimant needs and reengineers its disability determination process.

American society has changed dramatically since the DI program began in the 1950s. This is reflected in an increased demand for SSA's services, changes in the characteristics of claimants seeking benefits, and complexities in claim related workloads and processes.

The demographic character of the SSA disability claimant population has changed as well. The enactment of the SSI program in the 1970's added individuals who have sketchy work histories, increased the number of individuals filing based on disabilities such as mental impairments, and provided for eligibility of disabled children. Additionally, the requirements of the SSI program added complex and time consuming development of non-disability eligibility factors such as income, resources and living arrangements. The 1990 U.S. Supreme Court decision, *Sullivan* v. *Zebley*, resulted in increased claims for children; children comprised 21 percent of all SSI claims in 1992, up from 11 percent in 1988. Claims for homeless individuals and others with special needs have increased in recent years. These claimants require significant intervention and assistance to navigate the disability claims process.

A trend in the general population which is reflected in SSA's disability claimant population is the increased number of people in the United States for whom English is not the native language. Recent national Census data indicate that 1 in 7 people speak a language other than English in the home; this is an increase of almost 38 percent in the last 10 years. SSA will need to accommodate the special communication needs of these claimants in its ongoing claimant contacts and in public information vehicles.

Forty percent of claimants filing for disability benefits and polled in a recent SSA survey had filed for or received benefits from Aid to Families with Dependent Children, welfare or social services within the past year. Approximately three-fourths of them were awarded this assistance and three-fourths of those awardees were still receiving benefits when they applied for disability benefits. SSA has the opportunity to develop productive relationships with these entities to improve the processing of disability claims for mutual customers.

Technological advances such as personal computers, facsimile machines, electronic mail, and videoconferencing are increasingly available to our claimants, their representatives, medical providers and other third parties involved in the disability process. SSA can take advantage of these capabilities to offer expanded service options and to modernize evidence collection.

New Process

Overview

A claimant for disability benefits under the proposed process will be provided a full explanation of SSA's programs and processes at the initial contact with SSA. The claimant and third parties will be able to assist in the development of the claim, deal with a single contact point in the Agency, and request a personal interview with the decisionmaker at each level of the process. Additionally, if the claimant requests a hearing, the issues and evidence to be addressed at the hearing will be focused, the responsibilities of representatives clarified and, if the claim is approved, the effectuation of payment to the claimant, eligible dependents and the representative streamlined.

The new process will result in a correct decision at the initial level by simplifying the decision methodology, providing consistent direction and training to all decisionmakers, enhancing the collection and development of medical evidence, and employing a single quality review process across all levels.

A single claim manager will handle most aspects of the initial level claim, thus eliminating many steps caused by numerous employees handling discrete

parts of the claim (handoffs) and the time lost as the claim waits at each employee's workstation to be handled (queues). This will reduce the time needed to rework files and redevelop information from the same medical sources. Levels of appeal will be combined and improved, reducing the need to redevelop nonmedical eligibility factors after a favorable decision because less time will have elapsed since initial filing.

The proposed process will enable the current work force to handle an increased number of claims, freeing the most highly skilled staff (physicians and ALJs) to work on those cases and tasks that make the best use of their talents, and targeting expenditures for medical evidence to those areas most useful in determining disability.

Employees will perform a wider range of functions, using their skills to their full potential, enabling them to meet the needs of claimants and minimize unnecessary rework. The proposed process will facilitate employees' ability to do the total job by providing technology and the support to use that technology.

The New Process—A Brief Description

Under the proposed process, the number of appeal steps will be reduced and opportunities for personal interaction with decisionmakers will be increased. At the initial claim level, the claimant will be offered a range of options for filing a claim, pursuing evidence collection, and conferring with a decisionmaker, using various modes of technology to interact with SSA. At the hearing level, the claimant will have an additional opportunity to participate in a personal conference and meet with a decisionmaker.

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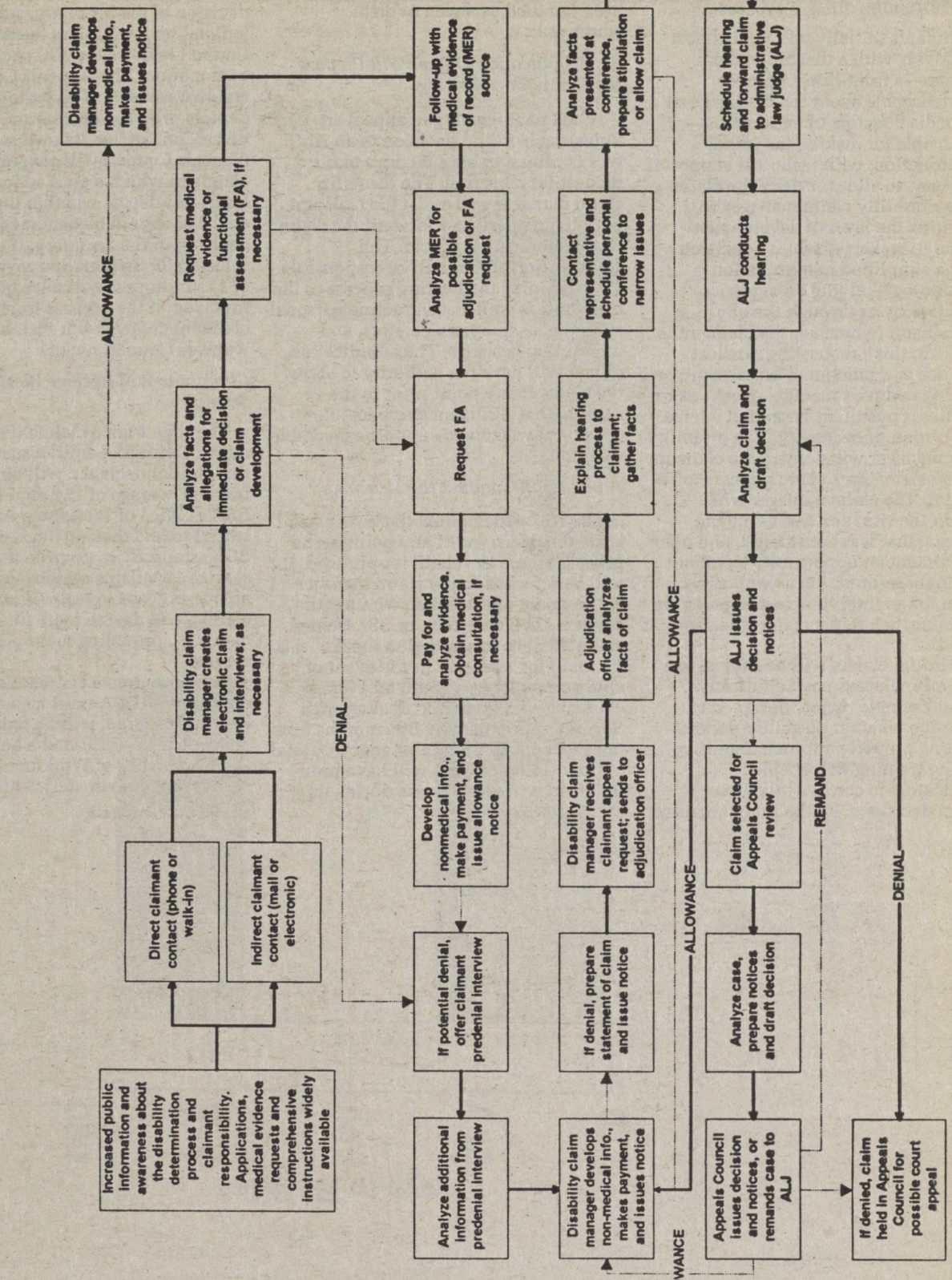
Figure 14

The New Disability Claim Process



A Disability Claim Manager Will Handle Initial Disability Claims Processing

Claimants initially will deal almost exclusively with a disability claim manager—a front-line employee knowledgeable about the medical and nonmedical factors of entitlement—responsible for making the initial determination, with technical support if necessary, to allow or deny the claim.

The disability claim manager will determine the level of development needed to make a disability decision using a simplified determination methodology; relying on evidence submitted by or through the efforts of the claimant (whenever the claimant is able to do this); requesting medical evidence or a functional assessment; or referring complex medical questions to a medical consultant for expert advice and opinion, if necessary. The disability claim manager will contact the claimant if the decision on a claim appears to be a denial. The claim manager will explain the situation including the evidence that was considered, and offer the claimant an opportunity to submit additional information as well as an option for an interview in-person or via telephone, before the claim is formally denied.

All initial claims will be subject to a randomly selected postadjudicative national sample review designed to determine whether disability policies are being properly applied. Extensive ongoing training will enable adjudicators to consistently issue correct decisions. By the time the initial decision is issued, the claim will have been handled by seven or eight employees.

An Adjudication Officer Will Prepare the Claim for a Hearing

A claimant wishing to appeal an unfavorable initial decision to an ALJ will continue to have 60 days to file a request for a hearing. The disability claim manager will assist the claimant with the request, and forward the claim to an adjudication officer. The adjudication officer will be responsible for explaining the hearing process to the claimant, as well as conducting personal conferences, preparing claims, and scheduling hearings. The adjudication officer will have the authority to allow the claim at any point prior to the hearing that sufficient evidence becomes available to support a favorable decision.

An ALJ Will Conduct the Hearing

The ALJ will conduct the hearing and issue the decision. At any point in the process where the claim is approved, it will be returned to the claim manager for payment effectuation, whether the claim is DI, concurrent, or SSI. Denied claims will be forwarded to the Appeals Council, for retention in the event of civil action. At this point, an average claimant will have been dealing with SSA for approximately five months from the first contact with the Agency. A total of up to 14 employees will have been involved with the process during this entire period.

An ALJ decision will be the final decision of the Secretary, subject to judicial review, unless the Appeals Council reviews the ALJ decision on its own motion. The Appeals Council will conduct reviews of ALJ allowances and denials prior to effectuation, at its discretion, and on its own motion. The Appeals Council will also review all claims in which a civil action has been filed, and decide whether the ALJ decision should be defended as the final decision of the Secretary. If a claim is selected for own motion review, a total of 17 employees will have been involved in the process from first claimant contact with SSA through Appeals Council review.

Claimants Will Receive World-Class Service

The time from a claimant's first contact with SSA until issuance of a final initial decision, will be reduced from an average of 155 days (as cited in SSA's Office of Workforce Analysis study) to less than 40 days, enhancing SSA's capacity to provide world-class service. Available employees will be able to process a greater number of claims, and devote more time to each claimant, providing more personalized service.

The time from a claimant's first contact with SSA until issuance of a hearing decision, will be reduced from an average of a year and a half (as cited in SSA's Office of Workforce Analysis study) to approximately 5 months.

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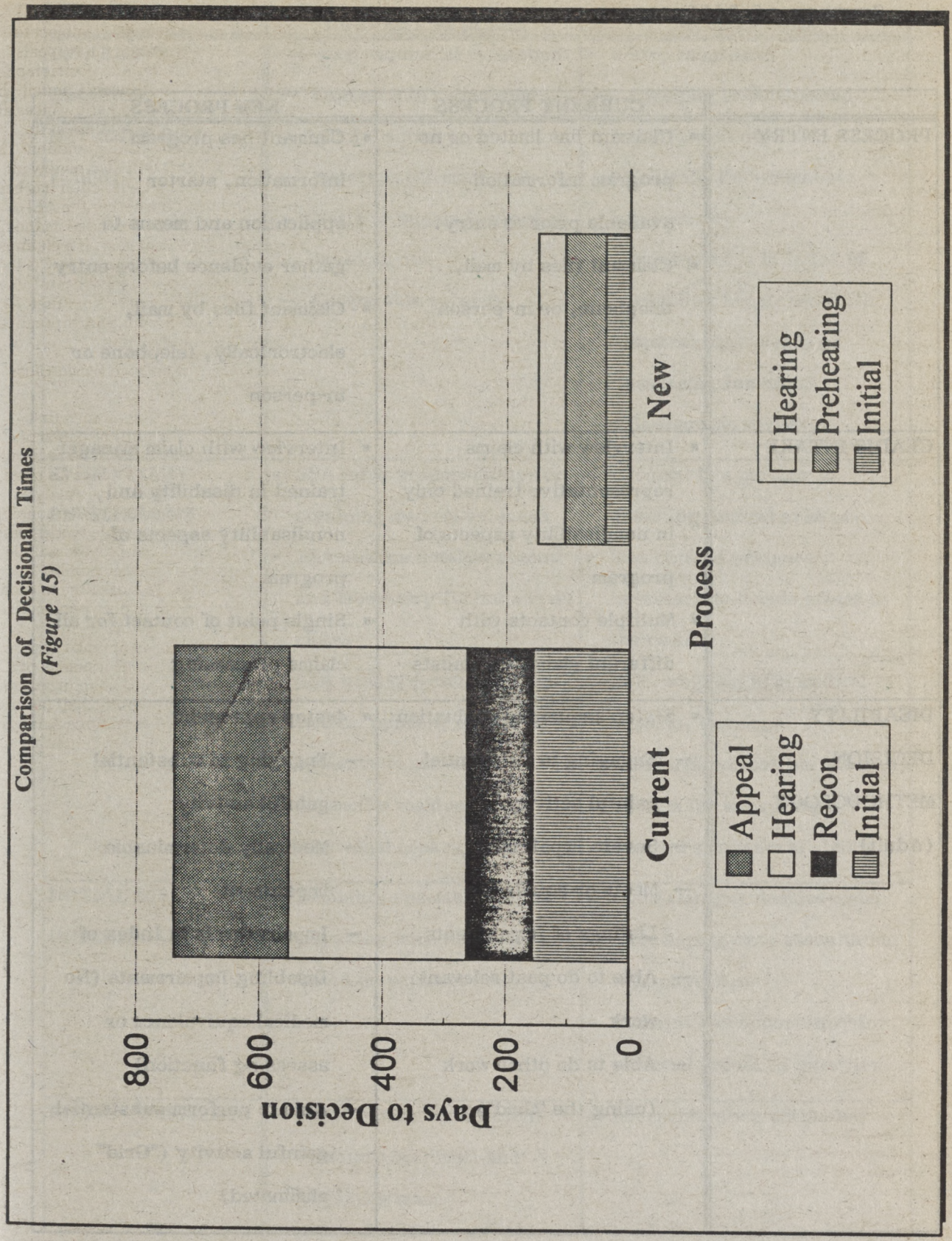
Comparison of Decisional Times
(Figure 15)
Days to Decision
800
600
400
200
0
Current
New
Process
Appeal
Hearing
Recon
Initial
Hearing
Prehearing
Initial

Summary of Differences

	CURRENT PROCESS	NEW PROCESS
PROCESS ENTRY	▪ Claimant has limited or no program information available prior to entry. ▪ Claimant files by mail, telephone, or in-person	▪ Claimant has program information, starter application and means to gather evidence before entry ▪ Claimant files by mail, electronically, telephone or in-person
CLAIMS INTAKE	▪ Interview with claims representative trained only in nondisability aspects of program ▪ Multiple contacts with different claims specialists	▪ Interview with claim manager trained in disability and nondisability aspects of program ▪ Single point of contact for all claims processing
DISABILITY DECISION METHODOLOGY (Adult)	▪ 5-step sequential evaluation: — Engaging in substantial gainful activity — Severe impairment — Meets or equals the Listings of Impairments — Able to do past relevant work — Able to do other work (using the "Grid")	▪ 4-step approach: — Engaging in substantial gainful activity — Medically determinable impairment — Impairment is in Index of Disabling Impairments (No medical equivalence or assessing function) — Able to perform substantial gainful activity ("Grid" eliminated)

	CURRENT PROCESS	NEW PROCESS
DISABILITY DECISION METHODOLOGY (Child)	▪ 4-step sequential evaluation: — Engaging in substantial gainful activity — Severe impairment — Meets or equals Listings of Impairments — Comparable severity	▪ 4-step approach: — Engaging in substantial gainful activity — Medically determinable impairment — Impairment is in Index of Disabling Impairments (No medical equivalence or assessing function) — Comparable severity
EVIDENTIARY DEVELOPMENT	▪ SSA takes responsibility for obtaining medical evidence ▪ SSA obtains detailed clinical and laboratory findings in all claims ▪ SSA uses objective findings, medical opinion, and other evidence to assess a claimant's residual functional capacity	▪ Claimant is a partner in obtaining medical evidence ▪ SSA obtains evidence necessary to decide issues in the claim ▪ SSA, working with medical experts, develops standardized instruments and criteria for measuring a claimant's functional ability
INITIAL DISABILITY DETERMINATION	▪ Disability specialist and physician team decide claim based on paper review	▪ Claim manager decides claim after appropriate consultation with physician ▪ Claimant has opportunity for personal predenial interview
RECONSIDERATION	▪ Paper review by different disability specialist and physician team	▪ Reconsideration eliminated

	CURRENT PROCESS	NEW PROCESS
ADMINISTRATIVE LAW JUDGE HEARING	▪ Hearing request must be filed within 60 days of reconsideration ▪ ALJ is responsible for overseeing all prehearing development ▪ Prehearing conference is held in limited circumstances	▪ Hearing request must be filed within 60 days of initial determination. ▪ Adjudication officer oversees prehearing development ▪ Personal conference is mandatory if claimant is represented
APPEALS COUNCIL REVIEW	▪ Claimant requests Appeals Council review and the Appeals Council may consider new evidence ▪ Appeals Council action is a prerequisite for judicial review	▪ Appeals Council reviews claim only on its own motion; review is limited to the record before the ALJ ▪ Appeals Council action is not a prerequisite for judicial review
QUALITY ASSURANCE	▪ Quality measurements focus primarily on end-of-line disability decision accuracy; quality is not consistently measured at all levels of administrative review	▪ Quality assurance will address customer satisfaction, employee education/performance, and error prevention; end-of-line reviews will measure quality of the entire adjudicative process

	CURRENT PROCESS	NEW PROCESS
PROCESS INTEGRITY	▪ Adjudicative standards and policies are available through a variety of instructional vehicles ▪ Consistent training is not provided to disability decisionmakers	▪ A single policy book will be used by all adjudicators at all levels of administrative review ▪ Ongoing training will be provided to all disability decisionmakers and support personnel

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Detailed Description of New Process

Process Entry and Intake

SSA Will Customize Its Disability Claims Entry and Intake Processes to Maximize Access, Efficiency, Accuracy, and Personal Service

The disability claims entry and intake processes will reflect the SSA commitment to providing world-class service to the public. The hallmarks of the process will be accessible, personal service that ensures timely and accurate decisions. SSA will work to make potential claimants better informed about the disability process and fully prepare them to participate in it. SSA will also be flexible in providing modes of access to the claims process that best meet the needs of claimants and the third parties who act on their behalf. SSA will provide claimants with a single point of contact for all claims-related business. Finally, SSA will ensure that the disability decisionmaking process promotes timely and accurate decisions.

SSA Will Make Information About Its Disability Programs Available to Potential Claimants Prior to Entry Into the Process

SSA will make available to the general public comprehensive information packets about the Disability Insurance (DI) and Supplemental Security Income (SSI) disability programs. The packets will include information about the purpose of the disability programs; the definition of disability; the basic requirements of the programs; a description of the adjudication process; the types of evidence needed to establish disability; and the claimant's role in pursuing a claim.

SSA will make disability information packets commonly available in the community, both at facilities frequented by the general public (libraries, neighborhood resource centers, post offices, the Department of Veterans Affairs offices, and other Federal government installations) and at facilities frequented by potential claimants (hospitals, clinics, other health care providers, schools, employer personnel offices, State public assistance offices, insurance companies, and advocacy groups or third party organizations that assist individuals in pursuing disability claims). SSA studies have shown that claimants frequently rely on advice from their physicians and from State public assistance personnel in deciding whether to file a claim for disability benefits. Therefore, SSA will make a special effort to target its public information activities at these and other known sources of referrals for claims. SSA will also make the disability information packets available electronically.

In addition to comprehensive program information, the packets will describe the types of information that a claimant will need to have readily available when the individual files a claim. It will also contain two basic forms: the first, designed for completion by the claimant, will include general identifying information and will serve as the claimant's starter application for benefits; the second, designed for completion by the treating source(s), will request specific medical information about a claimant's alleged impairments. SSA will encourage claimants to review the information in the packet and have the basic forms completed prior to telephoning or visiting an SSA office to apply for disability benefits. Claimants filing will be encouraged to immediately submit starter applications to protect the filing dates for benefits. The starter application will serve as a claim for both programs, but it will include a disclaimer should the claimant want to preclude filing for benefits based on need (i.e., SSI).

SSA Will Permit Claimants to Choose the Mode of Entry Into the Process That Best Meets Their Individual Needs

The disability claims entry process will be multi-faceted, allowing claimants the maximum flexibility in deciding how they will participate in the process. Claimants may choose to enter the disability claims process by telephoning the SSA toll-free number, electronically, by mail, or by telephoning or visiting a local office. Claimants may also rely on third parties to provide them assistance in dealing with SSA. Finally, claimants may formally appoint representatives to act on their behalf in dealing with SSA. SSA field managers will also have the flexibility to tailor the various service options to their local conditions, considering the needs of client populations, individual claimants, and the availability of third parties who are capable of contributing to the application process.

If an individual submits a starter application by mail or electronically, SSA will contact the claimant to schedule an appointment for a claims

intake interview or, at the claimant's option, conduct an immediate intake interview by telephone.

If an individual telephones SSA to inquire about disability benefits, the SSA contact will explain the requirements of the disability program, including the SSA definition of disability, and provide a general explanation of evidence requirements. The SSA contact will determine whether the individual has the disability information packet, and mail it or advise the claimant regarding possible means of electronic access. If an individual indicates a desire to file a claim at that time, the SSA contact will complete the starter application available on-line as part of the automated claims processing system to protect the claimant's filing date and schedule an appointment for a claims intake interview. The interview may be in person or by telephone at the claimant's option. If the individual has no medical treating sources, the SSA contact will annotate this information within the on-line claim record.

If a claimant visits an SSA office, the SSA contact will refer the claimant for an immediate claims intake interview or, at the claimant's option, complete the starter application and schedule a future appointment for an intake interview.

In all cases, appointments for claims intake interviews will be made available within a reasonable time period, generally 3 to 5 working days, but no later than two weeks.

Local management will determine how to best accommodate claimants' needs in learning about the disability process and completing a claims intake interview. Depending on an individual's circumstances, such accommodation may involve: referral to the nearest location for obtaining an information packet which can then be mailed in; an immediate telephone or in-person interview; arranging for an on-site visit from an SSA representative; or referral to appropriate third parties who can provide assistance. Additionally, depending on the nature of the individual's disability, SSA may encourage the individual to file in person when it appears that a face-to-face interview will assist in the proper claims intake and development. Face-to-face interviews, when considered necessary by either the claimant or SSA, can also be accomplished via videoconferencing. In any case, SSA will make every reasonable effort to meet the needs of the claimant in completing the application process.

Similarly, local managers will modify the claims entry and intake process to provide maximum flexibility for representatives who act on behalf of claimants or third parties who can assist claimants in completing the application process. Such accommodations may include, but are not limited to: (1) Using automated means to interact with SSA to protect a claimant's date of filing (e.g., telephone, fax, or E-mail); (2) providing appointment slots for third parties to accompany claimants to interviews or to provide assistance during telephone claims on a claimant's behalf; (3) out-stationing SSA personnel at a third-party location to obtain applications and/or medical evidence, when appropriate; and (4) providing open appointment" scheduling to permit claimants to contact SSA within a flexible band of time. Interested third parties will be encouraged to participate in the development of claims by becoming certified by SSA to do so.

Local managers will also conduct outreach efforts that are designed to meet the needs of hard-to-reach populations or assist those individuals unable to access the SSA claims process without considerable intervention. As appropriate, outreach efforts may be facilitated through videoconferencing, teleconferencing or other electronic methods of obtaining and processing claims information to provide timely service despite claimants' geographic or social isolation.

A Disability Claim Manager Will Be Responsible for a Disability Claim From Intake Through Payment

A disability claim manager will have responsibility for the complete processing of an initial disability claim. The disability claim manager will be a highly-trained individual who is well-versed in both the disability and nondisability aspects of the program and has the necessary knowledge, skills, and abilities to conduct personal interviews, develop evidentiary records, and adjudicate disability claims to payment. However, the disability claim manager will also be able to call on other SSA resources such as medical and technical support personnel to provide advice and assistance in the claims process.

The disability claim manager will rely on an automated claims processing system that will permit the disability claim manager to: gather and store claims information; develop both disability and nondisability evidence; share necessary facts in a claim with SSA medical consultants and specialists in nondisability technical issues; analyze evidence and prepare well-rationalized decisions on both disability and nondisability issues; and produce clear and understandable notices that accurately convey all necessary information to claimants.

The disability claim manager will be the focal point for claimant contacts throughout the claim intake and adjudication process. The disability claim manager will explain the disability program to the claimant, including the definition of disability and how SSA determines if a claimant meets the disability requirements. The disability claim manager will also convey what the claimant will be asked to do throughout the process; what the claimant may expect from SSA during this process, including anticipated timeframes for decision; and how the claimant can interact with the disability claim manager to obtain more information or assistance. The disability claim manager will advise the claimant regarding the right to representation and provide the appropriate referral sources for representation. The disability claim manager will also advise the claimant regarding community resources, including the names of organizations that could help the claimant pursue the claim. The goal will be to give claimants access to the decisionmaker and allow for ongoing, meaningful dialogue between the claimant and the disability claim manager.

Claims Intake and Development Will Be Directed at Reaching a Decision in the Most Timely and Accurate Manner

The disability claim manager will conduct a thorough screening of the claimant's disability and nondisability eligibility factors. If the claimant appears ineligible for either disability program based on the claimant's allegations and evidence presented during the claim intake interview, the disability claim manager will explain this to the claimant. If the claimant decides not to file a claim, the disability claim manager will give the claimant an informal denial notice.

If the claimant decides to file, the disability claim manager will complete appropriate application screens from the automated claims processing and decision support system. Impairment-specific questions will assist the claim manager in obtaining information that is relevant and necessary to a disability decision. Based on the claimant's statements and the evidence that is available at that interview, the disability claim manager will determine the most effective way to process the claim. If the evidence is sufficient to decide the claim, the disability claim manager will take necessary action to issue a decision and, if necessary, effectuate payment. The disability claim manager will

determine what additional evidence is required to adjudicate the claim and will take steps to obtain that evidence. Such steps may include asking the claimant to obtain further medical or nonmedical evidence where feasible, requesting medical evidence directly from treating sources, or ordering further medical evaluations.

The disability claim manager will decide whether to defer nondisability development (e.g., requesting SSI income and resource information, or developing DI dependents' claims) or do it simultaneously with development of the disability aspects of the claim. In making this decision, the disability claim manager will take into account the type of disability alleged, evidence and other information presented by the claimant, and other relevant circumstances, e.g., terminal illness, homelessness or difficulty in recontacting the claimant. Because the disability claim manager maintains ownership of the claim throughout the initial decision-making process, the disability claim manager will be in the best position to choose the most efficient and effective manner of providing claimants with timely and accurate decisions while meeting claimants' individual service needs.

Although the disability claim manager will be responsible for the adjudication of an initial claim, the disability claim manager will call in other staff resources, as necessary. With respect to disability decisionmaking, the disability claim manager will, in appropriate circumstances, refer claims to medical consultants to obtain expert advice and opinion. Similarly, other staff resources will be called upon for technical support in terms of certain claimant contacts and status reports; development of nondisability issues including auxiliary claims or representative payee issues; and payment effectuation. However, the disability claim manager will make final decisions on both the disability and nondisability aspects of the claim.

Claimants Will Be Partners in the Processing of Their Disability Claims

Throughout the disability claims process, SSA will encourage claimants to be full partners in the processing of their claims. To the extent that they are able, claimants and their families and other personal support networks will actively participate in the development of evidence to substantiate their claim for disability benefits. SSA will provide assistance and/or engage third party resources, when necessary and appropriate. SSA will keep claimants informed of the status of their claims, advise claimants regarding what additional evidence may be necessary, and inform claimants what, if anything, they can do to facilitate the process.

At the completion of the claims intake interview, the disability claim manager will issue a receipt to the claimant that will identify what to expect from SSA and the anticipated timeframes. It will also identify what further evidence or information the claimant has agreed to obtain. Finally, it will provide the name and telephone number of the disability claim manager for any questions or comments which the claimant may have.

SSA Will Recognize That Some Third Parties Can Develop Complete Application Packages

Certain third party organizations may be willing to provide a complete disability application package to SSA. Based on local management's assessment of service area needs and the availability of qualified organizations, SSA will certify third party organizations who are capable of providing a complete application package, including appropriate application forms and medical evidence necessary to adjudicate a disability claim. In such claims, SSA will permit the third party to identify potential claimants, screen for disability and nondisability criteria, and contact SSA to protect the filing date. The third party will interview the claimant; complete all applications and related forms; obtain completed treating source statements; and obtain additional medical evaluations, when appropriate. Using procedures agreed on with local management, the third party will submit claims for adjudication by a disability claim manager. The disability claim manager may elect to contact the claimant for the purpose of verifying identity or other claims-related issues, as appropriate. SSA will monitor such third parties to ensure that quality service is provided to claimants and to prevent fraud.

Claimants Will Have the Opportunity for a Personal Interview Before SSA Makes an Initial Disability Denial Decision

When the evidence does not support an allowance, the disability claim manager will provide the claimant an opportunity for a personal interview before issuing the initial denial determination. The interview will be in person, by videoconference, or by telephone, at the claimant's option and as the disability claim manager determines is appropriate under the circumstances. In appropriate circumstances, the predenial interview may follow the initial intake interview. The purpose of the predenial interview will be to advise the claimant of what evidence has been considered and to identify what further evidence, if any, is available that bears on the issues. If such further evidence exists, the disability claim manager will advise the claimant to obtain the evidence or, as appropriate, assist the claimant in obtaining it.

Initial Disability Decisions Will Use a "Statement of the Claim" Approach

The initial disability determination will use a "statement of the claim" approach. The statement of the claim will set forth the issues in the claim, the relevant facts, the evidence considered, including any evidence or information obtained during the predenial interview, and the rationale in support of the determination. The statement of the claim not only reflects the SSA commitment to fully explaining the basis for its action but also recognizes that claimants need clear information about the basis for the determination to make an informed decision regarding further appeal.

Much of the information that will provide the basis for the statement of the claim will be available on-line as part of the automated claims processing and decision support system. Adjudicators will create the statement of the claim and whatever supplementary information is necessary for a legally sufficient notice to the claimant based on the information in the decision support system. For allowance decisions, the statement of the claim will be more abbreviated than for denial decisions; however, it will contain sufficient information to facilitate quality assurance reviews and/or continuing disability reviews. The statement of the claim will be part of the on-line claim record and will be available to other adjudicators as the basis and rationale for the Agency action, if the claimant seeks further administrative review.

Disability Decision Methodology

The Methodology for Deciding Disability Claims Will Promote Consistent, Equitable, and Timely Disability Decisions

SSA must have a structured approach to disability decisionmaking that takes into consideration the large number of claims (2.7 million initial disability decisions in FY 1994) and still provides a basis for consistent, equitable decisionmaking by adjudicators at each level. The approach must be simple to

administer, facilitate consistent application of the rules at each level, and provide accurate results. It must also be perceived by the public as straightforward, understandable and fair. Finally, the approach must facilitate the issuance of timely decisions.

The cornerstone of any approach is, of course, the statutory definition of disability. Under the statute, disability (for adults) means the: "* * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months * * * An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy * * *" (section 223(d) of the Social Security Act)

The decision-making approach is the foundation on which SSA will base the claim intake process and evidence collection. The focus will be, first, to establish a solid medical basis for documenting that an individual has a medically determinable physical or mental impairment. Second, once the evidence establishes a medically determinable impairment, SSA will use additional medical findings to provide a solid link between the disease entity and the loss of function caused by the impairment(s).

Disability Decisionmaking for Adult Claims Will Be a Four-Step Evaluation Process

The disability decision methodology will consist of four steps that are based on the statutory definition of disability. They are:

Step 1—Is the individual engaging in substantial gainful activity?
If yes, deny.
If no, continue to Step 2.
Step 2—Does the individual have a medically determinable physical or mental impairment?
If no, deny.
If yes, continue to Step 3*.
Step 3—Does the individual have an impairment that is included in the Index of Disabling Impairments?
If yes, allow*.
If no, continue to Step 4.
Step 4—Does the individual have the functional ability to perform substantial gainful activity?
If yes, deny.
If no, allow*.

*An impairment must meet the duration requirement of the statute; a denial is appropriate for any impairment that will not be disabling for 12 months.

Step 1—Engaging in Substantial Gainful Activity

Any individual who is engaging in substantial gainful activity will not be found disabled regardless of the severity of the individual's physical or mental impairments. If a claimant is performing substantial gainful activity at the time a claim is filed, SSA will determine that the claimant is not disabled based on the demonstrated ability to engage in substantial gainful activity.

Under the current process, in determining whether a claimant is performing or has performed substantial gainful activity, SSA generally considers the amount of the claimant's earnings, less any impairment-related work expenses. However, there are several threshold levels of earnings that need to be considered and, depending on the actual amount earned, SSA evaluates whether a claimant's work is comparable to that of unimpaired individuals in the community who are doing the same or similar occupations, or whether the work is substantial gainful activity based on prevailing pay scales in the community.

Under the new process, SSA will simplify the monetary guidelines for determining whether an individual (except those filing for benefits based on blindness) is engaging in substantial gainful activity. In making this determination, SSA will evaluate the work activity based on the earnings level that is comparable to the upper earnings limit in the current process (i.e., $500). A single earnings level will simplify the evidentiary development necessary to evaluate work activity and establish the appropriate onset date of disability. SSA will continue to exclude impairment-related work expenses in evaluating whether a claimant's earnings constitute substantial gainful activity. SSA will continue to use separate earnings criteria to evaluate the work activity of blind individuals as in the current process.

Step 2—Medically Determinable Impairment

Because the statute requires that disability be the result of a medically determinable physical or mental impairment, the absence of a medically determinable impairment will justify a finding that the individual is not disabled.

Under the current regulations, SSA considers, as a threshold matter, whether an individual has a medically determinable impairment or combination of impairments that is "severe." A severe impairment is defined as one that significantly limits the individual's physical or mental abilities to do work activities such as walking, standing, sitting, hearing, seeing, understanding, carrying out, or remembering simple instructions, using judgment, etc.

Under the new approach, SSA will consider whether a claimant has a medically determinable impairment, but will no longer impose a threshold severity requirement. Rather, the threshold inquiry will be whether the claimant has a medically determinable physical or mental impairment. To establish the presence of a medically determinable impairment, evidence must show an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

SSA will continue to evaluate the existence of a medically determinable impairment based on a weighing of all evidence that is collected, recognizing that neither symptoms nor opinions of treating physicians alone will support a finding of disability. There must be medical signs and findings established by medically acceptable clinical or laboratory diagnostic techniques which show the existence of a physical or mental impairment that results from anatomical, physiological, or psychological abnormalities which, *in the opinion of the Secretary*, could reasonably be expected to produce the symptoms or substantiate any opinion evidence provided. Depending on the nature of a claimant's alleged impairments, SSA will consider the extent to which medical personnel other than physicians can provide evidence of a medically determinable impairment.

There will be an exception to the requirement that evidence include medically acceptable clinical and/or laboratory diagnostic techniques. This will occur when, even if SSA accepted all of the claimant's allegations as true, SSA still could not establish a period of disability; under these circumstances, SSA will not require evidence to establish the existence of a medically determinable impairment. For instance, if a claimant describes a condition as one that will clearly not meet the 12-month duration requirement, (e.g., a simple fracture), SSA will deny the claim on the basis that even if the allegations were medically documented, SSA could not establish a period of disability.

Step 3—Index of Disabling Impairments

If an individual has a medically determinable physical or mental impairment documented by medically acceptable clinical and laboratory techniques, and the impairment will meet the duration requirement, SSA will compare the claimant's impairment(s) against an index of severely disabling impairments. In contrast to the Listing of Impairments in the current regulations, the index will contain fewer impairments and have less detail and complexity. The index will describe impairments that will result in death or impairments that are so debilitating that any individual would be unable to engage in substantial gainful activity regardless of any reasonable accommodations that an employer might make in accordance with the Americans with Disabilities Act. The index will be designed to be equitable, easy to understand, and consistent with the statutory definition of disability.

The index will function to quickly identify severely disabling impairments; the index will not attempt to describe ideal medical documentation requirements for each and every body system as occurs with the current Listings. The index will consist of descriptions of specific impairments and the medical findings that are used to substantiate the existence and severity of the particular disease entity. The index will not attempt to measure the functional impact of an impairment on the individual; functional impact will be considered at Step 4 in the process. The medical findings in the index will be as nontechnical as possible and will exclude such things as calibration or standardization requirements for specific tests and/or detailed test results (e.g., pulmonary function studies or electrocardiogram tracings). The index will be simple enough so that laypersons will be able to understand what is required to demonstrate a disabling impairment in the index. Additionally, SSA will draw no inferences or conclusions about the effect of a claimant's impairments on his or her ability to function merely because a claimant's impairment(s) does not meet the criteria in the index. Finally, SSA will no longer use the concept of medical equivalence" in relation to the index, as it now uses in applying the Listing of Impairments.

Step 4—Ability to Engage in Any Substantial Gainful Activity

In the final step in determining disability, SSA will consider whether an individual has the ability to perform substantial gainful activity despite any functional loss caused by a medically determinable physical or mental impairment. If an individual retains the ability to perform substantial gainful activity, then an individual does not meet the statutory definition of disability.

Presently, there are no generally accepted measurement criteria for determining an individual's ability to function in relation to work-related activities. Currently, SSA assesses residual functional capacity by analyzing the objective medical findings and other available evidence and translating this information into functional loss and residual capacity for work activities.

Additionally, there are also no definitive sources for identifying the physical and mental requirements of "baseline" work functions that are required to engage in substantial gainful activity. SSA currently relies on the Department of Labor definitions regarding the physical and mental demands of work in the national economy, and relies on related reference sources and independent experts regarding the existence of particular occupations and jobs in the national economy.

Under the new process, SSA will define the physical and mental requirements of substantial gainful activity and, will measure as objectively as possible whether an individual meets these requirements. How SSA will achieve this is described in the following sections.

SSA Will Develop Instruments That Provide A Standardized Measure of Functional Ability

Under the current process, SSA relies on available clinical and laboratory findings, treating source opinions, the claimant's description of his or her abilities and limitations, and third party observations of the claimant's limitations in determining the claimant's residual functional capacity. Residual functional capacity is the claimant's remaining capacity for work activities despite the limitations or functional loss caused by his or her impairments.

Under the new process, SSA will develop, with the assistance of the medical community and other outside experts from public and private disability programs, standardized criteria which can be used to measure an individual's functional ability. These standardized measures of functional ability will be linked to clinical and laboratory findings to the extent that SSA needs to document the existence of a medically determinable impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the functional loss. However, extensive development of all available clinical and laboratory findings is not necessarily effective in evaluating an individual's functional ability to perform basic work activities.

Functional assessment instruments will be designed to measure, as objectively as possible, an individual's abilities to perform a baseline of occupational demands that includes the principal dimensions of work and task performance, including primary physical, neurophysical, psychological, and cognitive processes. Examples of task performance include, but are not limited to: Physical capabilities, such as sitting, standing, walking, lifting, pushing, pulling; mental capabilities, such as understanding, carrying out, and remembering simple instructions; using judgment; responding appropriately to supervisors and co-workers in usual work situations; and responding appropriately to changes in the routine work setting; and postural and environmental limitations. Functional assessment instruments will be designed to realistically assess an individual's abilities to perform a baseline of occupational demands.

SSA will be primarily responsible for documenting functional ability using the standardized measurement criteria. In the near term, SSA will solicit functional information from treating medical sources, other nonmedical sources, and from claimants in a manner that is similar to the current process. In the future, the standardized measurement criteria will be widely available and accepted so that functional assessments may be performed by a variety of medical sources, including treating sources. The SSA goal will be to develop functional assessment instruments that are standardized, that accurately measure an individual's functional abilities and that are universally accepted by the public, the advocacy community, and health care professionals. Ultimately, documenting functional ability will become the routine practice of physicians and other health care professionals, such that a functional assessment with history and descriptive medical findings will become an accepted component of a standard medical report.

The prospect of universal health coverage may offer a unique opportunity for SSA to work with the public and private sector to develop standards that both can use. For example, medical

insurance payors (whether public or private) may want some way of measuring the effectiveness and necessity of treatment that is prescribed by the individual's treatment source; SSA will want these same types of measures to determine how well an individual is able to function despite his or her impairment(s). Similarly, if all individuals have treating sources under universal health coverage, SSA can expect that complete functional assessment measurements will be readily available from a treating source. Finally, universal health coverage may enable SSA to access medical records from health care providers who may be operating under some contractual or other relationship with Federal agencies and/or a statutory requirement that health care providers cooperate in providing evidence as a condition of receiving Federal funds.

SSA will use the results of the standardized functional measurement in conjunction with a new standard that SSA will develop to describe basic physical and mental demands of a baseline of work that represents substantial gainful activity and that exists in significant numbers in the national economy.

SSA Will Identify Baseline Occupational Demands That Represent Substantial Gainful Activity

Under the current regulations, after assessing a claimant's residual functional capacity, SSA evaluates whether the claimant can meet the physical and mental demands of his or her past relevant work. Past relevant work is usually work that a claimant performed in the last 15 years.

If the claimant is unable to perform his or her past work, SSA then evaluates whether the claimant can perform other work in the national economy. In making this decision, SSA relies on medical-vocational guidelines (the "Grid"). The Grid rules represent major functional and vocational patterns and reflect the analysis of various vocational factors (age, education and work experience) in combination with the claimant's residual functional capacity (which is used to determine the claimant's maximum sustained work capacity for sedentary, light, medium, heavy or very heavy work).

In promulgating the Grid rules, SSA has taken administrative notice of the existence of unskilled jobs that exist in the national economy at the various functional levels. Therefore, when all the findings of fact regarding a claimant's functional ability and vocational factors coincide with the corresponding criterion of a rule, the existence of other work in the national economy is conclusively established. However, if any finding of fact does not coincide with the criterion of a rule, the rules can only provide a framework for decisionmaking. In these situations, adjudicators must consult vocational resources or obtain expert testimony to resolve the question of whether other work exists in the national economy that the claimant can perform.

Under the new approach, SSA will conduct research and, working in conjunction with outside experts, will specifically identify the activities that comprise a baseline of occupational demands needed to perform substantial gainful activity. In the current process, an example of comparable "baseline" criteria are the functional requirements of unskilled, sedentary work. In establishing the functional activities that comprise an appropriate baseline of occupational demands, SSA will ensure that:

(1) The functional activities are a realistic reflection of the demands of occupations that exist in significant numbers in the national economy;

(2) The occupations are those that can be performed in the absence of prior skills or formal job training; and

(3) The baseline of occupational demands that becomes the standard for evaluating the ability to perform substantial gainful activity considers any reasonable accommodations that employers are expected to make under the Americans with Disabilities Act.

The Effect of Age on Ability to Perform Substantial Gainful Activity

The effect of aging on the ability to perform substantial gainful work is very difficult to measure, especially in the context of today's world when individuals are living longer than preceding generations. Despite this change, the demographic characteristics of those preceding generations continue to provide the framework for disability decisionmaking because SSA's approach for deciding disability has changed little since the inception of the DI program.

The statute recognizes that age should be considered in assessing disability on the assumption that the ability to make a vocational adjustment to work other than work an individual has previously done may become more difficult with age. In determining the impact of age, recognition should be given to the changes that occur with each succeeding generation. Accordingly, in the new process, SSA will establish age criterion in relation to the full retirement age. The full retirement age will gradually increase over time, based on the recognition that succeeding generations can expect to remain in the workforce for longer periods than the preceding generation.

In applying age criterion under the new process, an individual who falls within the prescribed number of years preceding the full retirement age will be considered as "nearing full retirement." In establishing what the prescribed number of years should be, SSA will conduct research and consult with outside experts on the relationship between age and an individual's ability to make vocational adjustments to work other than work the individual has done in the recent past.

SSA will rely on the age of the individual in relation to the full retirement age to decide which of two decision paths to follow as described in the next two sections.

Individuals Who Are Not Nearing Full Retirement

For an individual who is not nearing full retirement, SSA will compare the individual's functional abilities against the functional demands of the baseline work. SSA will no longer rely on the medical-vocational guidelines and/or expert testimony to identify whether work exists in the national economy that the claimant can perform. The ability to perform the baseline work will represent a realistic opportunity to perform substantial gainful activity that exists in significant numbers in the national economy and a finding of disability will not be appropriate.

However, anyone, regardless of age, who cannot perform the baseline work will be considered unable to engage in substantial gainful activity, and a finding of disability will be justified. The range of work represented by less than the baseline will be considered so narrow that despite any other favorable factors, such as young age or higher education or training, an individual would not be expected to have a realistic opportunity to perform substantial gainful work in the national economy.

For individuals who are not nearing full retirement, the ability or inability to perform previous work is not a significant factor. These individuals should be capable of making a vocational adjustment to other work, as long as they are functionally capable of performing the baseline work.

Individuals Who Are Nearing Full Retirement

For individuals who are nearing full retirement, SSA will compare the individual's functional abilities against the functional demands of the

individual's previous work. Individuals nearing full retirement age can not be expected to make a vocational adjustment to work other than work they have performed in the recent past. However, consistent with the statute, if an individual, even one nearing full retirement age, is capable of performing his or her previous work, SSA will find that the individual is not disabled.

For those individuals who have no previous work, SSA will compare the individual's functional abilities to the baseline work, and a finding of not disabled will be appropriate if the individual is capable of performing the baseline work. In such claims, the fact that the individual has no previous work is usually not related to the existence of his or her impairment(s), and a finding of disability will not be appropriate for these individuals if they retain the capacity for the baseline work.

The Effect of Education on Ability to Perform Substantial Gainful Activity

The statute also recognizes that education may play a role in an individual's ability to perform substantial gainful activity. Experience demonstrates that educational level alone, i.e., the numerical grade level that an individual has attained may not be a good indicator of ability to function. Education is generally completed in the remote past when compared to the age at which the majority of disability claimants file for benefits. Completion of a certain educational level in the remote past, without any practical application of that education in recent work activity, has no positive effect on an individual's ability to perform substantial gainful activity.

In relying on standardized functional assessments, SSA will be measuring both the individual's physical and mental abilities, and education will be appropriately reflected in the assessment of an individual's cognitive abilities. However, further evaluation of a claimant's educational level will not be required because, in establishing the functional activities that comprise an appropriate baseline of occupational demands, SSA will not assume that individuals have prior skills or significant formal job training. Thus, additional formal education will have little impact on an individual's ability to perform the baseline of occupational demands.

SSA Will Rely on Medical Consultants to Provide Necessary Expertise in the Decisionmaking Process

SSA will continue to rely on medical consultants to provide expert advice and opinion regarding medical questions and issues that will arise in deciding disability claims. Disability adjudicators at all levels of the administrative review process will call on the services of medical consultants to interpret medical evidence, analyze specific medical questions, and provide expert opinions on existence, severity and functional consequences of medically determinable impairments. If a medical consultant is called on to offer expert advice and opinion, the medical consultant will provide a written analysis of the issues and rationale in support of his or her opinion. The written analysis will be included in the record and will be considered with the other medical evidence of record by disability adjudicators at all levels of administrative review. Additionally, medical consultants will assist in the training of other consultants and disability adjudicators; contact other health care professionals to resolve medical questions on specific claims; perform public relations and training with the medical community; and participate in SSA quality assurance efforts.

Childhood Disability Methodology

As with adults, SSA must have a structured approach to disability decisionmaking in childhood claims that takes into consideration the relatively large number of claims and still provides a basis for consistent, equitable decisionmaking by adjudicators at all levels of administrative review. The approach for childhood claims must also derive from the statute. Under the statute,

> An individual will be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months (or in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity). (Section 1614(a)(3)(A) of the Social Security Act).

Disability Decisionmaking For Childhood Claims Will Be a Four-Step Evaluation Process

The disability decision methodology for childhood claims will consist of four steps that are based on the statutory definition of disability.

As with adults, the approach is one that provides accurate decisions that can be achieved efficiently and cost-effectively, primarily by ensuring that documentation requirements are directed toward the ultimate finding of disability. The four steps are:

Step 1—Is the child engaging in substantial gainful activity?
If yes, deny.
If no, continue to Step 2.
Step 2—Does the child have a medically determinable physical or mental impairment?
If no, deny.
If yes, continue to Step 3*.
Step 3—Does the child have an impairment that is included in the Index of Disabling Impairments?
If yes, allow *.
If no, continue to Step 4.
Step 4—Does the child have the functional ability to perform activities that are comparable to an adult's ability to engage in substantial gainful activity?
If yes, deny.
If no, allow *.

* An impairment must meet the duration requirement of the statute; a denial is appropriate for any impairment that will not be disabling for 12 months.

Step 1—Engaging in Substantial Gainful Activity

Any child who is engaging in substantial gainful activity will not be found disabled regardless of the severity of his or her physical or mental impairments. The guidelines for determining whether a child is engaging in substantial gainful activity will be identical to the guidelines for adults. Although the issue of work activity will arise infrequently in childhood claims, the step is warranted for two reasons:

(1) The approach for adults and children should be as similar as possible; and

(2) As a child approaches age 18, it is increasingly likely that work activity may be an issue.

Step 2—Medically Determinable Impairment

Because the statute requires that disability be the result of a medically determinable physical or mental impairment, the absence of a medically determinable impairment will justify a finding that a child is not disabled. To establish the presence of a medically determinable impairment, evidence must show an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

The same guidelines and rules that apply for adults will apply equally for children. SSA will continue to evaluate

the existence of a medically determinable impairment based on a weighing of all evidence that is collected, recognizing that neither symptoms nor opinions of treating physicians alone will support a finding of disability. There must be medical signs and findings established by medically acceptable clinical or laboratory diagnostic techniques which show the existence of a physical or mental impairment that results from anatomical, physiological, or psychological abnormalities which, *in the opinion of the Secretary,* could reasonably be expected to produce the symptoms or substantiate any opinion evidence.

SSA will use the same exception for evidence collection in childhood claims that will be applied in adult claims. If a child has a medically determinable physical or mental impairment that is not an exception to further development, SSA will then evaluate whether the impairment(s) is included in the index of disabling impairments.

Step 3—Index of Disabling Impairments

If a child has a medically determinable physical or mental impairment documented by medically acceptable clinical and laboratory techniques and the impairment will meet the duration requirement, SSA will compare the child's impairment(s) against an index of disabling impairments. As with adults, the index for childhood claims will function to quickly identify severely disabling impairments; the index will not attempt to describe ideal medical documentation requirements for each and every body system.

The index for childhood claims will consist of descriptions of specific impairments and the medical findings that are used to substantiate the existence and severity of the particular disease entity. As with adults, the childhood index will not attempt to measure the functional impact of an impairment on the child; functional impact will be considered at Step 4 in the process. The medical findings in the index will be as nontechnical as possible and will be simple enough so that laypersons will be able to understand what is required to substantiate a disabling impairment in the index. As with adults, SSA will draw no inferences or conclusions about the effect of a child's impairments on his or her ability to function merely because a child's impairment(s) is not included in the index. Additionally, SSA will no longer use the concept of medical equivalence" or functional equivalence in relation to the childhood Index.

Step 4—Comparable Severity to Adult Ability to Engage in Substantial Gainful Activity

In evaluating disability in adults, SSA will evaluate an individual's functional ability to perform work-related activities consistent with the ability to engage in any substantial gainful activity. The difficulty with evaluating childhood claims is the standard against which any functional measurement criteria are compared. For older children, it is relatively easy because at some age (somewhere between 14 and 18) the standard approaches the adult standard, i.e., ability to engage in substantial gainful activity. However, for younger children, the standard can be more difficult to describe. Under the current process, SSA uses a standard that measures the degree to which a child engages in age-appropriate activities which corresponds fairly well with developmental milestones for different age categories. However, the difficulty with this approach is that it may not appropriately define how much functional loss or interference with growth and maturity is comparable to inability to perform any substantial gainful activity.

Consistent with the adult approach, SSA will develop baseline criteria for a child's activities that are comparable to an adult's ability to perform substantial gainful activity. In establishing a baseline of functional activities, the functional abilities for a child will represent a realistic comparison to an adult's ability to work.

Functional Assessment Instruments

Consistent with the approach for adult claims, SSA will develop, with the assistance of the medical community and educational experts, standardized criteria which can be used to measure a child's functional ability. These standardized measures of functional ability will be linked to clinical and laboratory findings to the extent that SSA needs to document the existence of a medically determinable impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the functional loss.

These functional assessment instruments will be designed to measure, as objectively as possible, a child's abilities to perform a baseline of functions that are comparable to the baseline of occupational demands for an adult. SSA will conduct additional research to specifically identify activities that are comparable to those that comprise a baseline of occupational demands needed to perform substantial gainful activity by adults.

SSA will be primarily responsible for documenting functional ability using the standardized measurement criteria. Ultimately, the course of documenting and developing for the functional abilities for childhood claims will mirror the adult approach.

Comparability Standard

SSA will develop realistic standards which represent activities that are comparable to an adult's ability to engage in substantial gainful activity. The standards will focus on a skill acquisition threshold designed to measure broad areas of skill that are required to ultimately develop the ability to engage in substantial gainful activity. If the child is progressing satisfactorily in the development of these skills, then the child will not have an impairment of comparable severity and SSA will not find the child disabled.

Evidentiary Development

SSA's Ability To Issue Timely and Accurate Disability Decisions Depends on the Efficient Collection of Quality Medical Evidence

SSA's ability to provide timely and accurate disability decisions depends to a significant degree on the quality of medical evidence it can obtain and the speed with which it can obtain it. The medical evidence collection process accounts for a considerable portion of the total time involved in processing disability claims.

Traditionally, the procurement of medical evidence has involved multiple, often repetitive, requests for information from a variety of health care providers. Health care providers believe that these requests burden them with far too much paperwork and offer far too little in the way of compensation for the time invested. Conversely, adjudicators often find that this evidence is primarily treatment-oriented and fails to provide the highly specialized clinical information required by the current Listings, or the functional information that is frequently necessary at various points in disability decision-making process. Health care professionals, particularly physicians, readily concede that their training is oriented towards diagnosis and treatment, not the assessment of function. Thus, the timely collection of medical information depends to a significant degree on health care providers who have only a tangential interest and understanding of

the disability program, its requirements, and, most importantly, the vital role that health care providers' information has in the disability decision process.

Evidence Collection Will Focus on Core Diagnostic and Functional Information Necessary to a Disability Decision

The goals of the evidence collection process will be to focus requests for evidence on the critical diagnostic and functional assessment information necessary for a disability decision and to form a new partnership with the sources of this information so that it can be obtained in the most efficient, cost-effective manner. Medical evidence development will be driven by the four-step approach SSA will use to decide disability. Two of the core elements of that approach are: (1) Identifying an individual's medically determinable impairments (including those that meet the Index of Disabling Impairments criteria); and (2) assessing the functional consequences of those impairments. SSA will develop medical evidence that is sufficient to satisfy the core elements but target evidentiary development so that SSA obtains only the evidence that is necessary to reach an accurate decision on the ultimate question of disability.

Treating Sources Will be the Preferred Sources for Medical Evidence

SSA will give primary emphasis to obtaining medical information from treating sources by way of brief, but specific, diagnostic information regarding an individual's medically determinable impairments and the functional consequences of those impairments. Treating source statements will include diagnostic information about a claimant's impairments, the clinical and laboratory findings which provide the basis for the diagnosis, onset and duration, response to treatment, and the functional limitations that can reasonably be linked to the clinical and laboratory findings. SSA will develop, in conjunction with the appropriate health care professionals and other public and private disability programs, standardized criteria which can be used to measure, as accurately and objectively as possible, an individual's functional ability. SSA will also seek health care providers' assistance in educating the medical community on the clinical application of these instruments. Once developed and universally accepted as the appropriate standard by the medical community, the standardized measurement criteria will be widely available. If a standardized functional assessment is available from a treating source, SSA will obtain that information and accept it as probative evidence. SSA may also request that the treating source or another examining source perform the standardized functional assessment at SSA expense.

SSA Will Use a Standardized Form To Request Medical Evidence From Treating Sources

SSA will develop a standardized form which effectively tailors the request for evidence to the specific diagnostic and functional assessment information necessary to make a disability decision. The standard form will also be available in electronic form to permit treating sources to submit evidence electronically. Standardizing requests for evidence in this manner will facilitate the participation of claimants, representatives and third parties in the evidence collection process.

The form will permit treating sources to provide necessary diagnostic and functional assessment information on a single document. In appropriate circumstances, SSA will accept a treating source's statement on the standardized form as to these issues without resorting to the traditional, wholesale procurement of actual medical records. Depending on the nature and extent of an individual's impairments and treating sources, statements from multiple medical sources may be appropriate. In completing standard forms, treating sources will certify that they have in their possession the medical documentation referred to in the statement and that said documentation will be promptly submitted at the request of SSA. The certification approach is consistent with evidence collection methods used by private disability insurance carriers, which request specific medical records in individual claims, as appropriate to the individual circumstances, or at random as part of a quality assurance program. SSA will monitor treating source completion of the standardized forms and verify evidence when appropriate.

SSA Will Provide Incentives for Treating Sources To Cooperate in the Development of Medical Evidence

SSA will acknowledge the value of treating source information by establishing a national fee reimbursement schedule for medical evidence. Additionally, the fee reimbursement schedule will utilize a sliding-scale mechanism to reward the early submission of medical information. A national, sliding-scale fee schedule will provide incentives for treating sources to cooperate in the evidentiary development process and invest quality time to provide medical certifications on behalf of their patients.

SSA will focus professional educational efforts and medical relations outreach at the local and/or regional level to ensure that treating sources are kept informed of program requirements and made aware of specific evidentiary needs or problems as they arise in the adjudication process.

SSA Will Use Consultative Examinations When There is No Treating Source Able or Willing To Provide Necessary Evidence or There Are Unresolved Conflicts in the Record

If a claimant has no treating source, or a treating source is unable or unwilling to provide the necessary evidence, or there is conflict in the evidence that can not be resolved through evidence from treating sources, SSA will refer the claimant for an appropriate consultative examination. Because the standardized measurement criteria for assessing function will be widely available, consulting sources will be able to perform functional assessments that, in the absence of adequate treating source information or where there are unresolved conflicts in the evidence, will be considered probative evidence. Depending on the service area, SSA will consider contracting with large health care providers to furnish consultative examinations for a specified geographic location.

As part of an ongoing training and medical relations program, SSA will ensure that providers of consultative examinations are provided adequate training on disability requirements, both initially and as program changes occur.

Administrative Appeals Process

The Administrative Appeals Process Will Be Simple and Accessible and Maintain Public Confidence in the Integrity of the Process

The administrative appeals process will be simplified to increase the accessibility of the process. The public perceives multiple, mandatory appeal steps as obstacles to receiving timely, fair, and accurate decisions. SSA will reduce the number of mandatory appeals steps in the administrative process. Streamlining the appeals process in this manner will not only promote more timely decisions but also ensure that claimants do not inappropriately withdraw from the claims process based on a perception that it is too difficult or time-consuming to pursue their appeal rights.

Claimants will be able to fully participate in the administrative appeals

process with or without a representative. SSA will ensure that claimants are fully advised of their right to representation and SSA will routinely provide the appropriate referral sources for representation. SSA will also encourage the early participation of a representative when the claimant has appointed one and will give the representative responsibility for developing evidence necessary to decide a claim. However, the decision whether to appoint a representative must remain with the claimant and SSA will neither encourage nor discourage claimants in seeking representation.

The administrative appeals process will function so that it maintains the public's confidence in the integrity of the system. To instill such confidence, SSA will provide an initial decisionmaking process that is thorough and results in fully developed records with fair and accurate decisions. Additionally, SSA will explain the basis of a decision in clear and understandable language. Finally, SSA will ensure that disability claims are decided on the merits of the evidence and that SSA regulations and policies have been consistently applied at all levels of administrative review.

As noted previously, the initial disability determination will use a "statement of the claim" approach which will set forth the issues in the claim, the relevant facts, the evidence considered, including any evidence or information obtained during the predenial interview, and the rationale in support of the determination. The statement of the claim will be part of the on-line claim record and will stand as the basis and rationale for the Agency action, if the claimant seeks further administrative review. SSA will standardize claim file preparation and assembly, including the use of appropriate electronic records, at all levels of administrative process until such time as the claims record is fully electronic.

The Next Level of Administrative Appeal Will Be an Administrative Law Judge Hearing

Because the initial determination will be the result of a process that ensures fully developed evidentiary records and ample opportunity for the claimant to personally present additional evidence prior to an adverse determination, there will be no need for any intermediate appeal (e.g., reconsideration) prior to the administrative law judge (ALJ) hearing. If the claimant disagrees with the initial determination, the claimant may, within 60 days of receiving notice, request an ALJ hearing.

An Adjudication Officer Will Conduct All Prehearing Proceedings

If a claimant decides to request an ALJ hearing, an adjudication officer will conduct an interview in person, by telephone, or by videoconference, and become the primary point of contact for the claimant. The adjudication officer will have the same knowledge, skills and abilities as the adjudicators who decide claims initially. The adjudication officer will also have specialized knowledge regarding hearings and appeals procedures. The adjudication officer will be the focal point for all prehearing activities but will be expected to work closely with the ALJ, medical consultants and the disability claim manager, when appropriate. The adjudication officer will explain the hearing process; advise the claimant regarding the right to representation; provide the appropriate referral sources for representation; give the claimant, where appropriate, copies of necessary claim file documents to facilitate the appointment of a representative; and encourage the claimant to decide about the need for and choice of a representative as soon as is practical.

The adjudication officer will also identify the issues in dispute and whether there is a need for additional evidence. If the claimant has a representative, the representative will have the responsibility to develop evidence. The adjudication officer will also conduct informal conferences with the representative, in person or by telephone, to identify the issues in dispute and prepare written stipulations as to those issues not in dispute. If the claimant submits additional evidence, the adjudication officer may refer the claim for further medical consultation, as appropriate. The adjudication officer will have full authority to issue a revised favorable decision if the evidence so warrants. If the adjudication officer issues a favorable decision, the adjudication officer will refer the claim back to the disability claim manager to effectuate payment.

The adjudication officer will consult with the ALJ during the course of prehearing activities, as necessary and appropriate to the circumstances in the claim. As a preliminary matter, the adjudication officer will also set a date for the hearing that is 45 days after the hearing request. The adjudication officer may exercise discretion in establishing an earlier or later hearing date depending on the individual circumstances. Electronic access to ALJs' calendars will facilitate timely scheduling of hearings. The adjudication officer will refer the prepared record to an ALJ only after all evidentiary development is complete and the claimant or a representative agrees that the claim is ready to be heard.

The ALJ will retain the authority and ability to develop the record. However, use of an adjudication officer realigns most, if not all, prehearing activities so that the burden of ensuring their completion rests with other members of the adjudicative team. ALJs' primary function will be hearing and deciding claims.

The Administrative Law Judge Hearing Will be a De Novo, Nonadversarial Proceeding

The ALJ hearing will be a *de novo* proceeding in which the ALJ considers and weighs the evidence and reaches a new decision.

A *de novo* hearing is consistent with the role of an ALJ envisioned under the Administrative Procedure Act. Under that scheme, the ALJ is an independent decisionmaker who must apply an agency's governing statute, regulations and policies, but who is not subject to direction and control by the agency with respect to the decisional outcome in any individual claim. ALJs are independent triers of fact who perform their evidentiary factfinding function free from agency influence. At the same time, the Administrative Procedure Act ensures that an ALJ's decision is subject to review by the agency, thus giving the agency full power over policy. Policy responsibility remains exclusively with the agency while the public has assurance that the facts are found by an official who is not subject to agency influence.

A hearing before an ALJ will remain an informal adjudicatory proceeding as it is under the current process. The claimant will have the right to be represented by an attorney or a non-attorney with the decision regarding representation made by the claimant alone. An informal, nonadversarial proceeding is consistent with the public's strong preference for a simple, accessible hearing process that permits, but does not require, an attorney. An informal process facilitates the earlier and faster resolution of the issues in dispute, thus promoting more timely decisions.

As an independent factfinder in a nonadversarial proceeding, the ALJ will still have a role in protecting both SSA interests and the claimant's interests, particularly when the claimant is unrepresented. However, an improved initial determination process with its focus on early and comprehensive evidentiary development, predenial

personal conferences, fully rationalized initial decisions, and prehearing analysis of contested issues should ensure that the Agency position is fully explored and presented to the ALJ. Moreover, the primary burden of compiling an evidentiary record will be shifted to the representative—if one is appointed—or to the claimant (when able to do so), with assistance (when appropriate), from SSA personnel.

Adjudication officers and other decision writers will assist ALJs in preparing hearing decisions, using the same decision support system that supports the preparation of initial disability determinations. A simplified disability decisional methodology, in conjunction with the use of prehearing stipulations that frame the issues in dispute, will result in shorter, more focused hearing decisions. If the ALJ issues a favorable decision, he or she will refer the claim back to the disability claim manager to effectuate payment.

The Administrative Law Judge Decision Will Be the Final Decision of the Secretary Subject to Judicial Review Unless the Appeals Council Reviews the Administrative Law Judge Decision On Its Own Motion

Under the new process, if a claimant is dissatisfied with the ALJ's decision, the claimant's next level of appeal will be to Federal district court. A claimant's request for Appeals Council review will no longer be a prerequisite to seeking judicial review.

As under the current process, the Appeals Council will continue to have a role in ensuring that claims subject to judicial review have properly prepared records and that the Federal courts only consider claims where appellate review is warranted. Accordingly, the Appeals Council, working with Agency counsel, will evaluate all claims in which a civil action has been filed and decide, within a fixed time limit whether it wishes to defend the ALJ's decision as the final decision of the Secretary. If the Appeals Council decides to review a claim on its own motion, it will seek voluntary remand from the court for the purpose of affirming, reversing or remanding the ALJ's decision. Favorable Appeals Council decisions will be returned to the disability claim manager to effectuate payment.

Additionally, the Appeals Council will have a role in a comprehensive quality assurance system. As part of this system which is described in greater detail below, the Appeals Council will also conduct its own motion reviews of ALJ decisions (both allowances and denials) prior to effectuation. If the Appeals Council decides to review a claim on its own motion, the Appeals Council may affirm, reverse or remand the ALJ's decision. The Appeals Council's review will be limited to the record that was before the ALJ.

Quality Assurance

Quality Assurance Will be a System of Agency Accountability

SSA will be accountable to the public, the ultimate judge of the quality of SSA service, and SSA will strive to consistently meet or exceed the public's expectations. SSA will have a comprehensive quality assurance program that defines its quality standards, continually communicates them to employees in a clear and consistent manner, and provides employees with the means to achieve them. SSA will devote resources to building quality into the system of adjudication to ensure that the right decision is made the first time. SSA will also systematically review the quality of the overall system of adjudication to ensure the integrity of the administrative process and promote uniform application of agencies policies nationally. Finally, SSA will measure customer satisfaction against the SSA standards for service.

Ensuring That the Right Decision is Made the First Time Requires an Investment in Employees

SSA's ability to ensure that the right decision is made the first time depends on a well-trained, competent, and highly motivated workforce that has the program tools and technological support to issue quality decisions.

SSA will make an investment in comprehensive employee training to ensure that employees have the necessary knowledge and skills to perform the duties of their positions. SSA will develop national training programs for initial job training and orientation as well as continuing education to maintain job knowledge and skills. Such training will include general communication skills and how to deal effectively with the public generally, and disability claimants in particular. National training programs will also address changes to program policy.

In addition to initial program training, continuing education opportunities will be made available to employees to enhance current performance or career development. These opportunities may be in the form of self-help instruction packages, videotapes, satellite broadcasts, or non-SSA training or educational opportunities. SSA will ensure that employees are given sufficient time and opportunity to complete the required continuing education. Employees will be encouraged to provide feedback on the value of these continuing education opportunities, including the quality of training materials, methods, and instructors.

Employees, other than ALJs (because of Administrative Procedure Act limitations), who complete initial training and pass a set of performance evaluations based on national quality standards will receive a certificate of competence. This certificate will attest that the employee has successfully completed both initial training and a probationary period on the job. Certification will be renewed yearly upon successfully completing required training and having no less than a fully satisfactory performance rating. Those employees not certified initially or renewed will be provided an improvement plan with goals and time targets for improved performance.

In addition to formal program training, SSA will rely on a streamlined and targeted system of in-line quality reviews and monitoring of adjudicative practices. The elements include a mentoring process for new employees and peer review for experienced employees. SSA will encourage peers to discuss difficult claims or issues and resolve them informally whenever possible. Peer reviews and mentoring will not only promote timely and accurate development of disability claims, but will also foster a spirit of teamwork. They will also promote earlier identification and resolution of problems with policy or procedures. As part of this process, managers will be expected to oversee the adjudication process. They will conduct spot checks at key points in the adjudication process or perform special reviews based on profiles of error-prone claims. The goal of these reviews is to provide immediate, constructive feedback on identified errors to reduce or eliminate their possible recurrence.

To ensure that adjudicators have the necessary program tools to issue accurate decisions, SSA will use a single mechanism for the presentation of all substantive policies used in determining eligibility for benefits. Additionally, an integrated claims processing system will provide the necessary technological support for adjudicators at all levels of the administrative process. Among other things, the claim processing system will facilitate the preparation of accurate decisions by providing on-line editing capacity to identify errors in advance

and decision support software to assist in analysis and decisionmaking.

Although comprehensive employee education and an in-line review system will build quality into the system of adjudication with the goal of error prevention, SSA must still monitor quality on a systematic, national basis. Accordingly, all employees will be subject to and receive continuous feedback from comprehensive end-of-line reviews as described in the following section.

Quality Measurement Will Focus on Comprehensive End-of-Line Reviews

Another component of quality assurance is an integrated system of national postadjudicative monitoring to ensure the integrity of the administrative process and to promote national uniformity in the adjudication of disability claims. This system will include comprehensive review of the whole adjudicatory process including both disability and nondisability issues, allowances and denials, and at all levels of decisionmaking. The review will focus on whether accurate decisions were made at the first possible step in the process. This type of review will not be aimed at correcting errors in individual claims but, rather, will be the means to oversee, monitor and provide feedback on the application of agency policies at all levels of decisionmaking. Reliance on an integrated claim processing system will facilitate the selection of a statistically valid sample of claims for this review.

SSA will use the results from these end-of-line reviews to identify areas for improvement in policies, processes or employee education and training. SSA will also use the results to profile error-prone claims with the goal of preventing errors at the front end.

SSA Will Conduct Surveys to Measure Customer Satisfaction

To measure whether SSA has met or exceeded the public's service expectations, SSA must measure their level of satisfaction with the level of service SSA provides. Customer surveys and periodic focus groups will be the most frequently used methods of determining the public's views on the quality of SSA service. SSA will also survey representatives and third parties who provide assistance or act on claimants' behalf in dealing with SSA. Survey results will be communicated to staff on a timely basis, both as Agency feedback and individual feedback, along with any plans to address identified problems.

SSA will also seek employee feedback on how well SSA has met their expectations. Employee feedback will be sought on a wide array of issues including Agency goals and performance indicators, training and mentoring needs, and the quality of operating instructions. Although formal mechanisms will be used to obtain feedback periodically, each employee will be encouraged to provide continuous feedback on how to make improvements in the process.

Measurements

SSA Will Measure Disability Service From the Perspective of the Claimant

SSA's management information will be revised to assess the performance of the Agency as a whole in providing service to claimants for disability benefits. Management information regarding the contributions at each step in the process to the final product, as well as to the work product passed on to other steps will be available. For example, current component processing time measures will be replaced by a measure of time from the first point of contact with SSA until final claimant notification. Meaningful, timely management information will be facilitated by a seamless claim processing system with a common database that is used by all individuals who contribute to each step in the process.

Other measures, such as cost, productivity, pending workload, and accuracy will be developed or revised to assess the performance of the Agency as a whole and the participants in the process who contribute to this performance. Measurements for public awareness, as well as claimant and employee satisfaction will add to this assessment.

New Process Enablers

Reengineering is dependent upon a number of key factors that provide the framework for the new process design. Each of these enablers" is an essential element in the new disability determination process.

Process Unification

Under the Social Security Act, the Secretary has been granted broad authority to promulgate regulations to govern the disability determination process. In addition to the regulations, SSA publishes Social Security Rulings and Acquiescence Rulings. Social Security Rulings are precedential court decisions, policy statements, and policy interpretations that SSA has adopted as binding policy. Acquiescence Rulings explain how a decision by a U.S. Court of Appeals will be applied when the court's holding is at variance with the Agency's interpretation of a provision of the statute or regulations.

These source documents provide the basic framework for the policies that regulate eligibility for benefits. Administrative law judges (ALJ) and the Appeals Council use these source documents in making disability decisions. However, they are not directly used by decisionmakers at the first two levels of the process, i.e., initial and reconsideration determinations. Guidance for these decisionmakers is provided in a series of administrative publications specifically designed for and aimed at the audiences responsible for adjudicating these claims.

The Program Operations Manual System instructions provide the substance of law, regulations, and rulings for adjudication issues in a structure format that does not necessarily repeat the wording of the source documents for field offices, State disability determination services (DDS), the processing centers, and quality assurance reviewers. The Program Operations Manual System is supplemented by other administrative issuances to clarify or elaborate specific policy issues. The Program Operations Manual System also provides basic operating instructions to the initial, reconsideration and quality components responsible for processing claims. The Hearings, Appeals, and Litigation Law Manual provides operating instructions and summaries of court decisions to hearing offices and the Appeals Council.

Neither the Program Operations Manual System or the Hearings, Appeals, and Litigation Law Manual is binding on ALJ decisionmaking because this material is not considered Agency policy under the Administrative Procedures Act. Only those regulations and interpretative rulings published in the **Federal Register**, in accordance with the Administrative Procedures Act guidelines, can be binding on ALJs. Other decisionmakers are bound by interpretative guidance in the Program Operations Manual System and supplemental issuances. This situation fosters the perception that different policy standards are used at different levels of decisionmaking in the claims process.

SSA will develop a single presentation of all substantive policies used in the determination of eligibility for benefits. All decisionmakers will be bound by these same policies. These policies will be published in accordance with the Administrative Procedures Act. In addition, to facilitate the flow of work in the new process, a single operating manual will be developed.

Public and Professional Education

Public and professional education is essential for the proper understanding of and participation in the disability claims process. The goal is to ensure that those individuals and groups involved in the disability process have a better understanding of SSA disability programs, their medical and nonmedical requirements, and the nature of the decisionmaking process.

SSA will make information widely available for the general population. Pamphlets, factsheets, posters, videos, information on diskettes and on computer bulletin board systems will be developed. This information will be written in a simple, straight forward and understandable manner. It will be available in many languages and dialects and will accommodate vision and hearing impaired individuals. Videotapes will be available to show in SSA offices, welfare offices and in places where medical care is provided. It will explain the definition of disability, stressing the durational and level-of-severity requirements while giving real life examples. Insured status requirements for SSA disability insurance (DI) and income and resource limitations for supplemental security income (SSI) will be explained in general terms.

This same information will be distributed to third parties who may be referral sources for disability claims. It will serve to provide them with basic information about medical and nonmedical eligibility criteria and the options available for filing claims.

SSA will work with nationally and locally interested and involved groups to develop direct lines of communications about the disability process and program. These efforts will not be limited to providing information, but will include opening and maintaining a dialogue about the disability process as part of an ongoing organizational relationship.

Professionals who work with the disabled population will require more detail. The current "Understanding SSI" booklet will be enhanced to include more information on the disability aspects of the SSI program—including the requirements and process, as well as the options available to claimants or interested third parties to speed up the process. A similar booklet for the DI program will be developed. These booklets will serve as training manuals and reference tools, and will include information and examples about providing functional assessments. Special efforts will be made to have coverage of these booklets included in courses which are part of a social service delivery curriculum at the post-secondary and graduate levels.

SSA will conduct outreach efforts with the legal community, to ensure that information about the disability programs is widely available to the organized bar and the Federal judiciary. Policy documents, regularly updated electronically, and rules of representation will be available at forums sponsored by the organized bar and in initial orientation and continuing legal education programs designed for Federal judges.

Treating physicians, medical providers and other treating professionals need up-to-date information on medical evidence requirements. SSA will conduct educational outreach with the medical community to provide them with a better understanding of the SSA disability programs, the medical and functional requirements for eligibility, and the best ways to provide medical information needed for decisionmaking. In addition to the use of printed materials, SSA will arrange briefings and training sessions in association with medical organizations and societies at the local, State and national levels, as well as through hospital staff meetings.

Those medical providers who conduct consultative examinations for SSA will need ongoing training regarding changes in the disability program. SSA will prepare training programs for this audience which will utilize written, audiotape, videotape, and computerized training methods.

Claimant Partnership

As part of their partnership with SSA, claimants will be encouraged to actively participate at all levels of the adjudication process and will be fully informed of their rights and responsibilities. SSA's interaction with claimants will facilitate claimant responsibility and active participation in the processing of their claims. The resources of interested and capable third parties will be garnered to assist claimants and SSA in fulfilling their partnership responsibilities.

The majority of claimants are able to complete simple forms, attend appointments, and obtain medical and nonmedical documentation, either on their own or with the assistance of third parties. Other claimants are unable to accomplish some of these tasks, even with the assistance of third parties. Still others have substantial difficulty fulfilling any of these tasks, and may have no third party to assist them. Given the range of claimant capabilities, SSA will retain ultimate responsibility for development of claims when claimants are not formally represented.

What SSA Will Do

SSA's interaction with claimants will focus on enabling their participation in the process. Understandable public information materials and application packets will be widely available. Explanations of the program, the process, and claimant responsibilities will be furnished at the point individuals first make contact with SSA. SSA will also work with third parties, such as family members and community-based organizations, to provide additional claimant support.

In addition, SSA will provide ongoing assistance and appropriate status information throughout the process. The opportunity for personal contact with the disability claim manager will be afforded to each claimant prior to the issuance of an initially unfavorable decision. A claimant will be advised of evidence that has been considered in making the disability determination and provided an opportunity to present additional evidence for consideration.

Claimants will be provided the opportunity to fully participate in the appeals process. Decision rationales, appeal rights, and representation rights will be explained in clear, understandable language.

What Claimants Will Do

Early, ongoing dialogue between claimants and SSA will ensure that claimants have access to information and resources they need to actively pursue their claims and make informed choices.

Claimants will be asked to do more to facilitate development of supporting information when they are able, particularly with respect to medical evidence. When they file for disability benefits, claimants having had medical treatment will be asked to request that their treating sources complete standardized forms. Information about this requirement will be publicized in the general community and given to claimants and third parties when they first contact SSA. Third parties will be encouraged to assist claimants who are unable to fulfill this obligation on their own. However, when necessary, a disability claim manager will assist claimants in obtaining evidence.

To encourage the release of evidence by treating medical sources, SSA will network with the treating source community to overcome the lack of understanding and possible resistance to providing patient information. SSA will develop fax, E-mail, and other

electronic means for physicians to provide direct certification information.

There will be situations where claimants have no treating sources, or where treating sources provide insufficient medical evidence to make a disability determination. SSA will work with willing treating sources and other medical providers to assist in developing medical evidence (including testing and examination) in these circumstances.

SSA will encourage private insurers and public agencies that refer claimants to SSA as a condition of receiving other benefits to provide medical evidence for these individuals.

Claimants will be able to fully participate in the appeals process with or without a representative. During the appeal process, claimants and/or their representatives will have primary responsibility for compiling an evidentiary record. SSA will provide appropriate assistance for unrepresented claimants.

Assistance to Claimants

Many claimants today rely on other individuals; private and public organizations; and for-profit and nonprofit organizations to pursue their claims. Although they assist claimants, these individuals and organizations do not serve as official representatives. In most instances, those who assist in the process have the best interests of the claimant in mind. However, some individuals and organizations have been instrumental in attempts to defraud programs or take unfair advantage of claimants. In the future, SSA will develop ongoing relationships with community organizations to ensure that competent third-party resources are available to assist the claimants.

Examples of resources that SSA will help develop include:

—Transportation and escort services for indigent claimants and those who experience difficulty in getting to consultative examinations. This would include a combination of volunteer services and reimbursement for transportation on a contract basis. These services will be immediately available as the need dictates.

—Enhancement of medical provider capacity to identify potentially eligible patients, secure claims and provide medical evidence. This type of activity has been successfully demonstrated through the use of seed monies from SSA in the SSI outreach program. An additional financial benefit to the providers will be realized through concurrent Medicaid eligibility for patients.

—Software with compatible format design which will allow direct input of claims-related information to SSA. This will be available to claimant advocates and medical providers ensuring the rapid and accurate transmission of information. After a certification process, eligible users will be kept apprised of software, procedural, and policy changes. SSA will perform ongoing document verification to ensure the integrity of claims submitted by such users.

SSA will have an ongoing demonstration program that provides funds for truly innovative projects that test models for national implementation.

In order to expedite the referral of potentially eligible individuals, SSA will develop productive working relationships with Federal, State and local programs that serve individuals with disabilities. While eligibility requirements vary significantly for programs such as Food Stamps, Aid to Families with Dependent Children, General Assistance, foster care and adoption assistance, and Veterans Benefits, effective working relationships can be built around agreements that expand sharing of authorized information and awareness of program requirements.

Other programs will be able to use SSA-developed decisional support systems to evaluate potentially eligible persons prior to referral. This information will be transferred to SSA through compatible databases. To further enhance these relationships, disability claim managers will be available in remote locations, such as Department of Veterans Affairs homeless program sites, where the workload warrants their presence. With appropriate information available at these sites, the on-site disability claim manager will be able to complete the entire initial application process, with access to other program experts through information systems. Local managers will be encouraged to develop and maintain appropriate working relationships with local Federal, State and third-party resources.

The Payoff Will be Greater Customer Satisfaction

Active participation by claimants, supported by SSA's efforts and the contributions of third parties will result in a fundamental shift in claimant expectations and satisfaction with the SSA disability process. From the SSA perspective, the results will be better service to customers through timely, fully supported decisions rendered at all decisional levels; better use of SSA resources focused on helping those who need assistance; and greater public confidence in the disability adjudication process.

Workforce Maximization

Teamwork

The teamwork concept is a fundamental ingredient in the new process. The disability claim manager will be the focal point at the initial claim level, assisted by technical and medical support staff. The adjudication officer will be the focal point at the prehearing level, relying on technical and medical support staff, as well as interacting with the disability claim manager and the administrative law judge (ALJ), as necessary. The ALJ will be the focal point at the hearing level, receiving support from technical and medical support staff, and also interacting with the adjudication officer and disability claim manager, as necessary.

Each team member will have at least a basic familiarity with all the steps in the process and an understanding of how he/she complements another's efforts. Everyone will achieve a greater sense of participation, closure, and accomplishment because of shared responsibility for performing the whole process. Team members will maintain ownership of the process and the outcomes. The teams will function effectively and efficiently because:

—All members will have electronic access to the claim throughout the process and thus be better able to engage in meaningful discussions with the claimant.

—Handoffs, rework, and non-value steps will be significantly reduced and fewer employees will be involved in shepherding each claim through the process. This will enhance SSA's capacity to provide world-class service by allowing employees to devote more time to each claimant, providing more personalized service.

—Team members will be knowledgeable but will also be able to draw upon each other's expertise on complex issues.

—Improved automated systems will enable members of the team to work together using a shared data base even when they are not co-located.

—Communication between team members and other disability claim managers will encourage consistent application of disability policy.

—Customer service is the primary focus at all steps of the process and an integral part of the teams' goals. This focus and commitment will increase claimant satisfaction.

—Team members will work closely with social service and medical/professional agencies and advocacy groups in the service area to improve their ability to obtain the necessary medical and functional information to appropriately evaluate disabling conditions.
—Varying levels of job complexity will provide the opportunity for personal development, growth, and learning.

Disability Claim Managers

Disability claim managers will be responsible for intake of DI and SSI disability/blindness benefit claims, development of all evidence (medical and nonmedical) required to adjudicate those claims, final adjudication of claims, ongoing communication with claimants, and issuance of notices and/or payment actions. In carrying out these responsibilities, disability claim managers will work in a team environment with medical and nonmedical experts who provide advice and assistance with complex case adjudication, as well as support personnel who handle more routine aspects of case development and payment effectuation. Tasks will be facilitated by a fully automated intake process, developmental and decisional expert system applications, personalized automated notices, and automated payment computations.

Disability claim managers will be able to:

—Provide claimants with current and accurate information about their claims;
—Anticipate documentation needs and eliminate development that is not necessary in favorable determinations;
—Eliminate time lost and rework caused by frequent handoffs and queues;
—Access expert advice through shared databases, thus eliminating the need to transfer files;
—Provide claimants with complete information if their claims are proposed for denial and enhance claimants' ability to rebut such outcomes easily and early in the process; and
—Effectuate payment quickly, thus avoiding the need for recontacts and verification of nondisability factors of eligibility.

Adjudication Officers

Adjudication officers will be responsible for claims from the point of receiving hearing requests until they are ready to be heard by ALJs. In carrying out their responsibilities, adjudication officers will work in a team environment with medical and nonmedical experts, requesting advice and counsel from ALJs as necessary.

Adjudication officers will be able to:

—Address the claimants' questions and concerns regarding their claims;
—Identify and discuss issues in dispute with claimants and determine the need for additional evidence. If the claimant is represented, conduct personal conferences with the representative and prepare written stipulations as to those issues not in dispute;
—Review claim records prior to hearings and issue revised decisions if additional information or evidence so warrants or refer claims for medical consultation; and
—Take responsibility for all evidentiary development and refer prepared records to the ALJs.

Administrative Law Judges

Administrative law judges (ALJ) will be responsible for hearing and deciding appeals. ALJs will receive support from technical and medical personnel, including decision writers. ALJs will also work with adjudication officers and disability claim managers as necessary.

ALJs will be able to:

—Review and focus on fully developed claims records prior to hearings;
—Deal with claimants who have already made informed decisions regarding representation before they appear at hearings; and
—In most circumstances, close the record at the conclusion of hearings, deliberate on issues and render prompt decisions.

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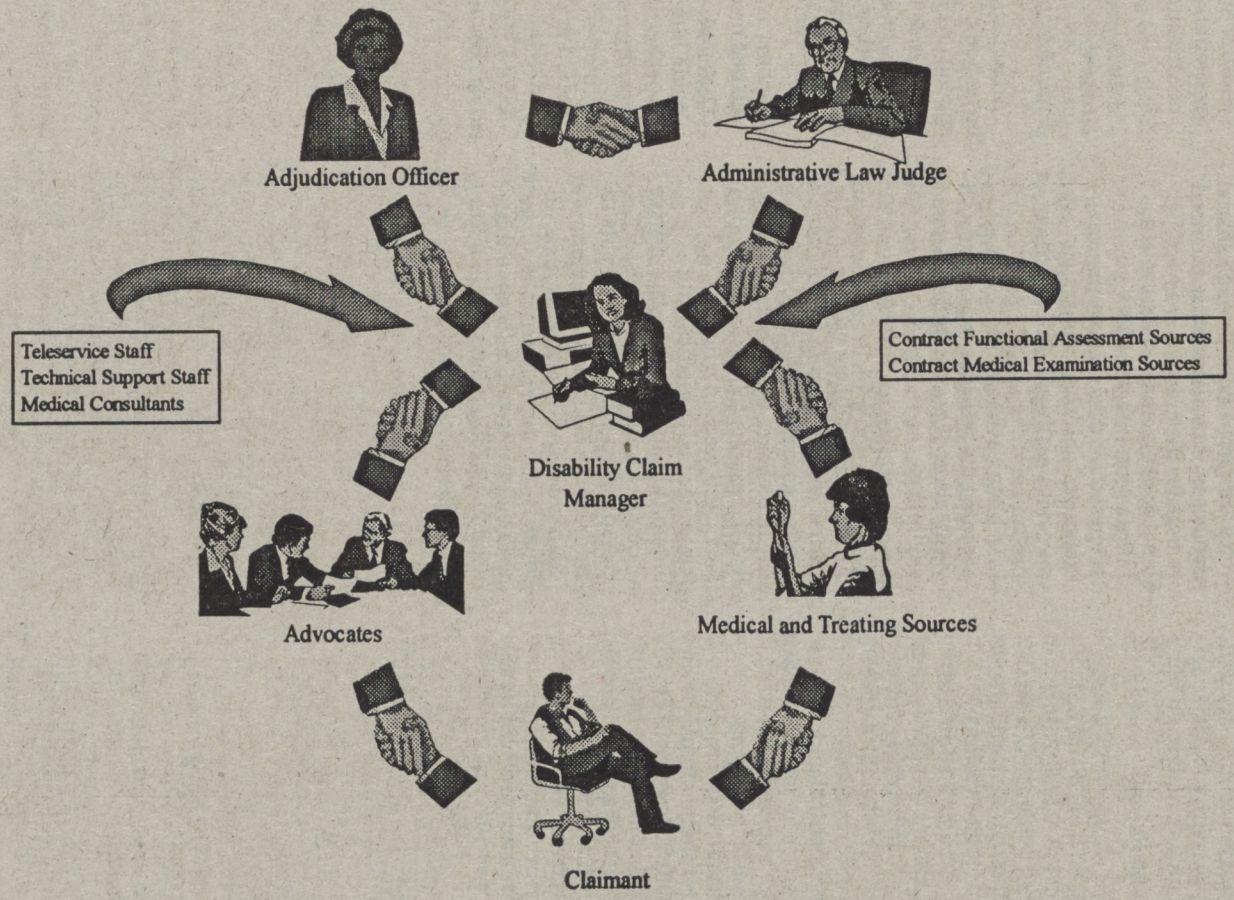
Figure 16

Dynamics of the New Process



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Workforce Enrichment/Empowerment

The work in the new process will raise job satisfaction and increase employee skills in the following way:

Employees involved with the initial level of claims will perform multiple tasks instead of singular activities, thus their roles will expand to encompass more of the "whole" job. This increases the sense of accomplishment as employees experience the direct relationship between their actions and the final product. Those at the prehearing step will also be able to do more of the "whole" job, including taking action to allow claims much earlier in the process. For medical consultants and ALJs, tasks will be eliminated that are not commensurate with professional skill levels. Employees will feel more of a sense of ownership for the services they perform as a member of a team focused on serving claimants.

Entry level positions will be developed in which employees work as part of the team while gaining experience and qualifying for greater responsibility. Adequate resources and sufficient training and mentoring will allow them to acquire the skills they need to process the claim from intake through adjudication rather than guessing what someone else needs or using the current all-encompassing approach to information gathering.

The new process will rely heavily on increased employee empowerment applying information technology and professional judgment to complete tasks more effectively and efficiently without constant checking, direction and micro-management. Recognition and reward processes will be revised to emphasize contributions to team outcomes and acquisition of knowledge bases. Continuous quality improvement activities will foster ongoing incremental process change.

Representatives: Fees, New Rules and Standards of Conduct

The Social Security Act and implementing regulations have long recognized the representational rights of claimants and have provided an administrative framework designed to ensure that claimants will have access to the legal community in the pursuit of their claims. Since the inception of the disability program, representatives have played a significant role in the disability process. The rate of representation in SSA disability claims has risen from approximately 55% in fiscal year (FY) 1982 to 75% in FY 1993. Focus groups of claimants and the general public have indicated that the disability program is too complex to understand and the process too fragmented and difficult for them to navigate alone. While many claimants resent having to pay a representative to establish entitlement to government-sponsored benefits, they feel that they have no choice if they want to be successful in this pursuit. While the rate of representation has risen, so too has the average fee for representation. The average fee received by representatives has jumped from approximately $1,500 in FY 1987 to $2,500 in FY 1993, further adding to the dismay of claimants. As more claimants seek representation and fees continue to climb, SSA has a heightened responsibility to monitor representational activity and to safeguard the interests of claimants. The proposed process will utilize new rules of representation and standards of conduct to ensure that representatives, as key players in the disability process, fulfill their responsibilities and adequately serve the needs of the claimants they represent.

Under the present statutory and regulatory scheme, representatives are not permitted to charge and collect a fee in any case without first obtaining the approval of the Secretary. There are two distinct procedures available to representatives for obtaining fee approval. The "fee petition" method requires the representative to itemize the services rendered and the time expended. The Secretary must evaluate each individual petition and determine the reasonable fee, considering such factors as case complexity, time expended, skills needed, and the results obtained. There is *no maximum fee* set by law for this procedure.

The second method, commonly referred to as the "fee agreement procedure", involves an agreement between the claimant and the representative whereby the fee is agreed to be no more than 25% of the retroactive benefits due, or $4,000, whichever is less. The agreement must be executed and submitted to the Secretary prior to the determination of the claim. While there is a maximum fee under this procedure, the Secretary does not have to conduct an individual evaluation of the reasonableness of the fee unless either the claimant, the representative, or the administrative law judge (ALJ) files a protest of the fee. The fee may be reduced by the Secretary *only* on the basis of evidence of the failure of the representative to adequately represent the interests of the claimant or on the basis of evidence that the fee is clearly excessive for the services rendered. Under limited circumstances, the representative may ask the Secretary to increase the fee.

In addition to approving all fees under both DI and SSI of the Social Security Act, there are withholding and direct payment of fee provisions that apply only to DI claims where an attorney is involved. Specifically, the Secretary must withhold and pay to the attorney the lesser of (1) 25% of the retroactive benefits due the claimant, or (2) the fee approved by the Secretary under either the fee petition or fee agreement procedures. The intent of this procedure is to provide an incentive for attorneys to accept Social Security claims work in order to increase claimant access to attorneys. In FY 1993, SSA paid nearly $300 million in fees to attorneys out of claimants' retroactive DI benefits. This withholding and payment provision does not apply to SSI claims because Congress did not find it appropriate to reduce a claimant's benefits in order to pay an attorney in a means-test program. However, even though SSA does not withhold and pay attorneys fees in these cases, it is estimated that SSI claimants paid over $133 million in fees to their representatives in FY 1992. Thus, the total cost to claimants for representation in 1993 approached the $500 million mark.

Since the inception of the fee agreement procedure in 1991, fee agreements have been rapidly replacing fee petitions as the vehicle for procuring agency approval of fees. SSA received 52,297 fee agreements in FY 1992, representing 39% of all fee approval requests. In FY 1993, fee agreements jumped to 87,395, accounting for 63% of all fee approval requests. Fees are generally higher under the fee agreement procedure, averaging $2,800 in FY 1993 as compared to an average fee of $2,200 for fee petitions. One of the factors causing higher fees under the fee agreement procedure is the lengthy processing time for disability claims; the longer it takes to issue a decision, the greater the retroactive benefits due the claimant. Under the fee agreement procedure, the fee is based on the amount of retroactive benefits due, and there may be little or no correlation to the time expended by the representative or the skills involved in rendering representational services. By eliminating fragmentation and handoffs, the proposed process will significantly reduce processing time. SSA will issue decisions faster, the amount of resulting retroactive benefits will be reduced, and resulting fees will likewise be reduced.

However, as the fee agreement procedure continues to claim an ever-increasing share of the total number of

fee requests filed each year, more and more fees will be based upon a predetermined, mathematical formula rather than by an independent evaluation of the quality of services rendered. In order to maintain the emphasis on quality in representational matters, the proposed process will adopt new representation rules and standards of conduct to effectively safeguard the rights and interests of claimants. These new regulations will:

—Establish qualifications for representatives, attorneys and non-attorneys, to ensure that claimants receive competent representation;

—Define the duties and responsibilities of representatives, including the duty to fully develop the record in a timely manner and to respond to requests to submit evidence;

—Establish a code of professional conduct for representatives in all matters before SSA, including conduct at prehearing conferences, hearings, and interaction with SSA employees and claimants generally;

—Provide a forum for claimants to air their grievances and file charges against representatives for failure to provide adequate representation or otherwise violating the rules of representation and standards of conduct;

—Provide meaningful sanctions against representatives, including suspension and disqualification from appearing before the agency in a representative capacity, for violating any of the provisions contained in the rules of representation and standards of conduct.

Without disturbing the statutory intent of facilitating claimant access to representatives, the simplified and user-friendly new process may well result in more claimants pursuing their claims without representation. However, the issue of representation will remain a matter of personal choice. In addition, the proposed process will reduce the trend of inflationary fees by eliminating the artificially high retroactive benefits that result from excessively long processing times. Finally, while current statutes and regulations attempt to protect claimants from fee abuses, they fall short of extending to claimants the assurances which they need most: that the representatives they retain will be qualified, will have the obligation to fully develop the record on their behalf, will adequately represent their interests, and will be accountable for misconduct or dereliction of duty. The new rules and standards of conduct provide the framework for these assurances.

Information Technology

Information technology will be a vital element in the redesign of the disability claim process. To the fullest extent possible, SSA will take advantage of the "Information Highway" and those technological advances that can improve the disability process and help provide world-class service. Existing Agency design plans for Intelligent Workstation/Local Area Network (IWS/LAN) and a Modernized Disability System are critical enablers for successful implementation of the proposed process redesign. Reengineering of the disability process is on the critical path of the design and development of the Modernized Disability System and implementation of IWS/LAN.

The Modernized Disability System and IWS/LAN will provide an integrated system to support the entire reengineered disability process. This system will provide electronic connectivity throughout the process. Current SSA systems that support disability processing operate independently of each other. Field offices, DDSs and hearing offices all have their own systems. The DDSs have their own baseline automation systems, but for the most part can only use the systems within the particular State on that State's machines. Likewise, hearing offices have a disability processing system that applies only to claim processing inside the hearings and appeals organization. Each organization independently inputs claim information into their systems and no *automated* information can be passed outside the organization for subsequent, much less parallel, claim processing.

The reengineered process relies on the ability to build a single electronic claim record as it goes from point to point in the disability process. This includes the ability for any facility to process the medical and nonmedical segments of claims for another facility. This is the primary benefit of the IWS/LAN and Modernized Disability System architectures. Both architectures are a prerequisite for enabling reengineering of the entire disability process.

The Enabling Platform

The IWS/LAN architecture and Modernized Disability System design will support a major objective of the redesigned disability process-seamless, reengineered electronic processing of disability claims from the first contact with the claimant to the final decision, including all levels of administrative appeal. All employees will use the same hardware, the same claim assignment and scheduling software, the same claim processing software, the same case control system, the same fiscal and accounting software, the same integrated quality assurance functionality, and the same management information system throughout all stages of the process. Therefore, data will need to be input and validated one time only, leading to more consistent decisions in establishing both the medical and nonmedical aspects of DI and SSI claims. All employees will also have access to decision support systems for those complex entitlement decisions. Since all facilities will be able to access the same record, all SSA representatives will be able to respond to inquiries from the same base of information. This will produce more consistent and accurate Agency responses to inquiries.

SSA will continue to move aggressively toward the goal for complete electronic, paperless processing with all aspects of the claims process. Key tenants of reengineered electronic, paperless processing will be encouraging electronic information exchanges with medical evidence providers—and then keeping information received electronically in that same (or a similar) digitized format for claim processing, use of cost effective scanning/imaging of decision supporting paper records, abstraction and/or summarization of key, paper-based information by employees via direct keying, and finally, direct keying of information into the claim processing system by employees, third parties, and/or claimants. Direct keying of information into the electronic file will be minimized whenever possible by reliance on data propagation from other SSA files and comprehensive database support throughout the claims processing systems.

Although full realization of a completely automated system will be a long-term initiative, a number of aspects of the redesigned process will be quickly realized and made possible by IWS/LAN and Modernized Disability System support in the very near future.

Redesign of Access to Services

Information technology will be applied in several ways to enhance the claimants' and representatives' access to services and information under the new process. Through reengineering, claimants will be able to conduct business with SSA via telephone, self-help workstations, kiosks, videoconferencing, and electronic data transfer at SSA facilities and other satellite locations. SSA will provide TV/VCRs and/or kiosks in SSA facilities and public places where there is a high

concentration of potential customers to dispense information about SSA programs, the requirements for eligibility, and the information requirements for filing an application. The better informed the customers, the better prepared they are at the time of the interview. This reduces recontacts and allows the customer to more fully participate in the timely pursuit of their claim.

Waiting rooms will be equipped with self-help workstations housed in private cubicles. They will help to pre-screen program eligibility and furnish application requirement information for walk-in claimants. These workstations can also be used as front-end interviewing devices that collect preliminary application information from claimants. The preliminary information will be used to access SSA databases to gather all known information on the claimant, including earnings history and any prior filings.

Application information will include the telephone numbers from which claimants or representatives will make telephone inquiries. SSA office telephone systems will be equipped with automatic number identification technology (also known as "caller ID"). Using this technology, SSA will be able to provide improved service by responding to telephone inquiries with increased assurance that the caller is the claimant or representative.

Customer Self-Help Redesign

An efficient paper application form designed to be easily read and indexed by scanning equipment will be widely available as part of a comprehensive consumer information publication about the disability program that will be stocked in SSA facilities and other appropriate community-based locales. Self-help instructional material will also be mailed to some applicants who inquire about disability benefits by calling SSA. Up-front completion of the form will not be a requirement of filing, but will enhance the intake process for applicants. The Modernized Disability System will have the capability to accept scanned information from the application form and integrate all relevant information into the electronic file.

In addition, an electronic application form will be made available to claimants with access to a personal computer and modem using an SSA bulletin board service or through other publicly available bulletin board services. The information will be completed and returned electronically to SSA via an agreed upon electronic filing method.

Finally, as previously mentioned, some claimants will begin the application process by completing a brief electronic application form using SSA self-help workstations in SSA offices and other community-based locations.

Enhanced Third Party Support

SSA will conduct forums and produce video and computer-based training materials for third parties who wish to participate in assisting customers to file applications and gather medical evidence. Wherever possible, physicians and health care organizations, advocates, community counseling services, and other professionals who regularly provide assistance to SSA claimants will be supplied with SSA software to electronically complete Agency forms. The data will be transferred to SSA using agreed upon methods. As long as these parties comply with certain stipulations, SSA will supply updates to software and procedures, and/or establish an SSA bulletin board from which these third parties can download current software.

SSA will allow representatives access to electronic claim folders. This access will be limited to the authorized representative (attorney or non-attorney) of the claimant and will be allowed from self-help workstations at an SSA facility, or via an agreed upon electronic data transfer method.

Evidence Collection Redesign

Medical Evidence of Record is to the disability process what the earnings record is to the Retirement and Survivors' Insurance program. SSA will marshall its resources for an "Evidence Modernization Project" as was successfully done for the Earnings Modernization Project. The success of Earnings Modernization was due, in no small part, to the partnership SSA established with the employer community to streamline and focus the wage reporting requirements. The redesigned disability process approach provides for similar partnership with medical providers and the necessary streamlining of evidence collection requirements.

SSA will expand its acceptance of interpretive data from the medical community. Instead of relying solely on actual medical records, SSA will focus on obtaining certifications of the diagnostic and functional information needed to make disability determinations. These standardized certifications will be designed to solicit from the treating source the specific information needed and enable SSA to process the information in a timely and accurate manner.

Electronic standardized treating source information will be transmitted from physicians to SSA and associated with the appropriate electronic record. If additional medical evidence is needed and it is not already electronic, it will be scanned and stored digitally, or it may be abstracted and stored electronically. "Fax ID" and "caller ID" will be established with all parties submitting evidence or who have rights to legitimately request evidence. As was done during Earnings Modernization with the employer community, SSA will take advantage of the expanding use of computer applications by medical providers by working with software vendors that currently service the medical community to include an application for treating source reporting in office automation software.

The paper version of the standardized treating source form will be designed so that the data can be read by scanning equipment into SSA claims processing systems. The form will be designed to support the structure of the Modernized Disability System.

A single vendor payment system utilized by all appropriate employees will be used to pay certain evidence providers for information which they provide SSA to aid in making a disability determination. To further paperless processing, SSA will adopt a "signature on file" policy for the claimant's evidence release authorization to eliminate routing of paper medical release forms.

SSA will also set up information exchanges with other Federal and State agencies and major medical providers using pin/password access to data stores as well as caller/fax ID to conduct information exchange over the telephone.

Reengineered Tools For Decisionmakers

The ability of decisionmakers to conduct thorough interviews and evidence evaluation, and timely and accurate claims adjudication is predicated on the implementation of the functionality provided by the IWS/LAN hardware and software components, and the decision support features of the Modernized Disability System. The IWS/LAN environment provides access from the decisionmakers' desktop to electronic policy and procedures, multiple/simultaneous information processing and retrieval sessions with SSA claims processing systems, simultaneous access to both intelligent workstation-based office automation software and SSA claims processing systems, and access to modern

information-handling and transfer technologies such as fax. With all of the tools at the decisionmakers' fingertips, time is not wasted in logging on and off claim processing systems to get to other claim processing systems or office automation applications, nor is time lost by having to log off the system in order to leave the workstation to research manual reference materials.

Expert system software will be included in SSA claims processing systems to assist disability decisionmakers in the analysis and evaluation of complex eligibility factors, and to ensure that the correct procedures for disability evaluation are followed. While conducting interviews, disability decisionmakers will use the decision support features of the Modernized Disability System which ask specific questions based on claimants' alleged impairments.

This will provide more personalized service for claimants since the decision support questions will be tailored to their particular impairments. The decision support system will use the accumulated data of the electronic record to automatically produce "statement of the claim" summaries and decision rationales used throughout the determination process.

Where disability decision team members cannot be physically co-located, they can remain in communication by using two-way TV and other videoconferencing technologies. Handoffs, and the queues associated with each handoff, can also be minimized by the use of expert systems because much of the specialized knowledge that a task requires will be electronically stored in the knowledgebase of the expert system and immediately available. Therefore, the number of situations where employees will have to handoff claims to other employees having more technical expertise will be reduced.

Expert systems will also be developed to improve the delivery of disability policy. Disability policy will be developed and stored in a format that can be integrated into computer systems as the source of context-sensitive help screens and decision-support messages. SSA components responsible for disability policy will be responsible for updating the system with policy language revisions that do not require programming changes.

Quality Assurance and Management Information Redesign

Quality assurance features fully supported by the Modernized Disability System will be integrated throughout the new process. For example, the national end-of-line quality review sample will be electronically selected and automatically routed to appropriate staff. In-line programmatic quality assurance, enhanced by the use of decision support systems, will be programmed into the computer applications and will help to identify errors of both oversight and substance, and also support routine analysis to aid in avoiding future similar errors. An on-line technical review will occur each time information is added to the electronic record.

Quality assurance and productivity measures will be incorporated in a new, total-process management information system. Meaningful, timely management information for the disability process is dependent on a seamless data processing system used by all components which affords a common case control system and a common data base. SSA's claim processing systems integrated on an Agency-wide IWS/LAN platform will provide this seamless environment.

The Modernized Disability System management information design supports the new process goal of providing access from a desktop computer to total-process management information data no more than 24 hours old. In addition to the routine, published national reports generated from the management information system, other reports needed by national or local entities, or individual employees will be preformatted and system-generated on demand. Managers and empowered employees will have the flexibility to change parameters and to access the full data base, permitting comparison of peer performance and trend analysis. The system would also permit custom, ad hoc reports for special studies or immediate special purpose activities with access to the full data base. Tools including user-friendly report generator software and statistical forecasting and modeling applications will be available on the intelligent workstation to assist users in the data analysis.

Appendix I—Reengineering Design Partners

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Rose Lucas—President, SSA/AFGE National Council of Data Operations Centers (Council 221).
James Marshall—President, SSA/AFGE National Council of SSA/OHA Locals (Council 215).
Larry Massanari—SSA Regional Commissioner, Philadelphia.
Francis O'Byrne—President, Association of Administrative Law Judges, Inc.
Ruth Pierce—Deputy Commissioner for Human Resources, SSA.
Daniel Skoler—Associate Commissioner for Hearings and Appeals, SSA.
Witold Skwierczynski—President, SSA/AFGE National Council of SSA Field Operations Locals (Council 220).
Earl Tucker—President, SSA/AFGE National Council of Social Security Regional Offices, Program Integrity Review (Council 224).
Janice Warden—Deputy Commissioner for Operations, SSA.
Andrew Young—Deputy Commissioner for Programs, SSA.

Appendix II—Methodology

Business Process Reengineering

The Process Reengineering Program is the culmination of a rigorous SSA investigation of the reengineering efforts and methodologies of those companies, public organizations, academic institutions, and consulting firms with the most "hands on" experience in this field. The positive findings from this detailed review, combined with concerns about existing business processes within SSA and the quality of SSA service to the public, led management to the conclusion that a process reengineering effort was critical to the SSA objective of providing "world-class" administration and service.

Based largely on analysis of what has worked best in the private and public sectors, a customized reengineering methodology was developed within SSA. It uses a reengineering team approach that combines a strong "customer" focus with classic management analysis techniques, and computer modeling and simulation, to intensely review a single business process. The objective is not to make small, incremental improvements in the various pieces of the process, but to redesign it as a whole, from start to finish, so that it becomes many times more efficient and, in so doing, significantly improves SSA service to the public.

A senior SSA manager was selected to serve as Director of the Process Reengineering Program. The Director leads all SSA process reengineering efforts, is the primary liaison with the Commissioner and Executive Staff, nominates topics for examination, chairs project steering committees, and directs a small professional staff and revolving group of managers/consultants.

SSA uses special, multi-disciplinary teams of individuals to conduct reengineering analyses and identify the best ways to redesign and significantly improve processes. Teams are comprised of outstanding employees, all of whom are subject matter experts in operational, programmatic, policy, systems, administrative, and other areas relevant to the business process.

Reengineering teams focus on identifying those procedural and policy changes to the process that will: make it more claimant and service oriented; greatly increase productivity and process speed; take advantage of opportunities offered by new technology; and improve the empowerment and professional enrichment of the employees who are part of the process. Although teams follow the same basic reengineering protocol, continual customization is both expected and encouraged.

Disability Process Reengineering

Project Employees within SSA and DDS at all levels recognize that there are significant problems with the disability claims process. They are dissatisfied with the long processing times and high backlogs which result in less than satisfactory service to claimants. The disability process reengineering project has allowed those who have long worked in the process, and with claimants and their representatives, to investigate the causes of current problems. With considerable input from other employees and those outside the process, they have developed the proposal for solving those problems.

The Secretary of the Department of Health and Human Services, Donna Shalala, and the Commissioner of Social Security, Shirley Sears Chater, have placed improvements in the disability process as critical to the delivery of world-class service by SSA. They have strongly supported the work of the project team. Their adoption of the proposal will depend on the response of the employees and the public to it.

An Executive Steering Committee was formed to meet on a regular basis to provide advice to the Commissioner on development of the disability reengineering process change proposal, and to ensure that support occurred at the highest levels of the Agency. The Executive Steering Committee established the parameters and expectations for the project. The expectation goals were driven by targets set forth in the Agency Strategic Plan and are based on percentages of service and/or productivity:

Parameters and Expectations for Reengineering the Disability Determination Process (9/15/93)

Definition of Process

The "process" to be reengineered is the initial and administrative appeals system for determining an individual's entitlement to Social Security and Supplemental Security Income disability payments. It includes all actions from an individual's initial contact with SSA through payment effectuation or final administrative denial. The system for determining whether an individual continues to be entitled to receive disability payments is not part of this "process."

Rationale: The process to be reengineered must be defined broadly to increase the opportunity for improvement. The continuing disability review system is not included because it is conceptually and practically distinct from the initial disability determination process.

Parameters

Every aspect of the process except the statutory definition of disability, individual benefit amounts, the use of an administrative law judge as the presiding officer for administrative hearings, and vocational rehabilitation for beneficiaries, is within the scope of this reengineering effort. However, analysis and ideas for change should proceed and be presented on two tracks: Improvements achievable without changes in statute or regulations and innovations that may require such change.

Rationale: The timing of legislative or regulatory change is beyond SSA's control. Such change could not reasonably be expected to be implemented in less than 2 years. However, limiting the reengineering effort to aspects of the process not requiring change in statute or regulations was rejected as limiting too greatly the possibility of major improvement/innovation in the process. The two-track approach provides for both shorter term incremental improvements and longer term, more radical change.

Expectations

1. Unless otherwise specified here, the recommendations for change should be consistent with the goals and objectives set forth in the Agency Strategic Plan.

2. Recommendations for change, taken as a whole, should not cause changes in benefit outlays unless as a necessary result of improvements in service, such as more timely processing and payment of claims.

3. Process changes should improve service and/or productivity, on a combined basis, by at least 25 percent by the end of FY 1997 over levels projected in the FY 1994 budget (it would require about an additional $500 million currently to realize such improvement) and decisional accuracy should not decrease. By FY 2000 additional actions, including any necessary statutory and regulatory changes, should provide a further 25 percent improvement.

The Executive Steering Committee facilitated good ongoing communications between components and the Team, and communicated the need and reason for reengineering the disability process. They were familiar with the current process problems and were kept apprised of research completed by the Team. In February, the Executive Steering Committee was expanded to include the Presidents of the American Federation of Government Employees, the National Federation of Federal Employees, and the National Treasury Employees Union locals, councils and chapters representing SSA employees; and the Presidents of the SSA/DDS professional and management associations recognized by SSA as having an interest in disability issues.

Upon receipt of this proposal, the Executive Steering Committee will make an impact assessment, cognizant of competing pressures and implementation challenges. During the dialogue period, the Executive Steering Committee will share and discuss the proposal, provide feedback, and identify implementation questions. Based on the comments received and issues identified, they will provide advice on the next steps.

The 18 members of the Disability Reengineering Team, all of whom are SSA or State DDS employees, have varied and extensive backgrounds in all aspects of the disability program. Team members attended a high quality, intensive 3-day SSA reengineering methodology training session, and completed extensive reading assignments on reengineering. Some Team members visited organizations who had reengineered their business processes to learn about successes as well as opportunities for improvement.

The Team used the following methods to obtain the information necessary to develop a redesigned disability process.

Briefings

Members of the Team received extensive briefings from:

—All SSA components that work with any aspect of the disability process; and

—Dr. Frank S. Bloch, Professor of Law and Director of the Clinical Education Center at Vanderbilt, who discussed the results of his study comparing disability programs and processes of the United States, Canada, and Western Europe. His work encompasses eligibility requirements and program goals, benefit award structure and short-term benefits, administrative organization, and procedures for claim processing and appeals.

Scan Visits

The Team made fact-finding visits to numerous SSA and DDS offices, and to other public and private organizations throughout the country who have an interest in working with SSA to improve the disability process. Team members conducted numerous telephone interviews with representatives of offices/groups whom they could not personally visit. They also publicized surface/electronic mail addresses and fax and voice telephone numbers for those who were not contacted or had additional information to provide.

Prior to site visits/contacts, Team members provided those organizations and individuals with general information about the reengineering effort, key research areas, and some unconventional ideas about the disability process so that the interviewees would have an opportunity to think about process issues. The Team encouraged interviewees to provide open and honest opinions, suggestions, and ideas.

Appendix III contains a list of the sites visited and telephone interviews conducted.

Focus Groups

A series of 12 focus groups were held throughout the country to obtain input from members of our claimant population and the general public regarding their experiences with and expectations of the SSA disability process. The focus groups provided the Team valuable information about claimants' expectations and preferences, as well as concerns about the current process. Appendix III contains a list of the focus group sites and composition.

Benchmarking

"Internal benchmarking" refers to the identification and understanding of site-specific best practices that currently exist within the Agency and is focused on the improvement and standardization of internal operations. The Team completed this phase of benchmarking by reviewing lists of sites engaging in "best practices" which were submitted by various SSA components, and visiting or telephoning as many of these SSA and DDS offices as possible.

"External benchmarking" is essentially the same, except the hunt for best practices and proven process innovations is expanded to comparable companies and organizations outside of SSA. It is focused outside the organization and is concerned with the relative performance of one specific function or process. Appendix III contains the companies/organizations the Team used as benchmarking partners.

A valuable part of the benchmarking exercise was the opportunity to validate

assumptions related to the disability process, note issues that required further investigation, and identify potential improvement opportunities.

Process Analysis

The Team utilized a document prepared by the SSA Office of Workforce Analysis in April 1993 which outlines the "as-is" disability claim and appeal processes of SSA. The document contains a description of claim processing tasks performed by line-employees in the seven operational components that deal with the disability claim process.

Team members conducted studies on issues such as claimant burden time, gap analysis, and administrative costs. They also collected, reviewed, and researched an extensive amount of existing procedural guides, laws/regulations, studies conducted by internal and external components, processing time and quality management information, workflows, cost data, etc.

Intensive deliberations, concept debates, and analysis on ideas for change were instrumental in the creation of the redesigned process.

Computer Modeling

Computer models are close representations of work processes that, if properly constructed, allow for better understanding, testing or forecasting, and study. Team members worked with modeling professionals in SSA and the private sector to build the models used to develop assumptions about a redesigned process. The assumptions used for the proposal are shown in appendix IV.

Models were built to represent both the current and proposed processes. These models helped the Team predict the best features and performance of the new disability process; to better judge the magnitude of change from one process to another; and to do some "what-if-nothing-changes" analysis to get a feel for the impact of inactivity.

Proposal

The dominant product of the entire effort—this proposal—outlines the best process improvement and process innovation ideas from the Team. The proposal as written by the Team, will be presented to the Executive Steering Committee, and will be made widely available within SSA and the DDS community, as well as to the broadest possible public for comment.

Appendix III—Research

Logistic Accomplishments

Sites Visited: 421
States Visited: 33
Individual Interviews: 3,600+

Specific Sites

35 SSA central office components
10 regional offices, OHA ROs and ROPIRS
7 DHHS regional OGC offices
37 State DDSs
64 field offices
28 hearing offices
9 processing centers and other large installations
10 teleservice centers
14 area director offices
181 sites "external" to SSA and DDSs
6 union/management associations

Telephone Interviews

31 field offices
1 teleservice center
3 area director offices
4 hearing offices
26 DDSs
46 sites external to SSA and DDSs

BILLING CODE 4190-29-P

Internal Site Visits

REGION	RO	FO	OTHER	HO	DDS
Boston	RC Exec. Staff, RCALJ Exec. Staff, ADs, DPB	W. Warwick, RI Providence, RI Boston, MA Dorchester, MA Roxbury, MA	■ ROPIR Director ■ DQB ■ Boston, MA TSC	Boston, MA Providence, RI	Boston, MA Providence, RI
New York	RC Exec. Staff. RCALJ Exec. Staff, DPB, ADs	Jamaica, NY Boro Hall, NY Albany, NY	■ ROPIR Mgmt Staff ■ Jamaica, NY TSC ■ NEPSC	New York City, NY Albany, NY	Brooklyn, NY Newark, NJ Manhattan, NY Albany, NY New York Administrator
Philadelphia	RC Exec. Staff, RCALJ Exec. Staff, PSC (DRS) ROMCS, ADs	Wilmington, DE Philadelphia NE, PA Richmond, VA Washington "M" St., DC Uniontown, PA Pittsburgh, Penn AV, PA Huntington, WV Charleston, WV	■ ROPIR Director ■ DQB ■ MATPSC ■ Baltimore, MD TSC	Jenkintown, PA Richmond, VA Washington, D.C. Pittsburgh, PA Huntington, WV Charleston, WV	Wilmington, DE Richmond, VA Fairfax, VA Charleston, WV Baltimore, MD
Atlanta	RC Exec. Staff, RCALJ Exec. Staff, PSC, DPB, ADs	Birmingham, AL Columbia, SC Tucker, GA Little Havana, FL Nashville, TN Rome, GA Cedartown, GA	■ DQB ■ SEPSC ■ Birmingham, AL TSC ■ Ft. Lauderdale, FL TSC ■ ROPIR Director	Atlanta, GA Birmingham, AL Columbia SC Chamblee, GA Ft Lauderdale, FL Nashville, TN	Decatur, GA Birmingham, AL Columbia, SC Miami, FL Nashville, TN
Chicago	RC Exec. Staff, RCALJ Exec. Staff, DPB, ROMCS, PSC (DRS), Illinois ADs	Springfield, IL Lansing, MI Chicago NSW, IL Rochester, MN St. Paul, MN	■ ROPIR Director ■ DQB ■ Chicago, IL TSC ■ GLPSC	Chicago, IL	Springfield, IL Lansing, MI St. Paul, MN
Kansas City	RC Exec. Staff, RCALJ Exec. Staff, PSC (DRS), DPB, ROMCS Iowa AD	Kansas City, KS Topeka, KS Independence, MO Gladstone, MO St. Louis, Southside, MO	■ ROPIR Director ■ DQB ■ MAMPSC	Kansas City, MO	Topeka, KS Kansas City, MO St. Louis, MO
Dallas	RC Exec. Staff, RCALJ Exec. Staff DPB	Dallas, TX Tulsa, OK Waco, TX Oak Cliffe, TX Albuquerque, NM Huron, SD, DM only	■ ROPIR Director ■ DQB ■ Albuquerque, NM DOC ■ Grand Prairie, TX TSC ■ Albuquerque, NM TSC	Dallas North, TX Albuquerque, NM Oklahoma City, OK	Albuquerque, NM Oklahoma City, OK Arlington, TX DHU Austin, TX

REGION	RO	FO	OTHER	HO	DDS
Denver	RC Exec. Staff, RCALJ Exec. Staff, DPB, ROMCS, ADs	Greeley, CO Ft. Collins, CO Denver Dntn, CO Englewood, CO Lakewood, CO Billings, MT Sheridan, WY Rapid City, SD Yankton, SD Sioux Falls, SD Pine Ridge, SD—Outstationed CR	■ DQB ■ Golden, Co TSC ■ ROPIR Director	■ Denver, CO ■ Billings, MT ■ Processing Center, Billings MT ■ Sioux Falls, SD	Denver, CO Sioux Falls, SD
San Francisco	RC Exec. Staff, RCALJ Exec. Staff, Chief Medical Officer, ADs, DPB, PSC	SF,Civic Center, CA Sacramento, CA Tucson, AZ Phoenix, AZ Chula Vista, CA El Cajon, CA, DM only San Diego, CA, DM only Linda Vista, CA, BM only Miracle Mile, CA	■ ROPIR Director ■ DQB ■ WNPSC	Oakland, CA Los Angeles W, CA	Oakland, CA Sacramento, CA Tucson, AZ Phoenix, AZ San Diego, CA
Seattle	RC Exec. Staff, RCALJ Exec. Staff, DPB, ADs, ROMCS	Renton, WA Olympia, WA Seattle North, WA Tacoma, WA Anchorage, AK, State Mgr. only	■ ROPIR Director ■ DQB ■ Auburn, WA TSC	Seattle, WA	Renton, WA Olympia, WA Portland, OR, DDS Administrator only
National			■ AFGE ■ NCSSMA ■ NFFE ■ NTEU ■ Assoc. of Administrative Law Judges, Inc. ■ NADE		

Telephone Call Summary — Internals

REGION	FO	OTHER	HO	DDS
Boston	Worcester, MA Fall River, MA			Windsor, CT Augusta, ME Concord, NH Waterbury, VT
New York	Elmira, NY Fajardo, PR Hato Tejas, PR San Juan, PR Cayey, PR Bayamo, PR			San Juan, PR
Philadelphia	Covington, VA Welch, WV	Pittsburgh, PA AD		Washington, D.C. Harrisburg, PA
Atlanta	Augusta, GA	Tampa, FL AD Miami, FL AD	Miami, FL	Frankfort, KY Jackson, MS Raleigh, NC
Chicago	Indianapolis, IN Valparaiso, IN Pontiac, MI Madison, WI Elkhart, IN Racine, WI Detroit East, MI Detroit Conner, MI Toledo, OH Springfield, OH Oshkosh, WI Chicago South, IL Muncie, IN Chicago East, IL Highland Park, MI Grand Rapids, MI	Cleveland, OH TSC	Oak Park, MI	Indianapolis, IN Columbus, OH Madison, WI
Kansas City	Dubuque, IA Columbia, MO			Lincoln, NE Des Moines, IA
Dallas	Gretna, LA Pasadena, TX			Baton Rouge, LA Little Rock, AK
Denver				Bismarck, ND Helena, MT Sioux Falls, SD Salt Lake City, UT Cheyenne, WY
San Francisco			Phoenix, AZ Santa Barbara, CA	Honolulu, HA Carson City, NV
Seattle				Boise, ID Anchorage, AK
National		■ Black Affairs Advisory Council ■ Pacific Asian American Advisory Committee ■ National Association of Senior Social Security Attorneys ■ Hispanic Affairs Advisory Council		

Central Office Site Visits

COMMISSIONER	HUMAN RESOURCES	FINANCE ASSESSMENT AND MANAGEMENT	OPERATIONS	POLICY AND EXTERNAL AFFAIRS	PROGRAMS	SYSTEMS
Office of Information Resource Management Office of Strategic Planning	Office of Workforce Analysis	Office of Financial Policy Operations Office of Program and Integrity Review Office of Budget	Office of Operations Management and Program Integration Office of Public and Employee Service Office of Automation Support Office of Disability and International Operations Office of Central Records Operations	Office of Legislation and Congressional Affairs Office of Public Affairs Office of Research and Statistics	Office of Disability Office of Supplemental Security Income Office of Hearings and Appeals Office of Retirement and Survivors Insurance Litigation Staff Office of the Actuary	Deputy Commissioner for Systems Disability Systems Modernization Staff Office of Information Management Office of Telecommunications Office of Systems Design and Development Office of Systems Requirement

External Contacts

REGION	ADVOCACY GROUPS	LEGAL/ REPRESENTATIVE COMMUNITY	CLINICS/ HOSPITALS	MISCELLANEOUS
Boston		■ Brock Hornby, US District Judge, District of Maine, Portland, ME—telephone ■ Disability Law Center, Boston, MA	■ Chrmn., Childhood Disabilities Comm., Amer. Academy of Pediatrics, Boston, MA—telephone ■ Dr. Winkler, Neurologist, Boston, MA—telephone ■ Pres., Amer. Academy of Disability Examining Physicians, Manchester, NH—telephone ■ Dr. P. Alden, Internist, Burlington, VT—telephone	■ Office of General Counsel, Boston, MA
New York	■ Fountain House, New York, NY ■ Brooklyn Center for the Independence for the Disabled, New York, NY ■ Gay Men's Health Crisis, New York, NY ■ Hyacinth House, New York, NY ■ Coalition for the Homeless, New York, NY ■ New York City Department for Homeless Services, New York, NY ■ Access Development Corporation, New York, NY ■ Lighthouse for the Blind, New York, NY ■ VISIONS, Blind Services, New York, NY ■ Venture House, New York, NY ■ Queens Independent Living Center, New York, NY ■ New York State Advocate for the Disabled, New York, NY ■ International Center for the Disabled, New York, NY ■ Jewish Guild for the Blind, New York, NY ■ Brookdale Center for Aging, New York, NY ■ Bronx Independent Living Center, New York, NY	■ Legal Services for the Elderly, New York, New York ■ MFY Legal Services, New York, New York ■ South Brooklyn Legal Service, Brooklyn, New York ■ Barbara Samuels, Brooklyn, New York ■ Greater New York State Law Project, New York, NY ■ Legal Services, New York, NY ■ Fordham Law School, New York, NY ■ HIV Law Project, New York, NY	■ Long Island Association for AIDS Care, New York, NY ■ Cabrini Medical Center, New York, NY ■ Dr. D. DeGuzman, Internist, Newark, NJ—telephone ■ Dr. A. Goravedes, Internist, New York, NY—telephone ■ Dr. A. Marxuach, Internist, Carolina, PR—telephone	■ New York State Department of Social Services, Albany, NY ■ VA Homeless Project, New York, NY ■ New York State Workers Compensation, New York, NY ■ New York City Human Resources Admin., New York, NY ■ Mayor's Office for People with Disabilities, New York, NY ■ Vocational and Educational Services of New York, NY ■ Department of Education, Rehabilitation Services Administration, New York, NY ■ Manhattan Borough President's Office, Manhattan, NY ■ New York Commission for the Blind, New York, NY ■ New Jersey Commission for the Blind, Newark, NJ Blind, Blind,

REGION	ADVOCACY GROUPS	LEGAL/ REPRESENTATIVE COMMUNITY	CLINICS/ HOSPITALS	MISCELLANEOUS
Philadelphia	■ Whitman-Walker Clinic, Wash., DC—HIV Claims ■ ABA Legal Counsel for the Elderly, Washington, DC ■ Goodwill Industries, Pittsburgh, PA	■ Jess Leventhal, ESQ, Philadelphia, PA ■ Jenkins, Block & Mering, Richmond, VA ■ Legal Aid Bureau, Inc., Baltimore, MD ■ Allegheny County Bar Association, Pittsburgh, PA ■ Community Legal Services, Philadelphia, PA ■ Faith Angell, US Magistrate Judge, Eastern District of PA, Philadelphia, PA—telephone	■ Dr. H. Goldman, Psychiatrist, Univ. of Md., Baltimore, MD—telephone ■ Dr. S. Whitman, Psychiatrist, Hahnemann Univ. Med. School, Philadelphia, PA—telephone ■ Dr. P. McHugh, Psychiatrist, Johns Hopkins Medical Center, Baltimore, MD—telephone ■ Dr. F. Wigley, Rheumatologist, Johns Hopkins Medical Center; Frances Scott Key Medical Center, Baltimore, MD—telephone ■ Dr. C. Kennedy, Psychologist, Nat. Institute of Mental Health, Rockville, MD—telephone	■ Office of General Counsel, Philadelphia, PA ■ Vocational Rehabilitation Counselor, Wilmington, DE ■ Senator Rockefeller's Office, Huntington, WV ■ Bernard Popick, former BDI Director, Baltimore, MD—telephone ■ Art Simermeyer, former BDI Director, Baltimore, MD—telephone ■ Jean Hinckley, Former Litigation Staff Director, Baltimore, MD—telephone
Atlanta	■ Camillus House, Miami, FL—Homeless ■ Salvation Army, Ft Lauderdale, FL ■ Health Crisis Network, Miami, FL—Aids ■ AID Atlanta, Inc., Atlanta, GA ■ Retarded Citizens of Atlanta, Atlanta, GA	■ Lyle Lieberman, Esq, Miami, FL ■ Legal Services of Greater Miami, Miami, FL ■ Rudolph Patterson, Esq., Macon, GA ■ Mary Ann Lubinski, Atlanta Legal Aid, Atlanta, GA ■ Legal Services of Middle Tennessee, Nashville, TN	■ Miami Jackson Memorial Hospital, Miami, FL ■ Henderson Clinic, Ft. Lauderdale, FL ■ Dr. Azen, Internist, Miami, FL ■ Dr. Hudgins, Internist, Atlanta, GA ■ Grady Memorial Hospital, Atlanta, GA ■ Dr. Bruce Davis, CE Provider, Nashville, TN ■ Dr. David Gaw, CE Provider, Nashville, TN ■ Vanderbilt Medical Center, Nashville, TN ■ Vanderbilt Child Development Center, Nashville, TN ■ Meharry Medical School, Hubbbard Gen. Hosp., Nashville, TN ■ Dr. S. Schams, Pediatrician, Chmn, Govt. Affairs Comm., TN Chap., Amer. Academy of Pediatrics, Greenville, TN—telephone	■ Office of General Counsel, Atlanta, GA ■ HRS, Broward Co., Ft. Lauderdale, FL ■ Dade County Public Schools, Special Ed. Programs, Miami, FL ■ State of Florida Public Defender's Office, Miami, FL ■ Veterans Administration RO, Atlanta, GA ■ Workers' Comp. Dept. State of GA, Atlanta, GA ■ Congressional Staffers representing Senator Nunn and Coverdell and Representatives Linder, Gingrich, Darden, Collins, Deal, and Rowland, Atlanta, GA ■ Vanderbilt Employee Benefits Center, Nashville, TN ■ Ken Dowd, former BDI specialist, Altamonte Springs, FL—telephone FL—telephone

REGION	ADVOCACY GROUPS	LEGAL/ REPRESENTATIVE COMMUNITY	CLINICS/ HOSPITALS	MISCELLANEOUS
Chicago		■ Nancy Katz, Chicago Legal Aid Foundation, Chicago, IL ■ Southern Minnesota Legal Services, Minneapolis, MN	■ Phil Bradley, HMO, SHARE, Chicago, IL ■ Dr. S. A. Berendi, Psychiatrist, Consultative Examinations, Inc., and Assistant Professor of Psychiatry, Rush School of Medicine, Chicago, IL—telephone ■ Dr. C. Cass, Family Physician, Springfield, OH—telephone ■ Dr. J. Runke, Internist, Dir., Amer. Academy of Disability Examining Physicians, Chicago, IL—telephone ■ Dr. L. Miller, Dir., Employee Health Programs, Mayo Clinic, Rochester, MN—telephone	■ Railroad Retirement Board, Chicago, IL—telephone
Kansas City	■ Coalition for Independence, Kansas City, MO—handicap facilitator	■ Benefit Team Services, Kansas City, MO ■ Occudata Inc., Kansas City, MO ■ Wayne Radford, Topeka, KS ■ John Stevens, Topeka, KS ■ Allsup, Inc., St Louis, MO	■ Dr. J. Hart, Physical Medicine & Rehabilitation, Jefferson City, MO—telephone	■ HHS Regional Director, Kansas City, MO ■ Office of General Counsel, Kansas City, MO
Dallas		■ Carl Weisbrod, Dallas, TX	■ T. Jackson, Medical Records Supervisor, Baptist Medical Cente- Little Rock, AR—telephone ■ M. Maldonado, Release of Information Supervisor, Memorial Medical Center, Corpus Christi, TX—telephone ■ J. Hrachovy, Supervisor for Release of Information, Texas Tech Health Center, Lubbock, TX—telephone ■ M. Twiggs, Medical Records Supervisor, Acadiana Abstracting Consultants, Acadia, LA—telephone ■ P. Gregory, Medical Records Supervisor, Holt-Crock Clinic, Fort Smith, AR—telephone ■ Dr. R. Washington, Internist, Dallas, TX—telephone	■ Office of General Counsel, Dallas, TX

REGION	ADVOCACY GROUPS	LEGAL/ REPRESENTATIVE COMMUNITY	CLINICS/ HOSPITALS	MISCELLANEOUS
Denver	■ Stout St. Clinic, Denver, CO—homeless ■ Ctr. for Independent Living, Denver, CO—handicap facilitator ■ The Gathering Place, Denver, CO—homeless,abused women ■ Sioux Tribal Leaders, Rapid City, SD ■ Rosebud Indian Reservation, Rosebud, SD ■ Pine Ridge Indian Reservation, Pine Ridge, SD ■ Yankton Sioux Tribe, Wagner, SD ■ Parents Let's Unite for Kids (PLUK), Billings, MT		■ Dr. Ilke, Neo-natologist, Univ. of Colorado, Denver, CO ■ Dr. E. Alverez, Indian Health Services, Kyle, SD ■ Dr. J. Hutchinson, Psychiatrist, Southwest Colorado Mental Health Center, Durango, CO—telephone ■ Dr. D. Hubbard, Medical Director, Valley Gardens Health Center, Renton, WA—telephone	■ Rural Social Services Office, Sheridan, WY ■ BIA Social Services, Pine Ridge, SD ■ Office of General Counsel, Denver, CO

REGION	ADVOCACY GROUPS	LEGAL/ REPRESENTATIVE COMMUNITY	CLINICS/ HOSPITALS	MISCELLANEOUS
San Francisco	■ Walden House, Inc., S.F., CA—DA&A ■ Chinatown North Beach Mental Health Services, S.F., CA—treat mentally ill ■ Asian-Pacific Community Counseling, Sacramento, CA—treat mentally ill ■ Transitional Living and Support Group, Sacramento, CA—treat mentally ill ■ Advocates for the Disabled, Inc., Phoenix, AZ ■ Union of Pan Asian Communities, San Diego, CA ■ Chicano Federation of San Diego, CA ■ Project Home, Tucson, AZ ■ Tohono O'Odham Nation, Tucson, AZ—Indian Tribe ■ Superstition Mountain Mental Health, Apache Junction, AZ ■ Com-Care, Phoenix, AZ—mentally ill ■ Alpha Project, El Cajon, CA—homeless ■ Bayside Settlement House, San Diego, CA—Vietnamese, Cambodian, Laotian communities ■ San Diego AIDS Foundation, San Diego, CA ■ Advocates for the Disabled, Phoenix, AZ ■ Skid Row Mental Health, Los Angeles, CA ■ Para Los Ninos, Los Angeles, CA ■ Jorge Chuc, Community Rehab. Services, Los Angeles, CA ■ CARE Program, Long Beach, CA ■ AIDS Project Los Angeles, Hollywood, CA ■ Mental Health Assoc. & Mental Health Advocacy Services, Los Angeles, CA AZ—mentally	■ Legal Services of Northern CA, Oakland, CA ■ Tretshock, McNamara & Clymer, Tucson, AZ ■ Phil Way, International Institute, Los Angeles, CA ■ N. T. Lieu, Legal Services, Pomona, CA ■ Louise A. Monaco, Los Angeles, CA ■ Joel Leidner, Los Angeles, CA	■ La Frontera Center, Tucson, AZ ■ Dr. E. Randolph Soo Hoo, Western Occupational Health Centers, Tucson, AZ ■ George Delong, PhD., Behavioral Health System, Inc., Phoenix, AZ ■ Veterans Admin. Medical Center, Long Beach, CA ■ Dr. David Smith, Professor of Rehabilitation, Chief of Rheumatology Rehabilitation Section, University of Arizona, Tucson, AZ—telephone ■ Dr. Mary Susan Hansen, Psychiatrist, Medical Director of the Citywide Case Management Program, Tenderloin Clinic, San Francisco, CA—telephone ■ Dr. Richard Shadoan, Psychiatrist, San Francisco, CA—telephone ■ Dr. R. Grossman, Family Practice/Neurologist, Tucson, AZ—telephone ■ Dr. R. P. Liberman, Psychiatrist, West LA VA Medical Center, Los Angeles, CA—telephone ■ Dr. D. Atkin, Orthopedist, San Diego, CA—telephone ■ Dr. D. Kelsay, Internist, Loma Linda, CA—telephone ■ Dr. C. Libanati, Internist, Loma Linda School of Medicine, Loma Linda, CA—telephone	■ California State Vocational Rehab., Sacramento, CA ■ Arizona Department of Economic Security, Phoenix, AZ ■ Private Secretary, Chandler, AZ—transcription service ■ North · Communications, Santa Monica, CA

REGION	ADVOCACY GROUPS	LEGAL/ REPRESENTATIVE COMMUNITY	CLINICS/ HOSPITALS	MISCELLANEOUS
Seattle	■ Seattle Indian Center, Seattle, WA—Indian facilitator ■ Downtown Emergency Service Center, Seattle, WA—homeless	■ NOSSCR, Seattle, WA	■ MDSI Physician Group, Seattle, WA ■ Dr. James Read, Psychologist, Boise, ID—telephone ■ Dr. D. D. Smith, Internist/Pulmonologist, Everett, WA—telephone	■ Office of General Counsel, Seattle, WA ■ Resource Center for the Handicapped, Seattle, WA ■ Belltown DSHS, Seattle, WA ■ Congressional Staffers representing Senator Murray and Representatives McDermott, Dunn, and Kreidler, Seattle, WA ■ Division of Alcohol & Abuse, State of WA, Seattle, WA ■ Burk Johnson, former BDI Reg. Rep., Russellville, Oregon—telephone
National	■ Save Our Security (SOS) ■ Association of Retarded Citizens (ARC) ■ National Mental Health Association ■ AARP ■ National Alliance for Mentally Ill ■ United Cerebral Palsy Assn. ■ Older Women's League ■ Center for Health Policy	■ National Senior Citizens Law Center ■ NOSSCR, Washington, DC ■ Bazelton Center for Mental Health Law, Washington, DC ■ George Washington Center for Health Policy, Washington, DC		■ HHS, Office of the Secretary ■ Administrative Conference of the US ■ Milton Carrow, Professor of Law, George Washington University, Washington, DC ■ Eileen Bradley, Business and Administration Law Division, OGC, HHS, Washington, DC ■ Peter Spencer, National Performance Review, Washington, DC ■ Patents & Trademarks, Wash., DC ■ Office of Technology Assessments, Wash., DC ■ General Accounting Office, Wash., DC ■ Office of Inspector General, Wash., DC ■ National Academy of Social Insurance Disability Project Panel, Wash., DC ■ Department of Justice, Washington, DC—telephone Panel, Panel,

REGION	ADVOCACY GROUPS	LEGAL/ REPRESENTATIVE COMMUNITY	CLINICS/ HOSPITALS	MISCELLANEOUS
Outreach Letters and Telephone Calls		■ Judge Elizabeth Price, U.S. Attorney, Sacramento, CA ■ Jeanette Plant, U.S. Attorney, Baltimore, MD ■ Ami Hay, U.S. Attorney, Pittsburgh, PA ■ John Weinberg, U.S. District Court Judge, Seattle, WA ■ Eugene Smith, ABA, Senior Lawyers Division, Baltimore, MD ■ Clara Dworsky, ABA, Senior Lawyers Division, Houston, TX ■ Richard Wiley, ABA, Section of Administration Law and Regulations, Washington, D.C. ■ Charles Sabatino, ABA, Comm. on Legal Problems for the Elderly, Washington, D.C. ■ Nancy Coleman, ABA, Comm. on Legal Problems for the Elderly, Washington, D.C.	■ American Hospital Assoc., Wash., DC ■ American Nurses Assoc., Wash., DC ■ National Medical Assoc., Wash., DC ■ American Psychiatric Assoc., Wash., DC ■ American Psychological Assoc., Wash., DC ■ National Assoc. of Social Workers, Wash., DC ■ Child Welfare League, Wash., DC ■ American Medical Assoc., Chicago, IL ■ Society for Hospital Social Work Administrators and Directors in Health Care, Chicago, IL ■ American Academy of Disability Examining Physicians, Chicago, IL ■ 36 Additional contacts made but not listed—can be furnished upon request	■ Contacts were made with each of the 52 DDS parent agencies ■ Letters were sent to 84 professional associations and advisory groups

Focus Group Sites and Participants

SITE	DATE	GROUP COMPOSITION
Philadelphia, PA	11/30/93	DI Reconsideration SSI Initial Awards
Atlanta, GA	12/01/93	SSI Reconsideration DI Initial Awards
Denver, CO	12/02/93	SSI Claimants General Public
Bridgeport, CT	12/07/93	SSI Hearing DI Claimants
Chicago, IL	12/08/93	Spanish-Speaking Initial Awards General Public
San Jose, CA	12/09/93	DI Hearing Vietnamese-Speaking Applicants and Initial Awards

External Benchmarking Sites

ORGANIZATION	LOCATION
Health & Welfare Canada Income Security Programs	Ottawa, Canada
Anne Arundel Medical Center, Pathways Program	Annapolis, MD
Mayo Clinic Disability Program	Rochester, MN
Minneapolis Children's Hospital	Minneapolis, MN
Blue Cross of California	Los Angeles, CA
Liberty Mutual Insurance	Boston, MA
Standard Insurance Company	Portland, OR
UNUM Corporation	Portland, ME
Department of Labor and Industries, Workers' Compensation	Olympia, WA
Immigration and Naturalization, Board of Immigration Appeals	Arlington, VA
Veterans Administration, Regional Office	New York City, New York
Federal Express Corporation	Columbia, MD
Southwest Airlines	Dallas, TX
Texas Instruments	Plano, TX

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Appendix IV—Model Assumptions

Computer software packages were used to model and simulate the effects the changes in this proposal will have at both the micro (local office) and macro (national) level. Some of the general guidelines and assumptions used for the proposed process are listed below.

Due to increased public information programs, claimants will be better prepared with respect to information and documentation needs prior to filing their claim.

The time that disability claim managers spend interviewing will be reduced as a decision support system will assist them in asking the claimant impairment-specific medical and nonmedical questions. Based on triage decisions they make throughout the interview, the disability claim managers will ask the claimant only the questions that are pertinent to the decisionmaking process.

The application and medical certification forms will be scanned or electronically transferred and associated with the electronic record. A disability claim manager will only key identifying information from the application form into the electronic record.

Claim files will be much smaller in size as SSA accepts medical certification statements in lieu of extensive medical documentation.

Time to obtain medical evidence will decrease as collection focuses on core diagnostic and functional information needed to make a decision and uses a standardized form.

Changes to the current process, such as the disability claim manager concept, the predenial interview, and fully rationalized disability decisions, will increase claimant satisfaction with SSA's decisional process and ultimately decrease the appeal rate and number of refilings.

A decision support system and an electronic record will assist adjudicators to prepare notices of decision.

The percentage of claimants represented will decrease as the processing time decreases, claimant participation increases, and increased customer service leads to a higher level of claimant satisfaction and understanding of the process.

Guidelines and assumptions used for the proposed process include those listed below.

A brief description of each task is provided. The task time, shown in minutes, is the estimated time it will take employees to complete the described work. The lapse time, shown in work days, represents the amount of time between actions. Three numbers are provided: the middle number represents the most common task or lapse time, while the first and third numbers represent the low and high extremes. The task and lapse times shown represent times likely when the proposed process is fully up and running.

Percentages are shown to represent frequency of occurrences.

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Task Description	Task or Lapse Time or Frequency of Occurrence
Preliminary inquiry interviewing time	10-15-20 minutes
Lapse time between inquiry interview and scheduled appointment	3-4-5 days
Percentage of cases on which nonmedical development is deferred	50%
Application interview time	30-45-50 minutes
Preliminary nonmedical development and review time	20-40-60 minutes
Medical evidence request times:	
Medical evidence of record	10-15-20 minutes
Consultative examination	10-15-20 minutes
Functional assessment	10-15-20 minutes
Medical evidence analysis time:	
Medical evidence of record	10-15-20 minutes
Consultative examination	10-15-20 minutes
Functional assessment	20-25-30 minutes
Percentage of cases requiring medical consultation:	
Medical evidence of record	25%
Consultative examination	25%
Functional assessment	40%
Medical consultation time	25-30-45 minutes
Lapse time between request for medical consultation and completion of task	1-3-5 days
Medical evidence receipt lapse time:	
Medical evidence of record	4-10-20 days
Consultative examination	6-10-14 days
Functional assessment	6-10-14 days

Predenial interviews:	
Preliminary telephone contact time	5-10-20 minutes
Percentage of cases requesting face-to-face interview	50%
Lapse time between telephone contact and face-to-face interview	1-2-4 days
Predenial interview time	30-45-60 minutes
Percentage of cases where additional documentation submitted after predenial interview	50%
Lapse time between interview and submission of evidence	6-10-14 days
Analysis time	10-30-45 minutes
Nonmedical Development and Payment Effectuation	
Lapse time between claimant contact and pre-effectuation interview	3-4-5 days
Interview and review of evidence	60-140-180 minutes
Percentage of cases where documentation submitted after pre-effectuation interview	75%
Lapse time between interview and submission of evidence	2-10-18 days
Preparation of notices	20-30-40 minutes
Percentage of claimants filing a request for hearing	50%
Lapse time between claimant receiving denial notice and filing an appeal	1-30-60 days
Appeal request interview time	20-25-30 minutes
Initial appeal file review time	10-15-30 minutes
Lapse time between adjudication officer receiving case and telephone contact(s)	7-9-10 days
Preliminary telephone contact time with claimant and/or representative	20-30-45 minutes
Percentage of claimants represented	50%

Personal Conference:	
Percentage of cases where a personal conference is requested	50%
Lapse time between requesting and holding the personal conference	5-10-15 days
Personal conference time	30-45-60 minutes
Percentage of cases requiring time for submission of additional evidence after personal conference	30%
Lapse time between personal conference and submission of evidence	10-20-30 days
Analysis time of evidence	10-20-30 minutes
Analysis and preparation of allowance	30-45-60 minutes
Analysis and preparation of stipulations for administrative law judge (ALJ)	45-60-75 minutes
Lapse time between decision and issuance of stipulations	2 days
Scheduling of hearing	45 days after first adjudication officer-level contact
Time for ALJ prehearing review	20-40-60 minutes
Hearing:	
Length of hearing	20-40-60 minutes
Percentage of cases where ALJ grants time after the hearing for submission of evidence	10%
Lapse time between hearing and submission of evidence	10-20-30 days
Lapse time between receipt of evidence and ALJ review	1-3-5 days
Analysis of additional evidence time	20-30-40 minutes
Analysis and preparation of allowance	30-45-60 minutes
Instructions for preparation of denial decision	10-15-20 minutes
Analysis and preparation of denial decision	60-90-120 minutes
Final review and sign-off time	10-15-20 minutes

Percentage of indirect time (i.e., leave, training, etc.)	40%
Percentage of employee direct time spent on disability tasks	50%
Percentage of cases selected for own motion review	5%
Time lapse for review	8-10-12 days
Time spent on own motion review	120-180-240 minutes
Percentage of cases selected for post-effectuation quality review	5%
Time lapse for review	n/a
Miscellaneous assumptions:	
Percentage of claimants bringing evidence to the interview	70%
Sufficient to decide the case	25%
Percentage allowed	80%
Percentage denied	20%
Not sufficient to decide case	75%
Medical evidence of record obtained	10%
Functional assessment obtained	90%
Percentage of claimants not bringing evidence to the interview	30%
Percentage of claimants with medical sources	75%
Medical evidence of record obtained	10%
Functional assessment obtained	90%
Percentage of claimants with no medical sources	25%
Consultative examination obtained	100%
Overall percentage of cases allowed	60%

The following table provides a comparison of the number of different employees that are likely to make some work investment in an individual claim at each decisional level in the current and proposed processes.

Type of Claim	Current Process	Proposed Process
Initial Allowance:		
DI	26	8
SSI	19	7
Initial Denial	16	7
Recon Allowance:		
DI	36	n/a
SSI	29	n/a
Recon Denial	24	n/a
Prehearing Allowance:		
DI	n/a	11
SSI	n/a	10
Hearing Allowance:		
DI	45	14
SSI	33	13
Hearing Denial	34	12
Appeals Council Own Motion Review	43	16-17

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Appendix V—Next Steps

Proposal for an Implementation Blueprint

Building a redesigned disability claim process will not be an easy task—impacts will be felt by almost everyone internal and external to SSA who is involved in the disability claim process. Claimants, their representatives, disability advocate organizations, professional associations, SSA and DDS employees and employee representatives will feel the effects of the transition to a new way of doing business.

There will be a vast number of decisions to be made about the way the new process will be built and its infrastructure designed. Timing of the myriad decisions is crucial to ensure that required organizational, budgetary, human resource, technological, logistical, and regulatory changes occur in the proper sequence.

The Team has developed a proposal that outlines the most significant redesign implementation steps. The steps are grouped according to areas of impact. Some of the steps will be sequential while others will be simultaneous.

I. Organization

SSA will develop an organizational structure that ensures coordination and effective support of the entire disability claim process. An implementation team will be established to plan and coordinate the general aspects of the redesign changes with existing SSA components, States, unions, and professional associations.

In addition to implementing the proposed process, the implementation team will be responsible for determining the impacts on other business processes. Some of these impacts may require changes in other processes.

The following steps will be completed in order to achieve these goals:

—Obtain executive approval to proceed with implementation
—Develop disability process management structure/organization/ownership
—Build implementation team
—Develop plan for change management
—Develop method for processing current work while implementation takes place
—Outline interdependent steps of implementation
—Analyze risk factors to be encountered in meeting timeframes
—Create clear objectives to provide rapid recognition of improvement/success
—Establish tangible success scorecard
—Establish major milestones and managerial checkpoints for implementation
—Monitor progress and adjust implementation schedules accordingly for future sites
—Complete first implementation phase
—Analyze success of first phase, make necessary implementation changes and prepare for additional implementation sites
—Complete full implementation

II. Communications

SSA will develop a comprehensive communications plan that systematically and logically addresses the needs of everyone associated with the disability claim process and enhances the implementation of the redesigned process. The following steps will be completed in order to achieve this goal:

—Determine who will need to be notified of the new process and at what intervals
—Develop models needed to assist staff, claimants and stakeholders to visualize the new organization, new roles, new responsibilities
—Select communications media, including new methods or modes
—Determine communications tools to be used in providing continuing updates throughout the implementation process
—Design communications plan
—Schedule communications releases
—Begin media campaign to describe new process
—Begin media campaign to describe interim measures to get to new process
—Notify stakeholders, employees, and other interested parties of initial sites selected and implementation schedule
—Announce achievement of successfully completed milestones

III. Program Management

A. *Costs*

SSA will determine the full cost of the redesigned disability claim process, its implementation and its related impact. The following steps will be completed in order to achieve this goal:

—Estimate cost of new process operation
—Obtain necessary funding for first-phase operating expenses
—Estimate initial implementation costs
—Obtain necessary funding for first-phase implementation costs
—Determine impact of new process on current DDS budgets and indirect costs to the States and take necessary resulting actions
—Develop method for tracking and monitoring implementation costs
—Monitor process and implementation costs, making adjustments as necessary

B. *Management Information*

SSA will develop the means to gather, analyze and report the information required to operate the redesigned disability claim process. The following steps will be completed in order to achieve this goal:

—Establish management information needs for oversight agencies
—Establish management information needs for SSA
—Establish management information needs for implementation site employees
—Design and test validity of new management information reporting mechanisms
—Institute new management information system

C. *Quality*

As an important element in the redesigned process, SSA will develop new methods for assuring the delivery of world-class service. The new methods will be integrated with training, policy, and management information facets of the redesigned process. The following steps will be completed in order to achieve this goal:

—Design quality control process
—Test and validate quality control process
—Establish quality feedback mechanisms
—Institute new quality control process

D. *State Roles*

SSA will analyze comments received during the 60-day dialogue period and make determinations regarding State roles. The following steps will be completed in order to achieve this goal:

—Identify where DDS employees fit in the new process
—Determine regulatory and statutory changes needed
—Negotiate changes under current statute and regulations for implementation sites

IV. Human Resources

A. *Training*

Major changes arising out of the new way of doing business mandate that employees be fully trained to meet the needs of the new process. Much training will be done on a large scale in short periods of time. Alternate training media, e.g., satellite training, self-paced computer-based training, videotape training, etc. will be used to reach large audiences effectively. The following steps will be completed in order to achieve this goal:

—Assign lead for developing, organizing and managing the training program
—Determine national and site-specific training needs
—Determine what instructions need to be written
—Ascertain format for training materials
—Develop means to ensure current work is completed while training takes place
—Establish training timetable
—Determine teaching resource needs and source of those resources
—Obtain instructor resources
—Obtain training supplies
—Secure necessary training facilities
—Plan and coordinate training sessions
—Begin training
—Monitor training results and make adjustments as necessary
—Complete all initial training activities

B. *Personnel*

SSA will effectively prepare for and, to the extent possible, minimize negative effects of the transition to the redesigned process on employees. Plans will consider the effect on the work environment, career enhancements, job responsibilities, possible workforce shifts, and performance evaluation. The following steps will be completed:

—Determine volume and qualifications of staff needed to perform new process
—Create, modify, or eliminate job types for the new process
—Develop change management assistance for employees
—Develop performance monitoring systems and incentives
—Determine tools employees need to perform new process
—Develop position descriptions and performance plans
—Establish long-term plan to ensure national availability of qualified staff
—Analyze staff availability at implementation sites for new process and old process
—Determine anticipated costs of moving personnel to work sites, temporarily and/or permanently
—Determine staffing needs
—Obtain necessary funding to move staff
—Obtain tools for employees
—Establish local management and key staff teams
—Select remaining staff
—Move staff as necessary
—Begin new process

V. Statutory/Regulatory/Policy

A. *Policy*

Extensive policy changes will take place prior to and during process implementation. As regulatory and statutory modifications occur, procedural re-writes will address their impact on SSA claim processing policy. New, more effective means of organizing and issuing Agency policy will be used to accomplish these tasks. The following steps will be completed in order to achieve these goals:

—Ascertain what procedures and workflows need to be modified, eliminated, or established
—Determine appropriate policy and procedure format(s)
—Develop screens and forms to be incorporated in new process
—Determine methods for policy and procedure dissemination
—Develop method for monitoring policy implementation
—Design new workflow
—Write procedures needed to nationally implement immediate changes
—Issue new procedures
—Monitor, analyze and re-write procedures as necessary
—Write procedures to support regulatory and statutory changes
—Issue long-term procedures
—Monitor, analyze, and re-write procedures as necessary

B. *Statutory/Regulatory*

A large number of regulations and statutory sections will need to be modified to support the implementation of the redesigned process. SSA will develop faster, more effective means for gaining the necessary changes. The following steps will be completed in order to achieve this goal:

—Write necessary regulations to support new process
—Propose elimination of unnecessary regulations
—Obtain final approval for regulatory changes
—Seek changes to necessary statutes to support new process
—Congressional approval of statutory changes
—Establish methods for statutory and regulatory change dissemination
—Disseminate statutory and regulatory changes to all necessary parties

VI. Logistics

A. *Implementation sites*

Implementation will impact the physical work environment. Decisions on number, location, size, and layout of offices will be designed into the implementation plan. The following steps will be taken:

—Ascertain type of sites needed
—Analyze demographic, geographic, and fiscal considerations for site selection
—Select site management team to orchestrate site preparation
—Determine number of first-implementation sites
—Recommend implementation sites
—Receive implementation site approval
—Evaluate implementation facilities for necessary space and layout modifications
—Determine new or additional equipment and furniture needs at implementation sites
—Evaluate supplies and forms needed for new process
—Obtain funding for site work, supplies and equipment
—Prepare site and equipment leases
—Order supplies and forms needed for new process
—Order new equipment
—Complete site preparation work at implementation facilities
—Install equipment
—Deliver supplies and forms to sites
—Deliver new employees' possessions

B. *Technology*

Increased use of automated processes; decisional support software; electronic claimant records; electronic interaction between SSA, claimants, and the medical community; and telecommunications in the redesigned process dictates that SSA expand and accelerate the current comprehensive technology design plan. The following steps will be completed to achieve these goals:

—Review and modify pertinent Agency tactical plans
—Analyze impact of change on computer programs currently being used or planned in SSA
—Reevaluate hardware and software needs
—Modify existing SSA software to support the new process
—Develop and validate new software
—Procure hardware
—Install necessary hardware
—Install software
—Test hardware and software, making necessary adjustments
—Implement new systems

Summary of Current Statutory and Regulatory Provisions Affected by the New Disability Process

Title II of the Social Security Act—Disability Determinations: Section 221(a) through (j)—Disability Insurance Benefit Payments (Definition of Disability): section 223(d)(5)(B).

Title XVI of the Social Security Act—Meaning of Terms (Aged, Blind, or Disabled Individual): section 1614(a)(3)(G)—Administration: section 1633.

Regulations (parts 404, 416 and 422)

The following sections of subpart G of Reg. No. 404 and subpart C of Reg. No. 416:

§§ 404.610/416.310 What makes an application a claim for benefits.
§ 404.614 When an application or other form is considered filed.
§ 416.325 When an application is considered filed.

The following sections of subpart J of Reg. No. 404 and subpart N of Reg. No. 416:

§§ 404.900/416.1400 Introduction.
§§ 404.902/416.1402 Administrative actions that are initial determinations.
§§ 404.904/416.1404 Notice of the initial determination.
§§ 404.905/416.1405 Effect of an initial determination.
§§ 404.907/416.1407 Reconsideration—general.
§§ 404.908/416.1408 Parties to a reconsideration.
§§ 404.909/416.1409 How to request reconsideration.
§§ 404.913/416.1413 Reconsideration procedures.
§ 416.1413a Reconsiderations of initial determinations on applications.
§§ 404.929/416.1429 Hearing before an administrative law judge—general.
§§ 404.930/416.1430 Availability of a hearing before an administrative law judge.
§§ 404.932/416.1432 Parties to a hearing before an administrative law judge.
§§ 404.933/416.1433 How to request a hearing before an administrative law judge.
§§ 404.935/416.1435 Submitting evidence prior to a hearing before an administrative law judge.
§§ 404.936/416.1436 Time and place for a hearing before an administrative law judge.
§§ 404.938/416.1438 Notice of a hearing before an administrative law judge.
§§ 404.939/416.1439 Objections to the issues.
§§ 404.940/416.1440 Disqualification of the administrative law judge.
§§ 404.941/416.1441 Prehearing case review.
§§ 404.944/416.1444 Administrative law judge hearing procedures—general.
§§ 404.946/416.1446 Issues before an administrative law judge.
§§ 404.948/416.1448 Deciding a case without an oral hearing before an administrative law judge.
§§ 404.955/416.1455 The effect of an administrative law judge's decision.
§§ 404.960/416.1460 Vacating a dismissal of a request for a hearing before an administrative law judge.
§§ 404.961/416.1461 Prehearing and posthearing conferences.
§§ 404.967/416.1467 Appeals Council review—general.
§§ 404.968/416.1468 How to request Appeals Council review.
§§ 404.969/416.1469 Appeals Council initiates review.
§§ 404.970/416.1470 Cases the Appeals Council will review.
§§ 404.971/416/1471 Dismissal by the Appeals Council.
§§ 404.972/416.1472 Effect of dismissal of request for Appeals Council review.
§§ 404.973/416.1473 Notice of Appeals Council review.
§§ 404.976/416.1476 Procedures before Appeals Council on review.
§§ 404.977/416.1477 Case remanded by the Appeals Council.
§§ 404.979/416.1479 Decision of Appeals Council.
§§ 404.981/416.1481 Effect of Appeals Council's decision or denial of review.
§§ 404.982/416.1482 Extension of time to file action in Federal district court.
§§ 404.992/416.1492 Notice of a revised determination or decision.
§§ 404.993/416.1493 Effect of revised determination or decision.

The following sections of subpart P of Reg. No. 404 and subpart I of Reg. No. 416:

§§ 404.1501/416.901 Scope of subpart.
§§ 404.1502/416.902 General definitions and terms for this subpart.
§§ 404.1503/416.903 Who makes disability and blindness determinations.
§§ 404.1505/416.905 Basic definition of disability.
§§ 404.1511/416.911 Definition of a disabling impairment.
§§ 404.1512/416.912 Evidence of your impairment.
§§ 404.1513/416.913 Medical evidence of your impairment.
§§ 404.1515/416.915 Where and how to submit evidence.
§§ 404.1517/416.917 Consultative examination at our expense.
§§ 404.1519/416.919 The consultative examination.
§§ 404.1519a/416.919a When we will purchase a consultative examination and how we will use it.
§§ 404.1519k/416.919k Purchase of medical examinations, laboratory tests, and other services.
§§ 404.1519m/416.919m Diagnostic tests or procedures.
§§ 404.1519n/416.919n Informing the examining physician or psychologist of examination scheduling, report content, and signature requirements.
§§ 404.1519q/416.919q Conflict of interest.
§§ 404.1519s/416.919s Authorizing and monitoring the consultative examination.
§§ 404.1519t/416.919t Consultative examination oversight.
§§ 404.1520/416.920 Evaluation of disability in general.
§§ 404.1520a/416.920a Evaluation of mental impairments.
§§ 404.1521/416.921 What we mean by an impairment(s) that is not severe.
§§ 404.1522/416.922 When you have two or more unrelated impairments—initial claims.
§§ 404.1523/416.923 Multiple impairments.
§ 416.924 How we determine disability for children.
§ 416.924a. Age as a factor of evaluation in childhood disability.
§ 416.924b Functioning in children.
§ 416.924c Other factors we will consider.
§ 416.924d Individualized functional assessment for children.
§ 416.924e Guidelines for determining disability using the individualized functional assessment.
§ 404.1525/416.925 Listing of impairments in Appendix 1.
§§ 404.1526/416.926 Medical equivalence.
§ 416.926a Equivalence for children.
§§ 404.1527/416.927 Evaluating medical opinions about your impairment(s) or disability.
§§ 404.1529/416.929 How we evaluate symptoms, including pain.
§ 416.931 The meaning of presumptive disability or presumptive blindness.
§ 416.932 When presumptive payments begin and end.
§ 416.933 How we make a finding of presumptive disability or presumptive blindness.
§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.
§§ 404.1545/416.945 Your residual functional capacity.
§§ 404.1546/416.946 Responsibility for assessing and determining residual functional capacity.
§§ 404.1560/416.960 When your vocational background will be considered.
§§ 404.1561/416.961 Your ability to do work depends upon your residual functional capacity.
§§ 404.1562/416.962 If you have done only arduous unskilled physical labor.
§§ 404.1563/416.963 Your age as a vocational factor.
§§ 404.1564/416.964 Your education as a vocational factor.
§§ 404.1565/416.965 Your work experience as a vocational factor.
§§ 404.1566/416.966 Work which exists in the national economy.
§§ 404.1567/416.967 Physical exertion requirements.
§§ 404.1568/416.968 Skill requirements.
§§ 404.1569/416.969 Listing of Medical-Vocational Guidelines in Appendix 2.
§§ 404.1569a/416.969a Exertional and nonexertional limitations.
§§ 404.1574/416.974 Evaluation guides if you are an employee.
§§ 404.1575/416.975 Evaluation guides if you are self-employed.
§§ 404.1584/416.984 Evaluation of work activity of blind people.
Appendix 1 Listing of Impairments.
Appendix 2 Medical-Vocational Guidelines.

The entire subpart Q of Reg. No. 404 and the entire subpart J of Reg. No. 416.

The following sections of subpart R of Reg. No. 404 and subpart O of Reg. No. 416:

§§ 404.1700/416.1500 Introduction.
§§ 404.1703/416.1503 Definitions.
§§ 404.1705/416.1505 Who may be your representative.
§§ 404.1707/416.1507 Appointing a representative.
§§ 404.1710/416.1510 Authority of a representative.

§§ 404.1715/416.1515 Notice or request to a representative.
§§ 404.1720/416.1520 Fee for a representative's services.
§§ 404.1725/416.1525 Request for approval of a fee.
§§ 404.1728/416.1528 Proceedings before a State or Federal court.
§§ 404.1730/416.1530 Payment of fees.
§§ 404.1735/416.1535 Services in a proceeding under title II of the Act.
§§ 404.1740/416.1540 Rules governing representatives.
§§ 404.1745/416.1545 What happens to a representative who breaks the rules.

The following sections of subpart B of Reg. No. 422:

§ 422.130 Claim Procedure.
§ 422.140 Reconsideration of initial determination.

The following sections of subpart C of Reg. No. 422:

§ 422.203 Hearings.
§ 422.205 Review by Appeals Council.
§ 422.210 Court review.

The following sections of subpart F of Reg. No. 422:

§ 422.505 Applications and related forms for retirement, survivors, and disability insurance benefit programs.
§ 422.525 Where applications and other forms are available.
§ 422.527 Private printing and modification of prescribed applications and other forms.

Appendix VI—Examples of Forms and Publications

Disability Information Packets

All forms that a claimant will need to file an application for benefits will be contained in the disability information packet which SSA will make available to the public. Claimants may obtain these packets by visiting or calling any local SSA office or calling the toll-free 800 telephone number. SSA will also make these packets available at other public locations such as post offices, public libraries, and local, State and Federal offices. Bulk supplies of the packets will also be available to third parties who play a role in the intake process. The information packet will contain two forms—an application and a medical certification form. During the Team's research, which included benchmarking activities, it was discovered that other government agencies and private organizations successfully utilize this approach.

Application Form

This is a "starter" form that serves the purpose of initiating the application process. It will solicit basic identification data regarding the claimant as well as information concerning the nature of the benefits sought (i.e., DI, SSI, children's, widow's, etc.). The application form will ask for minimal information, will be easily understood, and will require little or no assistance. The claimant's signature will be required on the form to meet the legal requirements of a formal "application".

Medical Certification Form

This form is for completion by the claimant's primary treating source. Rather than systematically collecting all medical evidence of record, SSA will use this form to solicit core diagnostic and functional information from the treating source. The form will use both narrative and "check box" formats to elicit identification of each of the claimant's medically determinable impairments; the objective data (signs, symptoms, clinical and laboratory findings) supporting the diagnoses; the treatment prescribed and response; the onset and expected duration of the impairments; and an assessment of the claimant's ability to perform work-related activities. The treating source signature certifies that the information is accurate and based upon records within their possession, which they agree to promptly furnish if requested.

The medical certification concept is similar to that used by many private disability insurance carriers, workers' compensation programs throughout the country, and the Canadian Government. The SSA medical report builds upon the concept of the forms used by other organizations to target the specific information called for in the new process.

SSA Publications

SSA rules, pamphlets, factsheets, flyers, posters, and other materials, will be printed and available for distribution throughout the country at designated public places accessible to claimants, representatives, the medical community, public and private social service agencies, third parties, and advocacy groups. This will ensure that these partners in the new process can be well informed and will allow SSA to achieve its goal of providing world-class service to its customers.

Appendix VII—Process Change Recommendations That Were Outside the Parameters

In conducting the internal and external scans, the Reengineering Team received many ideas and suggestions for change. The ideas that follow are recurring suggestions for change that the Reengineering Team did not consider because they exceeded the scope of the Team's mission or the parameters established by the Executive Steering Committee. They may be considered for further study or action by SSA or Congress, as appropriate. Inclusion here does not constitute endorsement by the Reengineering Team.

Time-Limited Benefits

Consider time-limited benefits which would subject individuals, whose impairments are expected to improve or where medical improvement is possible, to automatic benefit termination after a specified time. Duration of entitlement would depend on the nature of the impairment, i.e., the timeframe could vary according to the impairment the same way the current continuing disability review diary duration does. Individuals would be notified at the time their claims are allowed how long they will receive benefits. Before the automatic termination of benefits, SSA would notify individuals when benefits would end, and explain that they must refile or submit new medical information that confirms they continue to meet the definition of disability. Time-limited benefits would counteract the mindset that disability benefits are permanent. To be successful, time-limited benefits would have to be linked to a return to work program or participation in vocational rehabilitation services.

Integration of Mandatory Vocational Rehabilitation Services for Claimants

Consider focusing more resources on enforcing vocational rehabilitation participation, and discussing rehabilitation and return to work earlier in the application process. At the time of an initial determination, a vocational rehabilitation program should be prescribed and required for the claimant to follow during the period of entitlement. Special efforts should be made so that rehabilitation agencies would work with disabled children, drug addicts, and alcoholics. If SSA determines that the rehabilitation program is not proceeding as scheduled, a new decision, based on current information, would be made regarding the claimant's ability to successfully continue and complete the rehabilitation program.

Changes in Payment of Benefits to Certain SSI Claimants

Consider providing benefits to some SSI claimants in the form of program support rather than cash. For example, some children might benefit from a system for vouchering or crediting funds for medical or therapeutic treatment, remedial education, and/or job training. This would present an opportunity for disabled children to get additional

assistance with education, learn job skills and maximize their potential. Disabled child recipients should be required to stay in school, or if homebound, continue in an educational program as a requirement to continue receiving benefits. Similarly, for adults receiving disability based on substance addiction, a system could be established for vouchering or crediting funds for medical or therapeutic treatment, education, job training, and for food, clothing, and lodging.

Incentives for the Medical Community to Provide Evidence on Their Patients or to be Consultative Examination Providers

To enhance SSA's ability to obtain needed medical evidence, consider enacting legislation to require release of medical information to SSA without the need for a signed consent form or based on signature in file and to require timely release of any physician or hospital records produced or maintained by a Medicare/Medicaid provider. Legislation should also be enacted to allow physicians to repay their federally funded medical school loans by working as consultative examination providers or SSA medical consultants. SSA should also consider seeking a special tax credit system for reimbursement to medical providers for evidence of record on their patients. Physicians who opt for this new tax credit would be required to participate in training on completion of forms and to submit timely and accurate information.

Establish One Court to Handle All SSA Disability Cases

Consider supporting the establishment of a new Federal court of appeals with sole jurisdiction for reviewing the final decision of the Secretary in disability cases. District courts would no longer have jurisdiction in disability cases.

Eliminate SSA's Involvement With Representative Payees

Consider providing direct payment to all adult claimants unless they have a legal representative or have been found legally incompetent. SSA would no longer develop for capability or make determinations as to whether benefits are being used in an individual's best interests.

Change the Administrative Law Judge Position to a Hearings Officer Position

There are a number of Federal agencies whose administrative appeals processes use hearing officers or administrative judges who are not appointed as administrative law judges pursuant to the Administrative Procedure Act. Because the SSA hearing process is nonadversarial and informal, it was suggested that there is no need for an Administrative Procedure Act-protected administrative law judge.

Eliminate the Two-Year Waiting Period for Medicare

DI claimants must be eligible for disability benefits for two years before they can qualify for Medicare, while in most States SSI claimants receive Medicaid concurrently with the SSI award. Claimants who file for both DI and SSI may receive Medicaid coverage with SSI, but may lose it when DI payments begin after the end of the 5-month waiting period. In many cases, the claimant's primary concern is for medical care; enabling access to appropriate medical care could lead to or speed up medical recovery.

Require Claimants to Establish That Employers Have Made all the Accommodations Required Under the Americans With Disabilities Act

The Americans with Disabilities Act defines an individual with a disability as someone who has, or is perceived to have, or who has a history of a physical or mental impairment that substantially limits one or more major life activities. Any employer with 25 or more employees (15 or more employees as of June 26, 1994) is prohibited from discriminating against qualified job applicants and employees with disabilities. Qualified individuals are those who can perform the essential functions of the job they hold or desire, with or without reasonable accommodations. Consider requiring individuals who are qualified under the Americans with Disabilities Act to have a signed statement from their former employer which outlines the steps that have been taken to make reasonable accommodations for the disability.

Provide Presumptive Disability Payments in DI Claims

Consider providing presumptive disability benefits to DI claimants. Presumptive disability benefits are now provided prior to final decision to SSI claimants who are likely to be allowances. These payments can be given for up to six months and, if the claimant is denied, no repayment of the benefit is required. There is a growing number of DI claimants with the same financial needs as SSI claimants.

Establish a Family Maximum for SSI Benefits

Consider establishing a family maximum for SSI benefits as exists in DI. With the increasing number of children receiving SSI disability benefits, consideration should be given to equalizing Federal cash support to DI and SSI families.

Eliminate the Waiting Period for DI Benefits

Consider eliminating the five-month waiting period. The same definition of disability is used for both DI and SSI claimants, yet DI claimants must serve a five-month waiting period before they are eligible for DI disability benefits.

Limit Payment of Disability Benefits to Residents of the United States

Consider ceasing the payment of disability benefits to people who reside outside the United States. The vocational factors that are considered in determining ability to work are based on the United States national job economy and it should not be assumed that an individual would meet the SSA definition of disability in another labor market.

Change the Earnings Amounts for Determining Trial Work Period Months

Consider setting more reasonable levels for determining trial work period months to encourage claimants to attempt returning to work.

Use a Single Earnings Test for All Claimants

Consider standardizing the annual work test for all claimants under age 65. This would serve as an incentive for claimants to return to work and reduce the number of work issue continuing disability reviews that need to be developed.

Reduce the Number of Actions Required to Process Multiple Benefit Payments on One Social Security Number

Issuance of multiple payments on one social security number is very labor intensive. To simplify the process, consider adopting one of the following options: Issue a single check for all benefits due on the beneficiary's account number to the beneficiary and require him/her to disburse monies to the auxiliaries; pay total family benefits to the head of the household (if other than the beneficiary) which would eliminate multiple checks, multiple letters, and multiple payment actions dealing with the family unit; or pay a flat rate for each auxiliary. This would eliminate the need to calculate auxiliary benefits on each account.

Change the Definition of Disability to Eliminate the Consideration of Age, Education, and Previous Work in Determining Disability

Reconsider the definition of disability so that only medical factors are considered. With the enactment of the ADA, the number of job opportunities and the availability of services to people with disabilities has been greatly enhanced and determining disability should be based on a strict medical test

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federal register

Friday
April 15, 1994

Part III

Department of Housing and Urban Development
Office of Federal Housing Enterprise Oversight

Department of Justice

Department of the Treasury
Office of the Comptroller of the Currency
Office of Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

Federal Housing Finance Board

Federal Trade Commission

National Credit Union Administration

Policy Statement on Discrimination in Lending; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

[Docket No. N–94–3751; FR–3706–N–01]

DEPARTMENT OF JUSTICE

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 94–04]

Office of Thrift Supervision

[Docket No. 94–41]

FEDERAL RESERVE SYSTEM

[Docket No. R–0834]

FEDERAL DEPOSIT INSURANCE CORPORATION

FEDERAL HOUSING FINANCE BOARD

FEDERAL TRADE COMMISSION

NATIONAL CREDIT UNION ADMINISTRATION

Policy Statement on Discrimination in Lending

AGENCIES: Department of Housing and Urban Development; Office of Federal Housing Enterprise Oversight; Department of Justice; Office of the Comptroller of the Currency, Treasury; Office of Thrift Supervision, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Federal Housing Finance Board; Federal Trade Commission; National Credit Union Administration.

ACTION: Notice of approval and adoption of "Policy Statement on Discrimination in Lending"; and Solicitation of Comments regarding its application.

SUMMARY: The Department of Housing and Urban Development (HUD), the Office of Federal Housing Enterprise Oversight (OFHEO), the Department of Justice (DOJ), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Federal Housing Finance Board (FHFB), the Federal Trade Commission (FTC), and the National Credit Union Administration (NCUA) (collectively, "the Agencies") have adopted a statement entitled "Policy Statement on Discrimination in Lending" that describes the general principles that these Agencies will consider to identify lending discrimination in violation of the Equal Credit Opportunity Act or the Fair Housing Act. The principles outlined are general in nature. Their application in specific situations will depend on the facts involved and is subject to continuing development. The Agencies welcome comments about application of the principles to specific policies and practices. The Agencies anticipate providing further clarification and elaboration on the application of the principles in the future.

DATES: *Effective date:* April 15, 1994.

Comment due date: June 14, 1994.

ADDRESSES:

HUD: Comments should be directed 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 title.

OFHEO: Comments should be directed to: Communications and Public Affairs, Office of Federal Housing Enterprise Oversight, 1700 G Street, Fourth Floor, NW., Washington, DC 20552.

DOJ: Comments should be mailed to: U.S. Department of Justice, Housing and Civil Enforcement Section, P.O. Box 65998, Washington, DC 20035–5998.

OCC: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219, Attention Docket No. 94–04. Comments will be available for public inspection and photocopying at the same location.

OTS: Send comments to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention Docket No. 94–41. These submissions may be hand delivered to 1700 G Street NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Comments will be available for inspection at 1700 G Street NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

BOARD: Comments should refer to Docket No. R–0834 and mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard entrance on 20th Street NW (between Constitution Avenue and C Street NW) at any time. Comments may be inspected in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in the Board's rules regarding the availability of information (12 CFR 261.8).

FDIC: Comments should be directed to: Robert E. Feldman, Acting Executive Secretary, FDIC, 550 17th Street NW., Washington, DC 20429. They may be hand delivered to room 402, 1776 F Street NW., Washington DC between 8:30 a.m. and 5:15 p.m. on business days. Comments may also be faxed to (202) 898–3838.

FHFB: Comments should be directed to: Elaine L. Baker, Associate Director and Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

FTC: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

NCUA: Comments should be directed to: Mr. Michael J. McKenna, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT:

HUD: Peter Kaplan, Director, Office of Regulatory Initiatives and Federal Coordination, (202) 708–2904 (voice) or 1–800–877–TDDY (Federal Information Relay Service).

OFHEO: Kevin G. Chavers, Chief of Staff, Office of Federal Housing Enterprise Oversight, (202) 414–3800.

DOJ: Alexander C. Ross, (202) 514–2303, or Richard J. Ritter, (202) 514–4739, Housing and Civil Enforcement Division, or (202) 514–0383 (TDD).

OCC: R. Russell Bailey, Fair Lending Specialist, Compliance Management, (202) 874–4446; Margaret Hesse, Attorney, Bank Operations and Assets Division, (202) 874–4460.

OTS: Timothy R. Burniston, Deputy Assistant Director for Policy, (202) 906–5629; David H. Enzel, Special Counsel, (202) 906–6844; or Vicki Hawkins-Jones, Senior Attorney, (202) 906–7034.

BOARD: Glenn E. Loney, Associate Director, (202) 452–3585; or Michael S. Bylsma, Senior Attorney, (202) 452–3667; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System.

FDIC: Ken A. Quincy, Chief, Compliance and Special Review Section, Division of Supervision, (202) 898–6753; Bobbie Jean Norris, Deputy Director, Office of Consumer Affairs, (202) 898–6760; Ann Loikow, Counsel, (202) 898–3796.

FHFB: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2825 (voice) or (202) 408–2579 (TDD).

FTC: Peggy L. Twohig, Assistant Director for Credit Practices, Bureau of Consumer Protection, (202) 326–3224.

NCUA: Robert M. Fenner, General Counsel, or Michael J. McKenna, Staff Attorney, Office of General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION: The following Federal Agencies—HUD, OFHEO, DOJ, OCC, OTS, the Board, FDIC, FHFB, FTC, and the NCUA—sharing a concern that some prospective homebuyers and other borrowers may be experiencing discriminatory treatment in their efforts to obtain loans, formed an Interagency Task Force on Fair Lending to establish uniform policy against discriminatory lending.

On March 8, 1994, the Interagency Task Force on Fair Lending met to approve or recommend approval to their respective Agencies of the "Policy Statement on Discrimination in Lending," published in this notice, as a statement of the Agencies' general position on the Equal Credit Opportunity Act and the Fair Housing Act for purposes of administrative enforcement of those statutes. The Policy Statement is intended to be consistent with those statutes and their implementing regulations and provide guidance to lenders seeking to comply with them. The Policy Statement does not create or confer any substantive or procedural rights on third parties which could be enforceable in any administrative or civil proceeding.

The Agencies have all approved the Policy Statement and welcome comments from the public about application of the principles set forth in the Policy Statement to specific lending policies and practices. The Agencies anticipate providing further clarification and elaboration on the application of the fair lending principles, and these comments will be taken into consideration as they do so.

Accordingly, the following policy statement is the Policy Statement on Discrimination in Lending adopted by the Interagency Task Force on Fair Lending.

Policy Statement on Discrimination in Lending

The Department of Housing and Urban Development ("HUD"), the Department of Justice ("DOJ"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Housing Finance Board ("FHFB"), the Federal Trade Commission ("FTC"), the National Credit Union Administration ("NCUA"), and the Office of Federal Housing Enterprise Oversight ("OFHEO") (collectively, "the Agencies") are concerned that some prospective home buyers and other borrowers may be experiencing discriminatory treatment in their efforts to obtain loans. The 1992 Federal Reserve Bank of Boston study on lending discrimination, Congressional hearings, and agency investigations have indicated that race is a factor in some lending decisions. Discrimination in lending on the basis of race or other prohibited factors is destructive, morally repugnant, and against the law. It prevents those who are discriminated against from enjoying the benefits of access to credit. The Agencies will not tolerate lending discrimination in any form. Further, fair lending is not inconsistent with safe and sound operations. Lenders must continue to ensure that their lending practices are consistent with safe and sound operating policies.

This policy statement applies to all lenders, including mortgage brokers, issuers of credit cards, and any other person who extends credit of any type. The policy statement is being issued for several reasons, including:

- To provide guidance about what the agencies consider in determining if lending discrimination exists; and
- To provide a foundation for future interpretations and rulemakings by the Agencies.

A number of federal statutes seek to promote fair lending. For example, the Home Mortgage Disclosure Act ("HMDA"), 12 U.S.C. 2801 *et seq.*, seeks to prevent lending discrimination and redlining by requiring public disclosure of certain information about mortgage loan applications. The Community Reinvestment Act ("CRA"), 12 U.S.C. 2901 *et seq.*, seeks affirmatively to encourage institutions to help to meet the credit needs of the entire community served by each institution covered by the statute, and CRA ratings take into account lending discrimination by those institutions. The Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, prohibits discrimination against persons with disabilities in the provision of goods and services, including credit services. This policy statement, however, is based upon and addresses only the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. 1691 *et seq.*, and the Fair Housing Act ("FH Act"), 42 U.S.C. 3601 *et seq* , the two statutes that specifically prohibit discrimination in lending.

This policy statement has been approved and adopted by the signatory Agencies listed above as a statement of the Agencies' general position on the ECOA and the FH Act for purposes of administrative enforcement of those statutes. It is intended to be consistent with those statutes and their implementing regulations and to provide guidance to lenders seeking to comply with them. It does not create or confer any substantive or procedural rights on third parties which could be enforceable in any administrative or civil proceeding.

This policy statement will discuss what constitutes lending discrimination under these statutes and answer questions about how the Agencies will respond to lending discrimination and what steps lenders might take to prevent discriminatory lending practices.

A. Lending Discrimination Statutes and Regulations

(1) The ECOA prohibits discrimination in any aspect of a credit transaction. The ECOA is not limited to consumer loans. It applies to any extension of credit, including extensions of credit to small businesses, corporations, partnerships, and trusts.

The ECOA prohibits discrimination based on:

- Race or color;
- Religion;
- National origin;
- Sex;
- Marital status;
- Age (provided the applicant has the capacity to contract);
- The applicant's receipt of income derived from any public assistance program; and
- The applicant's exercise, in good faith, of any right under the Consumer Credit Protection Act.

The Federal Reserve Board's Regulation B, found at 12 CFR part 202, implements the ECOA. Regulation B describes lending acts and practices that are specifically prohibited, permitted, or required. Official interpretations of the regulation are found in Supplement I to 12 CFR part 202.

(2) The FH Act prohibits discrimination in all aspects of residential real-estate related transactions, including, but not limited to:

- Making loans to buy, build, repair or improve a dwelling;
- Purchasing real estate loans;
- Selling, brokering or appraising residential real estate; and
- Selling or renting a dwelling.

The FH Act prohibits discrimination based on:

- Race or color;

- National origin;
- Religion;
- Sex;
- Familial status (defined as children under the age of 18 living with a parent or legal custodian, pregnant women, and people securing custody of children under 18); and
- Handicap.

HUD's regulations implementing the FH Act are found at 24 CFR Part 100.

Because both the FH Act and the ECOA apply to mortgage lending, lenders may not discriminate in mortgage lending based on any of the prohibited factors in either list.

Liability under these two statutes for discrimination on a prohibited basis is civil, not criminal. However, there is criminal liability under the FH Act for various forms of interference with efforts to enforce the FH Act, such as altering or withholding evidence or forcefully intimidating persons seeking to exercise their rights under the FH Act.

What is prohibited. Under the ECOA, it is unlawful for a lender to discriminate on a prohibited basis in any aspect of a credit transaction and, under both the ECOA and the FH Act, it is unlawful for a lender to discriminate on a prohibited basis in a residential real estate related transaction. Under one or both of these laws, a lender may not, because of a prohibited factor:

- Fail to provide information or services or provide different information or services regarding any aspect of the lending process, including credit availability, application procedures, or lending standards;
- Discourage or selectively encourage applicants with respect to inquiries about or applications for credit;
- Refuse to extend credit or use different standards in determining whether to extend credit;
- Vary the terms of credit offered, including the amount, interest rate, duration, or type of loan;
- Use different standards to evaluate collateral;
- Treat a borrower differently in servicing a loan or invoking default remedies; or
- Use different standards for pooling or packaging a loan in the secondary market.

A lender may not express, orally or in writing, a preference based on prohibited factors or indicate that it will treat applicants differently on a prohibited basis.

A lender may not discriminate on a prohibited basis because of the characteristics of:

- A person associated with a credit applicant (for example, a co-applicant, spouse, business partner, or live-in aide); or
- The present or prospective occupants of the area where property to be financed is located.

Finally, the FH Act requires lenders to make reasonable accommodations for a person with disabilities when such accommodations are necessary to afford the person an equal opportunity to apply for credit.

B. Types of Lending Discrimination

The courts have recognized three methods of proof of lending discrimination under the ECOA and the FH Act:

- "Overt evidence of discrimination," when a lender blatantly discriminates on a prohibited basis;
- Evidence of "disparate treatment," when a lender treats applicants differently based on one of the prohibited factors; and
- Evidence of "disparate impact," when a lender applies a practice uniformly to all applicants but the practice has a discriminatory effect on a prohibited basis and is not justified by business necessity.

Overt Evidence of Discrimination. There is overt evidence of discrimination when a lender openly discriminates on a prohibited basis.

Example: A lender offered a credit card with a limit of up to $750 for applicants aged 21–30 and $1500 for applicants over 30. This policy violated the ECOA's prohibition on discrimination based on age.

There is overt evidence of discrimination even when a lender expresses—but does not act on—a discriminatory preference:

Example: A lending officer told a customer, "We do not like to make home mortgages to Native Americans, but the law says we cannot discriminate and we have to comply with the law." This statement violated the FH Act's prohibition on statements expressing a discriminatory preference.

Evidence of Disparate Treatment. Disparate treatment occurs when a lender treats a credit applicant differently based on one of the prohibited bases. Disparate treatment ranges from overt discrimination to more subtle disparities in treatment. It does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate against a person beyond the difference in treatment itself. It is considered by courts to be intentional discrimination because no credible, nondiscriminatory reason explains the difference in treatment on a prohibited basis.

Example: Two minority loan applicants were told that it would take several hours and require the payment of an application fee to determine whether they would qualify for a home mortgage loan. In contrast, a loan officer took financial information immediately from nonminority applicants and determined whether they qualified in minutes, without a fee being paid. The lender's differential treatment violated both the ECOA and the FH Act.

Redlining refers to the illegal practice of refusing to make residential loans or imposing more onerous terms on any loans made because of the predominant race, national origin, etc., of the residents of the neighborhood in which the property is located. Redlining violates both the FH Act and the ECOA.

Disparate treatment may more likely occur in the treatment of applicants who are neither clearly well-qualified nor clearly unqualified. Discrimination may more readily affect applicants in this middle group for two reasons. First, because the applications are all "close cases," there is more room and need for lender discretion. Second, whether or not an applicant qualifies may depend on the level of assistance the lender provides the applicant in preparing an application. The lender may, for example, propose solutions to problems on an application, identify compensating factors, and provide encouragement to the applicant. Lenders are under no obligation to provide such assistance, but to the extent that they do, the assistance must be provided in a nondiscriminatory way.

Example: A nonminority couple applied for an automobile loan. The lender found adverse information in the couple's credit report. The lender discussed the credit report with them and determined that the adverse information, a judgment against the couple, was incorrect since the judgment had been vacated. The nonminority couple was granted their loan. A minority couple applied for a similar loan with the same lender. Upon discovering adverse information in the minority couple's credit report, the lender denied the loan application on the basis of the adverse information without giving the couple an opportunity to discuss the report.

Example: Two minority borrowers inquired with a lender about mortgage loans. They were given applications for fixed-rate loans only and were not offered assistance in completing the loan applications. They completed the applications on their own and ultimately failed to qualify. Two similarly situated nonminority borrowers made an identical inquiry about mortgage loans to the same lender. They were given information about both adjustable-rate and fixed-rate mortgages and were given assistance in preparing applications that the lender could accept.

Both of these are examples of disparate treatment of similarly situated applicants, apparently based on a

prohibited factor, in the amount of assistance and information the lender provided. The lender might also generally exercise its discretion to disfavor some individuals or favor others in a manner that results in a pattern or practice of disparate treatment that cannot be explained on grounds other than a prohibited basis.

If a lender has apparently treated similar applicants differently on the basis of a prohibited factor, it must provide an explanation for the difference in treatment. If the lender is unable to provide a credible and legitimate nondiscriminatory explanation, the agency may infer that the lender discriminated.

If an agency determines that a lender's explanation for treating some applicants differently is a pretext for discrimination, the agency may find that the lender discriminated, notwithstanding the lender's explanation.

Example: A lender rejected a loan application made by a female applicant with flaws in her credit report but accepted applications by male applicants with similar flaws. The lender offered the explanation that the rejected application had been processed by a new loan officer who was unfamiliar with the bank's policy to work with applicants to correct credit report problems. However, an investigation revealed that the same loan officer who processed the rejected application had accepted applications from males with similar credit problems after working with them to provide satisfactory explanations.

When a lender's treatment of two applicants is compared, even when there is an apparently valid explanation for a particular difference in treatment, further investigation may establish disparate treatment on a prohibited basis. For example, seemingly valid explanations for denying loans to minority applicants may have been applied consistently to minority applicants and inconsistently to nonminority applicants; or "offsetting" or "compensatory" factors cited as the reason for approving nonminority applicants may involve information that the lender usually failed to consider for minority applicants but usually considered for nonminority applicants.

A pattern or practice of disparate treatment on a prohibited basis may also be established through a valid statistical analysis of detailed loan file information, provided that the analysis controls for possible legitimate explanations for differences in treatment. Where a lender's underwriting decisions are the subject of a statistical analysis, detailed information must be collected from individual loan files about the applicants' qualifications for credit. Data reported by lenders under the HMDA do not, standing alone, provide sufficient information for such an analysis because they omit important variables, such as credit histories and debt ratios. HMDA data are useful, though, for identifying lenders whose practices may warrant investigation for compliance with fair lending laws. HMDA data may also be relevant, in conjunction with other evidence, to the determination whether a lender has discriminated.

Evidence of Disparate Impact

When a lender applies a policy or practice equally to credit applicants, but the policy or practice has a disproportionate adverse impact on applicants from a group protected against discrimination, the policy or practice is described as having a "disparate impact." Policies and practices that are neutral on their face and that are applied equally may still, on a prohibited basis, disproportionately and adversely affect a person's access to credit.

Although the precise contours of the law on disparate impact as it applies to lending discrimination are under development, it has been clearly established that proof of lending discrimination using a disparate impact analysis encompasses several steps. The single fact that a policy or practice creates a disparity on a prohibited basis is not alone proof of a violation. Where the policy or practice is justified by "business necessity" and there is no less discriminatory alternative, a violation of the FH Act or the ECOA will not exist.

The existence of a disparate impact may be established through review of how a particular practice, policy or standard operates with respect to those who are affected by it. The existence of disparate impact is not established by a mere assertion or general perception that a policy or practice disproportionately excludes or injures people on a prohibited basis. The existence of a disparate impact must be established by facts. Frequently this is done through a quantitative or statistical analysis. Sometimes the operation of the practice is reviewed by analyzing its effect on an applicant pool; sometimes it consists of an analysis of the practice's effect on possible applicants, or on the population in general. Not every member of the group must be adversely affected for the practice to have a disparate impact. Evidence of discriminatory intent is not necessary to establish that a policy or practice adopted or implemented by a lender that has a disparate impact is in violation of the FH Act or ECOA.

Identifying the existence of a disparate impact is only the first step in proving lending discrimination under this method of proof. When an Agency finds that a lender's policy or practice has a disparate impact, the next step is to seek to determine whether the policy or practice is justified by "business necessity." The justification must be manifest and may not be hypothetical or speculative. Factors that may be relevant to the justification could include cost and profitability.

Even if a policy or practice that has a disparate impact on a prohibited basis can be justified by business necessity, it still may be found to be discriminatory if an alternative policy or practice could serve the same purpose with less discriminatory effect.

Example: A lender's policy is not to extend loans for single family residences for less than $60,000.00. This policy has been in effect for ten years. This minimum loan amount policy is shown to disproportionately exclude potential minority applicants from consideration because of their income levels or the value of the houses in the areas in which they live. The lender will be required to justify the "business necessity" for the policy.

Example: In the past, lenders primarily considered net income in making underwriting decisions. In recent years, the trend has been to consider gross income. A lender decided to switch its practices to consider gross income rather than net income. However, in calculating gross income, the lender did not distinguish between taxable and nontaxable income even though nontaxable income is of more value than the equivalent amount of taxable income. The lender's policy may have a disparate impact on individuals with disabilities and the elderly, both of whom are more likely than the general applicant pool to receive substantial nontaxable income. The lender's policy is likely to be proven discriminatory. First, the lender is unlikely to be able to show that the policy is compelled by business necessity. Second, even if the lender could show business necessity, the lender could achieve the same purpose with less discriminatory effect by "grossing up" nontaxable income (i.e., making it equivalent to gross taxable income by using formulas related to the applicant's tax bracket).

Lenders will not have to justify every requirement and practice every time that they face a compliance examination. The Agencies recognize the relevance to credit decisions of factors related to the adequacy of the borrower's income to carry the loan, the likely continuation of that income, the adequacy of the collateral to secure the loan, the borrower's past performance in paying obligations, the availability of funds to close, and the existence of adequate reserves. While lenders should

think critically about whether widespread, familiar requirements and practices have an unjustifiable disparate impact, they should look especially carefully at requirements that are more stringent than customary. Lenders should also stay informed of developments in underwriting and portfolio performance evaluation so that they are well positioned to consider all options by which their business objectives can be achieved.

C. Answers to Questions Often Asked by Financial Institutions and the Public

Lending institutions and others often ask the Agencies questions about various aspects of lending discrimination. The Agencies have compiled this list of common questions, with answers, in order to provide further guidance.

Q1: Are disparities in application, approval, or denial rates revealed by HMDA data sufficient to establish lending discrimination?

A: HMDA data alone do not prove lending discrimination. The data do not contain enough information on major credit-related factors, such as employment and credit histories, to prove discrimination. Despite these limitations, the data can provide "red flags" that there may be problems at particular institutions. Therefore, regulatory and enforcement agencies may use HMDA data, along with other factors, to identify institutions whose lending practices warrant more scrutiny. Furthermore, HMDA data can be relevant, in conjunction with other data and information, to the determination whether a lender has discriminated.

Q2: Does a lending institution that submits inaccurate HMDA data violate lending discrimination laws?

A: An inaccurate HMDA data submission constitutes a violation of the HMDA, the Federal Reserve Board's Regulation C, and other applicable laws, and may subject the lending institution to an enforcement action, which could include civil money penalties, and, if the lender is a HUD-approved mortgagee, the sanctions of the HUD Mortgagee Review Board. An inaccurate HMDA data submission, however, is not in itself a violation of the ECOA or the FH Act. However, a person who intentionally submits incorrect or incomplete HMDA data in order to cover up a violation of the FH Act may be subject, under the FH Act and federal criminal statutes, to a fine or prison term or both. In addition, a failure to ensure accurate HMDA data may be considered as a relevant fact during a FH Act investigation or an examination of the institution's lending activities.

Q3: Does a second review program only for loan applicants who are members of a protected class violate laws prohibiting discrimination in lending?

A: Such programs are permissible if they do no more than ensure that lending standards are applied fairly and uniformly to all applicants. For example, it is permissible to review the proposed denial of applicants who are members of a protected class by comparing their applications to the approved applications of similarly qualified individuals who are not members of a protected class to determine if the applications were evaluated consistently. It is impermissible, however, to review the applications of members of a protected class in order to apply standards to those applications different from the standards used to evaluate other applications for the same credit program or to apply the same standards in a different manner, unless such actions are otherwise permitted by law, as described in Question 4.

Other types of second review programs are also permissible. For example, lenders could review the proposed denial of all applicants within a certain income range. Lenders also could review a sampling of all applications proposed for denial, or even review all such applications.

Q4: May a lender apply different lending standards to applicants who are members of a protected class in order to increase lending to that sector of its community?

A: Generally, a lender that applies different lending standards or offers different levels of assistance on a prohibited basis, regardless of its motivation, would be violating both the FH Act and the ECOA. There are exceptions to the general rule; thus, applying different lending standards or offering different levels of assistance to applicants who are members of a protected class is permissible in some circumstances. For example, the FH Act requires lenders to provide reasonable accommodation to people with disabilities. In addition, providing different treatment to applicants to address past discrimination would be permissible if done in response to a court order or otherwise in accord with applicable legal precedent. However, the law in this area is complex and developing. Before implementing programs of this sort, a lender should seek legal advice.

Of course, affirmative advertising and marketing efforts that do not involve application of different lending standards are permissible under both the ECOA and the FH Act. For example, special outreach to a minority community would be permissible.

Q5: Should a lender engage in self-testing?

A: Principles of sound lending dictate that adequate policies and procedures be in place to ensure safe and sound lending practices and compliance with applicable laws and regulations, and that a lender adopt appropriate audit and control systems to determine whether the institution's policies and procedures are functioning adequately. This is as true in the area of fair lending as in other operations. Lenders should employ reliable measures for auditing fair lending compliance. A well-designed and implemented program of self-testing could be a valuable part of this process. Lenders should be aware, however, that data documenting lending discrimination discovered in a self-test generally will not be shielded from disclosure.

Corrective actions should always be taken by any lender that discovers discrimination. Self-testing and corrective actions do not expunge or extinguish legal liability for the violations of law, insulate a lender from private suits, or eliminate the primary regulatory agency's obligation to make the referrals required by law. However, they will be considered as a substantial mitigating factor by the primary regulatory agencies when contemplating possible enforcement actions. In addition, HUD and DOJ will consider as a substantial mitigating factor an institution's self-identification and self-correction when determining whether they will seek additional penalties or other relief under the FH Act and the ECOA. The Agencies strongly encourage self-testing and will consider further steps that might be taken to provide greater incentives for institutions to undertake self-assessment and self-correction.

Q6: What should a lender do if self-testing evidences lending discrimination?

A: If a lender discovers discriminatory practices, it should make all reasonable efforts to determine the full extent of the discrimination and its cause, e.g., determine whether the practices were grounded in defective policies, poor implementation or control of those policies, or isolated to a particular area of the lender's operations. The lender should take all appropriate corrective actions to address the discrimination, including, but not limited to:

- Identifying customers whose applications may have been inappropriately processed, offering to extend credit if they were improperly

denied; compensating them for any damages, both out-of-pocket and compensatory; and notifying them of their legal rights;

• Correcting any institutional policies or procedures that may have contributed to the discrimination;

• Identifying, and then training and/or disciplining, the employees involved;

• Considering the need for community outreach programs and/or changes in marketing strategy or loan products to better serve minority segments of the lender's market; and

• Improving audit and oversight systems in order to ensure there is no recurrence of the discrimination.

An institution is not required to report to the Agencies a lending discrimination problem it has discovered. However, a lender that reports its discovery can ensure that the corrective actions it develops are appropriate and complete and thereby minimize the damages to which it will be subject.

Q7: Will a lender be held responsible for discriminatory lending engaged in by a single loan officer where the lending institution has good policies and procedures in place, is otherwise in full compliance with all applicable laws and regulations and neither knows nor reasonably could have known that the officer was engaged in illegal discriminatory conduct?

A: Fair lending violations can occur even in the most well-run lending institutions that have good policies in place to ensure compliance with fair lending laws and regulations. Of course, the chances that such violations will occur can be greatly reduced by backing up those policies with proper employee training and supervision and subjecting the lending process to proven systems of oversight and review. Self-testing can further reduce the likelihood that violations may occur. Notwithstanding these efforts, a single loan officer might still improperly apply policies or, worse yet, deliberately circumvent them and manage to conceal or disguise the true nature of his or her practices for a time. It may be particularly difficult to discover this type of behavior when it occurs in the pre-application process.

In any case where discriminatory lending by a lending institution is identified, the lender will be expected to identify and fairly compensate victims of discriminatory conduct just as it would be expected to compensate a customer if an employee's conduct resulted in physical injury to the customer. In addition, such a violation might constitute a "pattern or practice" that must be referred to DOJ or a violation that must be referred to HUD.

As in other cases of discriminatory behavior, where a lender takes self-initiated corrective actions, such actions will be considered as a substantial mitigating factor by the Agencies in determining the nature of any enforcement action and what penalties or other relief would be appropriate.

Q8: If a federal financial institutions regulatory agency has "reason to believe" that a lender has engaged in a pattern or practice of discrimination in violation of the ECOA, the ECOA requires the agency to refer the matter to DOJ. What constitutes a "reason to believe"?

A: A federal financial institutions regulatory agency has reason to believe that an ECOA violation has occurred when a reasonable person would conclude from an examination of all credible information available that discrimination has occurred. This determination requires weighing the available evidence and applicable law and determining whether an apparent violation has occurred. Information supporting a reason to believe finding may include loan files and other documents, credible observations by persons with direct knowledge, statistical analysis, and the financial institution's response to the preliminary examination findings.

Reason to believe is more than an unfounded suspicion. While the evidence of discrimination need not be definitive and need not include evidence of overt discrimination, it should be developed to the point that a reasonable person would conclude that a violation exists.

Q9: If a federal financial institutions regulatory agency has reason to believe that a lender has engaged in a "pattern or practice" of discrimination in violation of the ECOA, the agency will refer the matter to DOJ. What constitutes a "pattern or practice" of lending discrimination?

A: Determinations by federal financial institutions regulatory agencies regarding a pattern or practice of lending discrimination must be based on an analysis of the facts in a given case. Isolated, unrelated or accidental occurrences will not constitute a pattern or practice. However, repeated, intentional, regular, usual, deliberate, or institutionalized practices will almost always constitute a pattern or practice. The totality of the circumstances must be considered when assessing whether a pattern or practice is present. Considerations include, but are not limited to:

• Whether the conduct appears to be grounded in a written or unwritten policy or established practice that is discriminatory in purpose or effect;

• Whether there is evidence of similar conduct by a financial institution toward more than one applicant. Note, however, that this is not a mathematical process, e.g., "more than one" does not necessarily constitute a pattern or practice;

• Whether the conduct has some common source or cause within the financial institution's control;

• The relationship of the instances of conduct to one another (e.g., whether they all occurred in the same area of the financial institution's operations); and

• The relationship of the number of instances of conduct to the financial institution's total lending activity. Note, however, that, depending on the circumstances, violations that involve only a small percentage of an institution's total lending activity could constitute a pattern or practice.

Depending on the egregiousness of the facts and circumstances involved, singly or in combination, these factors could provide evidence of a pattern or practice.

Q10: How does the employment of few minorities and individuals from other protected classes in lending positions—e.g., Account Executive, Underwriter, Loan Counselor, Loan Processor, Staff Appraiser, Assistant Branch Manager and Branch Manager—affect compliance with lending discrimination laws?

A: The employment of few minorities and others in protected classes, in itself, is not a violation of the FH Act or the ECOA. However, employment of few members of protected classes in lending positions can contribute to a climate in which lending discrimination could occur by affecting the delivery of services.

Therefore, lenders might consider the following steps, as appropriate to their institutions:

• Advertising lending job openings in local minority-oriented publications;

• Notifying predominantly minority organizations of such openings;

• Seeking employment referrals from current minority employees, minority real estate boards and local historically minority colleges and other institutions that serve minority groups in the community; and

• Seeking qualified independent fee appraisers from local minority appraisal organizations.

Similar outreach steps could be considered to recruit women, persons with disabilities, and other persons protected by the FH Act and the ECOA.

Q11: What is the role of the guidelines of secondary market purchasers and

private and governmental loan insurers in determining whether primary lenders practice lending discrimination?

A: Many lenders make mortgage loans only when they can be sold on the secondary market, or they may place some loans in their own portfolios and sell others on the secondary market. The principal secondary market purchasers, Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac"), publish underwriting guidelines to inform primary lenders of the conditions under which they will buy loans. For example, ability to repay the loan is measured by suggested ratios of monthly housing expense to income (28%) and total obligations to income (36%). However, these guidelines allow considerable discretion on the part of the primary lender. In addition, the secondary market guidelines have in some cases been made more flexible, for example, with respect to factors such as stability of income (rather than stability of employment) and use of nontraditional ways of establishing good credit and ability to pay (e.g., use of past rent and utility payment records). Lenders should ensure that their loan processors and underwriters are aware of the provisions of the secondary market guidelines that provide various alternative and flexible means by which applicants may demonstrate their ability and willingness to repay their loans. Fannie Mae and Freddie Mac not infrequently purchase mortgages exceeding the suggested ratios, and their guidelines contain detailed discussions of the compensating factors that can justify higher ratios (and which must be documented by the primary lender).

A lender who rejects an application from an applicant who is a member of a protected class and who has ratios above those of the guidelines and approves an application from another applicant with similar ratios should be prepared to show that the reason for the rejection was based on factors that are applied consistently without regard to any of the prohibited factors.

These same principles apply equally to the guidelines of private and governmental loan insurers.

Q12: What criteria will be employed in taking enforcement actions or seeking remedial measures when lending discrimination is discovered?

A: Enforcement sanctions and remedial measures for lending discrimination violations vary depending on whether such sanctions are sought by the appropriate federal financial institutions regulatory agencies, DOJ, HUD or other federal agencies charged with enforcing either the ECOA or the FH Act. The following discussion sets out the criteria typically employed by the federal banking agencies (i.e., OCC, OTS, the Board and FDIC), NCUA, DOJ, HUD, OFHEO, FHFB and FTC in determining the nature and severity of sanctions that may be used to address discriminatory lending practices. As discussed in Questions 8 and 9, above, in certain situations, the primary regulatory agencies will also refer enforcement matters to HUD or DOJ.

The federal banking agencies:

The federal banking agencies are authorized to use the full range of their enforcement authority under 12 U.S.C. 1818 to address discriminatory lending practices. This includes the authority to seek:

- Enforcement actions that may require both prospective and retrospective relief; and
- Civil money penalties ("CMPs") in varying amounts against the financial institution or any institution-affiliated party ("IAP") within the meaning of 12 U.S.C. 1813(u), depending, among other things, on the nature of the violation and the degree of culpability.

In addition to the above actions, the federal banking agencies may also take removal and prohibition actions against any IAP where the statutory requirements for such actions are met.

The federal banking agencies will make determinations as to the appropriateness of any potential enforcement action after giving full consideration to a variety of factors. In making these determinations, the banking agencies will take into account:

- The number and duration of violations identified;
- The nature of the evidence of discrimination (i.e., overt discrimination, disparate treatment or disparate impact);
- Whether the discrimination was limited to a particular office or unit of the financial institution or was more pervasive in nature;
- The presence and effectiveness of any anti-discrimination policies;
- Any history of discriminatory conduct; and
- Any corrective measures implemented or proposed by the financial institution.

The severity of the federal banking agencies' enforcement response will depend on the egregiousness of the financial institution's conduct. Voluntary identification and correction of violations disclosed through a self-testing program will be a substantial mitigating factor in considering whether to initiate an enforcement action.

In addition, the federal banking agencies may consider whether an institution has provided victims of discrimination with all the relief available to them under applicable civil rights laws.

The federal banking agencies may seek both prospective and retrospective relief for fair lending violations.

Prospective relief may include requiring the financial institution to:

- Adopt corrective policies and procedures and correct any financial institution policies or procedures that may have contributed to the discrimination;
- Train financial institution employees involved;
- Establish community outreach programs and change marketing strategy or loan products to better serve all sectors of the financial institution's service area;
- Improve internal audit controls and oversight systems in order to ensure there is no recurrence of discrimination; or
- Monitor compliance and provide periodic reports to the primary federal regulator.

Retrospective relief may include:

- Identifying customers who may have been subject to discrimination and offering to extend credit if the customers were improperly denied;
- Requiring the financial institution to make payments to injured parties:
- *Restitution*: This may include any out-of-pocket expenses incurred as a result of the violation to make the victim of discrimination whole, such as: fees or expenses in connection with the application; the difference between any greater fees or expenses of another loan granted elsewhere after denial by the discriminating lender; and, when loans were granted on disparate terms, appropriate modification of those terms and refunds of any greater amounts paid.
- *Other Affirmative Action As Appropriate to Correct Conditions Resulting From Discrimination:* The federal banking agencies also have the authority to require a financial institution to take affirmative action to correct or remedy any conditions resulting from any violation or practice. The banking agencies will determine whether such affirmative action is appropriate in a given case and, if such action is appropriate, the type of remedy to order.
- Requiring the financial institution to pay CMPs:

The banking agencies have the authority to assess CMPs against financial institutions or individuals for violating fair lending laws or

regulations. Each agency has the authority to assess CMPs of up to $5,000 per day for any violation of law, rule or regulation. Penalties of up to $25,000 per day are also permitted, but only if the violations represent a pattern of misconduct, cause more than minimal loss to the financial institution, or result in gain or benefit to the party involved. CMPs are paid to the U.S. Treasury and therefore do not compensate victims of discrimination.

National Credit Union Administration

For federal credit unions, NCUA will employ criteria comparable to those of the federal banking agencies, pursuant to its authority under 12 U.S.C. 1786.

The Department of Justice

The Department of Justice is authorized to use the full range of its enforcement authority under the FH Act and the ECOA. DOJ has authority to commence pattern or practice investigations of possible lending discrimination on its own initiative or through referrals from the federal financial institutions regulatory agencies, and to file lawsuits in federal court where there is reasonable cause to believe that such violations have occurred. DOJ is also authorized under the FH Act to bring suit based on individual complaints filed with HUD where one of the parties to the complaint elects to have the case heard in federal court.

The relief sought by DOJ in lending discrimination lawsuits may include:

- An injunction which may require both prospective and retrospective relief; and,
- In enforcement actions under the FH Act, CMPs not to exceed $50,000 per defendant for a first violation and $100,000 for any subsequent violation.

Prospective injunctive relief may include:

- A permanent injunction to insure against a recurrence of the unlawful practices;
- Affirmative measures to correct past discriminatory policies, procedures, or practices, so long as consistent with safety and soundness, such as:
- Expansion of the lender's service areas to include previously excluded minority neighborhoods;
- Opening branches or other credit facilities in under-served minority neighborhoods;
- Targeted sales calls on real estate agents and builders active in minority neighborhoods;
- Advertising through minority-oriented media;
- Self-testing;
- Employee training;
- Changes to commission structures which tend to discourage lending in minority and low-income neighborhoods; and
- Changes in loan processing and underwriting procedures (including second reviews of denied applications) to ensure equal treatment without regard to prohibited factors; and
- Record keeping and reporting requirements to monitor compliance with remedial obligations.

Retrospective injunctive relief may include relief for victims of past discrimination, actual and punitive damages, and offers or adjustments of credit or other forms of loan commitments.

The Department of Housing and Urban Development

The Department of Housing and Urban Development is fully authorized to investigate complaints alleging discrimination in lending in violation of the FH Act and has the authority to initiate complaints and investigations even when an individual complaint has not been received. HUD issues determinations on whether or not reasonable cause exists to believe that the FH Act has been violated. HUD also may authorize actions for temporary and preliminary injunctions to be brought by DOJ and has authority to issue enforceable subpoenas for information related to investigations.

Following issuance of a determination of reasonable cause under the FH Act, HUD enforces the FH Act administratively unless one of the parties elects to have the case heard in federal court in a case brought by DOJ.

Relief under the FH Act that may be awarded by an administrative law judge ("ALJ") after a hearing, or by the Secretary on review of a decision by an ALJ, includes:

- Injunctive or other appropriate relief, including a variety of actions designed to correct discriminatory practices, such as changes in loan processes or procedures, modifications of loan service areas or branching actions, approval of previously denied loans to aggrieved persons, additional record-keeping and reporting on future activities or other affirmative relief;
- Actual damages suffered by persons who are aggrieved by any violation of the FH Act, including damages for mental distress and out-of-pocket losses attributable to a violation; and
- Civil penalties of up to $10,000 for each initial violation and up to $25,000 and $50,000 for successive violations within specific time frames.

HUD also is authorized to direct Fannie Mae and Freddie Mac to undertake various remedial actions, including suspension, probation, reprimand, or settlement, against lenders found to have engaged in discriminatory lending practices in violation of the FH Act or the ECOA.

The Office of Federal Housing Enterprise Oversight

The Office of Federal Housing Enterprise Oversight is authorized to use its enforcement authority under 12 U.S.C. 4631 and 4636, including cease and desist orders and CMPs for violations by Fannie Mae and Freddie Mac of the fair housing regulations promulgated by the Secretary of HUD pursuant to 12 U.S.C. § 4545.

The Federal Housing Finance Board

While the Federal Housing Finance Board does not have enforcement authority under the ECOA or the FH Act, in reviewing the members of the Federal Home Loan Bank System for community support, it may restrict access to long-term System advances to any member that, within two years prior to the due date of submission of a Community Support Statement, had a final administrative or judicial ruling against it based on violations of those statutes (or any similar state or local law prohibiting discrimination in lending). System members in this situation are asked to submit to the Finance Board an explanation of steps taken to remedy the violation or prevent a recurrence. See 12 U.S.C. 1430(g); 12 CFR 936.3 (b)(5).

The Federal Trade Commission

The Federal Trade Commission enforces the requirements of the ECOA and Regulation B for all lenders subject to the ECOA, except where enforcement is specifically committed to another agency. The FTC may exercise all of its functions and powers under the Federal Trade Commission Act ("FTC Act") to enforce the ECOA, and a violation of any requirement under the ECOA is deemed to be a violation of a requirement under the FTC Act. The FTC has the power to enforce Regulation B in the same manner as if a violation of Regulation B were a violation of an FTC trade regulation rule.

This means that the FTC has the power to investigate lenders suspected of lending discrimination and to use compulsory process in doing so. The Commission, through DOJ or on its own behalf where the Justice Department declines to act, may file suit in federal court against suspected violators and seek relief including:

- Injunctions against the violative practice;

• Civil penalties of up to $10,000 for each violation; and

• Redress to affected consumers.

In addition, the Commission routinely imposes recordkeeping and reporting requirements to monitor compliance.

Q13: Will a financial institution be subjected to multiple actions by DOJ or HUD and its primary regulator if discriminatory practices are discovered?

A: In all cases where referrals to other agencies are made, the appropriate federal financial institutions regulatory agency will engage in ongoing consultations with DOJ or HUD regarding coordination of each agency's actions. The Agencies will coordinate their enforcement actions and make every effort to eliminate unnecessarily duplicative actions. Where both a federal financial institutions regulatory agency and either DOJ or HUD are contemplating taking actions under their own respective authorities, the Agencies will seek to coordinate their actions to ensure that each agency's action is consistent and complementary. The financial institutions regulatory agencies also will discuss referrals on a case-by-case basis with DOJ or HUD to determine whether multiple actions are necessary and appropriate.

Dated: April 6, 1994.

Henry G. Cisneros,

Secretary, U.S. Department of Housing and Urban Development.

Aida Alvarez,

Director, Office of Federal Housing Enterprise Oversight.

Janet Reno,

Attorney General, Department of Justice.

Eugene A. Ludwig,

Comptroller of the Currency.

Jonathan L. Fiechter

Acting Director, Office of Thrift Supervision.

Alan Greenspan,

Chairman, Board of Governors of the Federal Reserve System.

Andrew C. Hove, Jr.,

Acting Chairman, Federal Deposit Insurance Corporation.

Nicolas P. Retsinas,

HUD—Secretary, Designee to the Board, Federal Housing Finance Board.

Donald S. Clark,

Secretary, Federal Trade Commission.

Norman E. D'Amours,

Chairman, National Credit Union Administration.

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Chairman, National Credit Union Administration.

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BILLING CODES 4210–32–P; 4210–01–P; 15–01–0004–P; 4810–33–P; 6720–01–P; 6210–01–P; 6714–01–P; 6725–01–P; 6750–01–P; and 753–501–P

federal register

Friday
April 15, 1994

Part IV

Department of Housing and Urban Development

Office of the Secretary

Delegation of Authority, et al.; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–94–1057; FR–3701–D–01]

Delegation of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates the power and authority of the Secretary to order a Limited Denial of Participation, affecting certain contractors and participants in programs of the Department of Housing and Urban Development ("HUD" or "Department"), to appropriate Assistant Secretaries of the Department, with the authority to redelegate.

EFFECTIVE DATE: April 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ronnie A. Wainwright, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., room 10240, Washington, DC 20410, (202) 708–4184. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The HUD regulations, at 24 CFR 24.700, are being modified to provide that officials designated by the Secretary are authorized to order Limited Denials of Participation (LDP). This notice designates the Assistant Secretary for Housing—Federal Housing Commissioner, the Assistant Secretary for Community Planning and Development, the Assistant Secretary for Fair Housing and Equal Opportunity, the Assistant Secretary for Public and Indian Housing and the Assistant Secretary for Administration to order an LDP and authorizes the Assistant Secretaries to redelegate such authority, under separate Notices of Redelegation, to the appropriate Field officials.

In November of 1993, the Secretary announced the reorganization of HUD's field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD employees to serve HUD's customers more effectively. In implementing this objective, the Secretary determined to remove the Regional organizational layer and provide officials at lower organizational levels full authority to carry out program functions, with these field office officials reporting directly to program officials. This delegation of authority implements the Secretary's objective with respect to ordering LDPs.

The Department will shortly publish a Final Rule modifying 24 CFR 24.700 to state that HUD officials authorized by the Secretary of Housing and Urban Development may order LDPs.

Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Housing—Federal Housing Commissioner, the Assistant Secretary for Community Planning and Development, the Assistant Secretary for Fair Housing and Equal Opportunity, the Assistant Secretary for Public and Indian Housing and the Assistant Secretary for Administration the Secretary's authority to order Limited Denials of Participation, pursuant to 24 CFR 24.700.

Section B. Authority to Redelegate

The authority redelegated in Section A above may be further redelegated to employees of HUD.

Authority: Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: April 8, 1994.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 94–9230 Filed 4–14–94; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Administration

[Docket No. D–94–1059; FR–3697–D–01]

Delegation of Procurement Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of procurement authority.

SUMMARY: This Notice revokes all current delegations of procurement authority and consolidates into a single document all procurement authority delegated to the Assistant Secretary for Administration (the Department's Senior Procurement Executive).

EFFECTIVE DATE: April 12, 1994.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, room 5262, 451 7th Street SW., Washington, DC 20410, (202) 708–0294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's Field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD employees to serve HUD's customers more effectively. In order to provide more efficient service, this Notice revokes all current delegations of procurement authority and consolidates into a single document all procurement authority delegated to the Assistant Secretary for Administration (the Department's Senior Procurement Executive). The Department's current delegations of procurement authority have been amended several times in the past ten years to reflect changes in HUD's organizational structure and are badly fragmented. This delegation consolidates and updates all procurement authority and, in addition, provides the Assistant Secretary for Administration (the Senior Procurement Executive) with the flexibility needed to further implement streamlined procurement operations in headquarters and the field, while assuring that necessary internal controls are maintained. Also appearing in today's **Federal Register** is a Notice of Redelegation of Authority revoking procurement authority currently redelegated to Regional Administrators and redelegating all procurement authority to appropriate contracting officials in the field, and otherwise consolidating the redelegation of procurement authority.

Accordingly, the Secretary of Housing and Urban Development hereby delegates as follows:

Section A. Delegation of Authority

The Assistant Secretary for Administration, designated as the Department's Senior Procurement Executive, is authorized to exercise all duties, responsibilities, and powers of the Secretary with respect to Departmental procurement. The authority delegated to the Senior Procurement Executive includes the following duties, responsibilities and powers:

1. Authority to enter into and administer all procurement contracts within the Department and make related determinations.

2. Responsibility for procurement program development, including:

a. Implementation of procurement initiatives, best practices, and reforms;

b. In coordination with the Office of Federal Procurement Policy, determination of specific areas where Government-wide performance standards should be established and applied, and development of Government-wide procurement policies, regulations, and standards;

c. Establishment and maintenance of an evaluation program for all procurement activities within the Department;

d. Development of programs to enhance the professionalism of the Department's procurement work force, including the establishment of educational, training and experience requirements for procurement personnel; and,

e. Development of all Departmental procurement policy, regulations and procedures.

3. Responsibility for developing policies to assure greater uniformity and consistency in the administrative aspects of the Department's award and management of grants and cooperative agreements, including:

a. Effective implementation of uniform administrative requirements relating to grants and cooperative agreements, such as Office of Management and Budget ("OMB") Circulars and OMB Policy Letters;

b. Departmental policy and guidance related to the award and administration of discretionary grants and cooperative agreements; and

c. Enter into and administer grants and cooperative agreements in support of the Department's discretionary assistance programs.

Section B. Authority To Issue Rules and Regulations

The Senior Procurement Executive is authorized to issue such rules and regulations as may be necessary to carry out the authority delegated under Section A.

Section C. Authority to Redelegate

The Senior Procurement Executive is authorized to redelegate to qualified employees of the Department any of the authority delegated under Section A.

Section D. Delegations Revoked

All delegations of authority concerning procurement are hereby revoked including the following:

1. The delegation of authority published on April 8, 1992 at 57 FR 11962;

2. The delegation of authority published on October 17, 1985 at 50 FR 42097.

Authority: 41 U.S.G. § 414(2); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. § 3535(d)).

Dated: April 12, 1994.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 94–9233 Filed 4–14–94; 8:45 am]

BILLING CODE 4210–01–P

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D–94–1058; FR–3704–D–01]

Amendment of Redelegations of Authority

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of amendment of redelegations of authority.

SUMMARY: This notice amends current redelegations of authority from the Assistant Secretary for Fair Housing and Equal Opportunity under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments of 1988) to implement the field reorganization.

EFFECTIVE DATE: April 12, 1994.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., room 5226, Washington, DC 20410. Telephone (202) 708–0288. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's Field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD employees to serve HUD's customers more effectively. In implementing this objective, the Secretary determined to remove the Regional organizational layer and provide officials at lower organizational levels full authority to carry out program functions, with these field office officials reporting directly to program officials.

This notice amends current redelegations of authority from the Assistant Secretary for Fair Housing and Equal Opportunity under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments of 1988) to meet the objectives of the reorganization for the Office of Fair Housing and Equal Opportunity. This notice amends these redelegations of authority, including the Redelegation of Authority published on March 30, 1989 at 54 FR 13122 (FR–2614), to make the following modification: All references to "HUD Regional Administrators-Regional Housing Commissioners" are deleted and all power and authority redelegated to them revoked.

It is anticipated that in the near future the Office of Fair Housing and Equal Opportunity will publish further guidance in the **Federal Register** to field staff concerning their specific functions and responsibilities.

Amendment of Redelegations of Authority

All redelegations of authority from the Assistant Secretary for Fair Housing and Equal Opportunity under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments of 1988), including the Redelegation of Authority published on March 30, 1989 at 54 FR 13122 (FR–2614), are hereby amended to make the following modifications: all references to "HUD Regional Administrators-Regional Housing Commissioners" are deleted and all power and authority redelegated to them revoked.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 12, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–9235 Filed 4–14–94; 8:45 am]

BILLING CODE 4210–01–P

Office of the Assistant Secretary for Administration

[Docket No. D–94–1059; FR–3697–D–02]

Redelegation of Procurement Authority

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of redelegation of procurement authority.

SUMMARY: This notice implements the initial phase of the field reorganization for the Office of Administration by revoking all current redelegations of procurement authority and consolidating all procurement authority redelegated to HUD headquarters and field staff.

EFFECTIVE DATE: April 12, 1994.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, room 5262, 451 7th Street SW., Washington, DC 20410, (202) 708–0294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by

empowering HUD employees to serve HUD's customers more effectively. In implementing this objective, the Secretary determined to remove the Regional organizational layer and provide officials at lower organizational levels full authority to carry out program functions, with these field office officials reporting directly to program officials.

In a Delegation of Authority published in today's **Federal Register**, the Secretary of Housing and Urban Development revoked all current delegations of procurement authority and consolidated into a single document all procurement authority delegated to the Assistant Secretary for Administration (the Department's Senior Procurement Executive). This notice implements the initial phase of field reorganization for the Office of Administration by revoking all current redelegations of procurement authority and consolidating all procurement authority redelegated to HUD headquarters and field staff.

Administrative Service Centers (ASCs) will be established over the next two years to consolidate and expedite contracting, personnel, accounting, facilities, management information, and other common administrative support functions. Of those functions, only contracting authority is currently redelegated to HUD Regional and Field Offices and these redelegations of authority must therefore be revised to reflect the removal of the Regional organizational layer in the new HUD field organization. The final number and location of ASCs has not yet been established; when these decisions have been made, an additional notice of redelegation of authority will be published to reflect this permanent field organizational structure. This notice, however, revokes all procurement authority redelegated to Regional Administrators and provides greater flexibility to field contracting officials to redelegate procurement authority to qualified HUD field personnel as may be necessary to meet workload demands.

Accordingly, the Assistant Secretary for Administration redelegates as follows:

Section A. Redelegation of Authority

The Assistant Secretary for Administration, designated as the Department's Senior Procurement Executive, redelegates the following duties, responsibilities and powers:

1. The Director, Office of Procurement and Contracts, is designated the Department's principal Contracting Officer and may:

a. Enter into and administer all procurement contracts and interagency agreements for property and services required by the Department (including the placement of paid advertisements in newspapers);

b. Enter into and administer grants and cooperative agreements in support of the Department's discretionary assistance programs;

c. Make determinations and findings regarding the use of advance payments under FAR Subpart 32.4 with the concurrence of the Administration Comptroller-Director, Office of Finance and Accounting; and

d. Redelegate authority delegated by this notice to Headquarters personnel as indicated below, provided they meet experience, education, and training requirements established by the Senior Procurement Executive:

(1) In a. and b. above to qualified Office of Procurement and Contracts employees;

(2) Respecting the following purchasing procedures to qualified Headquarters employees:

(i) Small purchases (FAR part 13);

(ii) Issuance of delivery orders under contracts established by other Government sources (FAR part 8, e.g. GSA Federal Supply Schedules) or under pre-priced indefinite-delivery contracts established by the Department; and,

(iii) Purchases using the Government-wide Commercial Credit Card system in accordance with the Department's directives governing credit card purchasing.

2. The President of the Government National Mortgage Association ("GNMA") is authorized to exercise procurement authority with respect to requirements related to GNMA's programmatic functions. The President of GNMA is authorized to redelegate any of the powers or authority redelegated to him or her to qualified GNMA employees.

3. Each Director, Regional Office of Administration, and Director, Regional Contracting Division is designated as a Contracting Officer and may, subject to any limitations imposed by the Senior Procurement Executive:

a. Enter into and administer all procurement contracts and interagency agreements for property and services required by the Department (including the placement of paid advertisements in newspapers) and grants and cooperative agreements in support of the Department's discretionary assistance programs, with regard to activities within his or her respective region;

b. Order a Limited Denial of Participation sanction, pursuant to HUD regulations at 24 CFR 24.700;

c. Redelegate the award and administration of an individual or class of procurement contracts, interagency agreements, or discretionary grants and cooperative agreements to another Director, Regional Contracting Division, with the concurrence of the Senior Procurement Executive; and,

d. Redelegate the authority delegated by this Notice to any of the following personnel, provided they meet experience, education, and training requirements established by the Senior Procurement Executive:

(1) Regional Contracting Division personnel;

(2) Office of Housing personnel in State or Area Offices within the region for procurement contracts concerning the management and/or disposition of properties owned by HUD or subject to a mortgage where HUD is mortgagee-in-possession under the National Housing Act (12 U.S.C. 1701–1749). As a minimum, this authority shall be delegated to an Office of Housing management official designated by the Assistant Secretary for Housing-Federal Housing Commissioner in each Field Office for the following:

(i) Emergency procurement authority; and,

(ii) Small purchase authority in those Field Offices without full-time contracting personnel.

(3) State or Area Office personnel within the region for:

(i) Small purchases (FAR part 13);

(ii) Issuance of delivery orders under contracts established by other Government sources (FAR Part 8, e.g. GSA Federal Supply Schedules) or under pre-priced indefinite-delivery contracts established by the Department; and,

(iii) Purchases using the Governmentwide Commercial Credit Card system, in accordance with the Department's directives governing credit card purchasing.

Section B. Delegations Revoked

All current redelegations of authority concerning procurement are hereby revoked including the following:

1. The redelegation of authority published on September 17, 1993 at 58 FR 48667;

2. The redelegation of authority published on March 11, 1993 at 58 FR 13496;

3. The redelegation of authority published on December 7, 1992 at 57 FR 57841;

4. The redelegation of authority published on April 8, 1992 at 57 FR 11963;

5. The redelegation of authority published on February 15, 1991 at 56 FR 6407; and,

6. The redelegation of authority published on October 17, 1985 at 50 FR 42098.

Authority: 41 U.S.C. 414(2); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 12, 1994.

Marilynn A. Davis,

Assistant Secretary for Administration.

[FR Doc. 94–9234 Filed 4–14–94; 8:45 am]

BILLING CODE 4210–01–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. D–94–1055; FR–3696–D–01]

Revocation and Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: This notice revokes all powers and authorities previously redelegated by the Assistant Secretary for Public and Indian Housing to HUD Regional Administrators and/or to HUD Field Office Managers, including any powers and authorities further redelegated by Regional Administrators and/or Field Office Managers. Also in this notice, the Assistant Secretary for Public and Indian Housing redelegates to Directors and Deputy Directors of Public Housing in HUD Field Offices and Administrators of Field Offices of Native American Programs all powers and authorities necessary to carry out Office of Public and Indian Housing Programs (including the power to order Limited Denials of Participation sanctions).

EFFECTIVE DATE: April 12, 1994.

FOR FURTHER INFORMATION CONTACT: Casimir Bonkowski, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., room 4228, Washington, DC 20410, (202) 708–0440, or Dominic Nessi, Director, Office of Native American Programs, 451 7th Street SW., room 4140, Washington, DC 20410, (202) 708–1015. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's Field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD's employees to more effectively serve these customers. In implementing this objective, the Secretary determined to remove the Regional organizational layer and provide officials at lower organizational levels full authority to carry out program functions, with these field office officials reporting directly to program officials.

This Notice revokes and redelegates program authority to meet the objectives of the reorganization for the Office of Public and Indian Housing. This notice also continues an effort by HUD to implement section 902 of the Housing and Community Development Act of 1992 (Public Law 102–550; October 28, 1992) (Housing Act of 1992). Pursuant to section 902, the Department established the Office of Native American Programs (formerly the Office of Indian Housing) to administer and coordinate all programs of the Department relating to Indian and Alaska Native housing and community development. On March 1, 1994, at 59 FR 9764, the Department published a Redelegation of Authority from the Assistant Secretary for Public and Indian Housing to the Director of the Office of Native American Programs concerning all of the Department's programs for Native Americans. A further redelegation of authority from the Director of the Office of Native American Programs to the Administrators of the Field Offices of Native American Programs with respect to these programs is being developed and will be published in the **Federal Register** soon.

This notice revokes all authority previously redelegated by the Assistant Secretary for Public and Indian Housing to Regional Administrators and/or Field Office Managers, including any authority further redelegated by Regional Administrators and/or Field Office Managers, and redelegates to Directors and Deputy Directors of Public Housing in HUD Field Offices and Administrators of Field Offices of Native American Programs for all powers and authorities necessary to carry out Office of Public and Indian Housing Programs within their jurisdictions (including the power to order Limited Denials of Participation sanctions).

It is anticipated that in the near future the Office of Public and Indian Housing will issue further guidance to field staff concerning their specific functions and responsibilities under the programs for which all powers and authorities are redelegated by this action. Any subsequent guidance will be published in the **Federal Register**, and will include a detailed listing of powers and authorities which are to remain at the Headquarters level.

Accordingly, the Assistant Secretary for Public and Indian Housing revokes and redelegates authority as follows:

Section A. Authority Revoked

The Assistant Secretary for Public and Indian Housing revokes all authority previously redelegated to HUD Regional Administrators and/or HUD Field Office Managers for Office of Public and Indian Housing Programs, including any authority further redelegated by Regional Administrators and/or Field Office Managers. (This notice does not revoke or supersede the redelegation of authority published on March 1, 1994, at 59 FR 9764, from the Assistant Secretary for Public and Indian Housing to the Director of the Office of Native American Programs concerning all of the Department's programs for Native Americans.)

Section B. Authority Redelegated

(1) The Assistant Secretary for Public and Indian Housing redelegates to Directors and Deputy Directors of Public Housing in HUD Field Offices all powers and authorities necessary to carry out the following public housing programs. (Public Housing for Indian families is traditionally funded through a separate appropriations; therefore, the authority concerning this program and the programs integral to its successful implementation were redelegated to the Director of the Office of Native American Programs on March 1, 1994):

A. Public Housing Development (U.S. Housing Act of 1937, 42 U.S.C. 1437 *et seq.*, as amended by section 622(a) of the Housing and Community Development Act of 1992 (Designated Housing)).

B. Public Housing Operating Subsidy (Section 9, U.S. Housing Act of 1937, 42 U.S.C. 1437g).

C. Public Housing Modernization (Comprehensive Grant Program) (Section 14 of the U.S. Housing Act of 1937 (42 U.S.C. 14371), and Section 509 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101–625)).

D. Public Housing Modernization (Comprehensive Improvement Assistance Program) (Section 14, U.S. Housing Act of 1937, 42 U.S.C. 14371).

(2) The Assistant Secretary for Public and Indian Housing redelegates to Directors and Deputy Directors of Public Housing in HUD Field Offices and Administrators of Field Offices of Native American Programs all powers and authorities necessary to carry out

the following public and Indian housing programs:

A. Section 8 Rental Voucher Program (Section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)).

B. Section 8 Rental Certificate Program (Section 8 of the U.S. Housing Act of 1937, 42 U.S.C. 1437f).

C. Section 8 Moderate Rehabilitation Program (Section 8 of the U.S. Housing Act of 1937, 42 U.S.C. 1437f).

D. Public and Indian Housing Resident Management Technical Assistance Grants (Section 20(f) of the U.S. Housing Act of 1937, 42 U.S.C. 1437r(f)).

E. Homeownership and Opportunity for People Everywhere (HOPE) (Title III of the U.S. Housing Act of 1937, and Section 411 of the Cranston-Gonzalez National Affordable Housing Act of 1990, Pub. L. 101–625).

F. Public and Indian Housing Youth Sports Program (Section 520 of the Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. 11903a).

G. Public and Indian Housing Drug Elimination Program (The Public and Assisted Housing Drug Elimination Act of 1990, 42 U.S.C. 11901 note).

H. Urban Revitalization Demonstration Program (Section 120 of the Housing and Community Development Act of 1992, amended, 42 U.S.C. 1437 et seq.).

I. Public Housing Management Assessment Program (Section 502 of the Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. 14371).

J. Service Coordinators in Public Housing (Section 661 of the Housing and Community Development Act of 1992, Title VI, Subtitle E, Public Law 102–550).

K. Public and Indian Housing Family Investment Centers (Section 22 of the U.S. Housing Act of 1937, 42 U.S.C. 14371).

L. Public Housing Youth Apprenticeship Program (Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act for 1993, Pub. L. 103–124, approved October 28, 1993).

M. Section 5(h) Homeownership Program (Section 5(h) of the U.S. Housing Act of 1937, 42 U.S.C. 1437c(h)).

N. Hope for Elderly Independence (Section 803 of the Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. 8012).

O. Moving to Opportunity for Fair Housing (MTO) (Section 152 of the Housing and Community Development Act of 1992, 42 U.S.C. 1437f).

P. Demolition and Disposition of Public Housing (Section 18 of the U.S. Housing Act of 1937, 42 U.S.C. 1437p).

In addition, the Assistant Secretary for Public and Indian Housing redelegates to the HUD officials in paragraphs (1) and (2) above the authority to order a Limited Denial of Participation sanction, pursuant to HUD regulations at 24 CFR 24.700.

Section C. Authority Excepted

The authority redelegated in Section B above does not include the authority to issue or waive regulations.

Section D. Authority to Further Redelegate

The authority redelegated in Section B above may be further redelegated.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 12, 1994.

Michael B. Janis

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–9231 Filed 4–14–94; 8:45 am]

BILLING CODE 4210–33–P

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D–94–1060; FR–3674–D–01]

Revocation and Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: This notice revokes all powers and authorities previously redelegated by the Assistant Secretary for Community Planning and Development to HUD Regional Administrators and/or to HUD Field Office Managers, including any powers and authorities further redelegated by Regional Administrators and/or Field Office Managers. This notice then redelegates from the Assistant Secretary for Community Planning and Development to Directors and Deputy Directors of Community Planning and Development in HUD Field Offices all the powers and authorities necessary to carry out Office of Community Planning and Development programs (including the functions specifically enumerated and the power to order Limited Denials of Participation sanctions), except those powers and authorities specifically excluded.

EFFECTIVE DATE: April 12, 1994.

FOR FURTHER INFORMATION CONTACT: Sylvester C. Angel, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., room 7148, Washington, DC 20410, (202) 708–2090. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's Field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD's employees to more effectively serve these customers. In implementing this objective, the Secretary determined to remove the Regional organizational layer and provide officials at lower organizational levels full authority to carry out program functions, with these field office officials reporting directly to program officials.

This notice implements the field reorganization for the Office of Community Planning and Development. This notice revokes all authority previously redelegated by the Assistant Secretary for Community Planning and Development to Regional Administrators and/or Field Office Managers, including any authority further redelegated by Regional Administrators and/or Field Office Managers. This notice then redelegates to Directors and Deputy Directors of Community Planning and Development in HUD Field Offices all the powers and authorities necessary to carry out Office of Community Planning and Development programs (including the functions specifically enumerated and the power to order Limited Denials of Participation sanctions), except those powers and authorities specifically excluded.

Accordingly, the Assistant Secretary for Community Planning and Development revokes and redelegates authority as follows:

Section A. Authority Revoked

The Assistant Secretary for Community Planning and Development revokes all authority previously redelegated to HUD Regional Administrators and/or HUD Field Office Managers for Office of Community Planning and Development Programs, including any authority further redelegated by Regional Administrators and/or Field Office Managers.

Section B. Authority Redelegated

The Assistant Secretary for Community Planning and Development redelegates to Directors and Deputy Directors of Community Planning and Development in HUD Field Offices all

the powers and authorities necessary to carry out the following Office of Community Planning and Development programs (including the functions specifically enumerated), except those powers and authorities specifically excluded:

1. Community Development Block Grants, other than the Indian Tribe Component (Entitlement and Non-Entitlement for States and Small Cities) (Title I, Housing and Community Development Act of 1974, 42 U.S.C. 5301 *et seq.*):

- Sign program Grant Agreements.
- Sign SF 718 Funding Reservations.
- Sign SF 7082 CDBG funding approvals.
- Sign grant award letters.
- Sign IPA Audit correspondence.
- Sign Inspector General Audit correspondence.
- Sign Congressional correspondence.
- Conduct environmental reviews and releases (and determine whether an applicant has the capacity to carry out environmental reviews).
- Make recommendations on sanctions.
- Notify grantees of monitoring findings.
- Sign notice of funding amount.
- Sign notification of receipt of final statement.
- Sign amendments to final statement.
- Release funds under Executive Order 12372.
- Acknowledge receipt of grantee performance report.
- Sign substantive review of grantee performance report.
- Sign notification of Urban County Qualification.
- Sign closeout of State Grants.
- Sign all correspondence to grantees.
- Waive handbooks, notices and, general terms and conditions of the Community Development Block Grant agreements, not covered by statute or regulations.

Authority not redelegated:

- Disapprove applications for entitlement grants filed pursuant to section 104 of the Housing and Community Development Act of 1974 (42 U.S.C. 5304).
- Terminate, reduce or limit the availability of grant payments pursuant to section 111(a) (42 U.S.C. 5311).
- Adjust entitlement grants pursuant to section 104(e) (42 U.S.C. 5304).
- Reallocate funds pursuant to section 106(c) or (d) (42 U.S.C. 5306).
- Determine basic grant amounts for metropolitan cities and urban counties pursuant to section 106(b) (42 U.S.C. 5306).
- Determine the qualifications of localities for status which entitles them to special consideration. This includes, but is not limited to, the determination of qualifications of counties as urban counties pursuant to section 102(a)(6) (42 U.S.C. 5302), the determination of what constitutes a city pursuant to section 102(a)(5) (42 U.S.C. 5302) and the determination of levels of physical and economic distress of cities and urban counties for eligibility for urban development action grants pursuant to section 119(b) (42 U.S.C. 5318).
- Approve and disapprove applications filed for loan guarantee or grant assistance, issue commitments, or issue guarantees pursuant to section 108 (42 U.S.C. 5308).

2. The Home Program: HOME Investment Partnerships, other than the Indian Tribe Component (Title II, National Affordable Housing Act of 1990 (NAHA), 42 U.S.C. 12721):

- Approve deadline extensions unless required by statute or regulation.
- Approve HOME program descriptions.
- Execute SF 40093 HOME Investment Partnership Agreements.
- Designate new HOME participating jurisdictions.
- Conduct environmental reviews and releases (and determine whether an applicant has the capacity to carry out environmental reviews).

Authority not redelegated:

- Determine allocation and reallocation amounts pursuant to Section 217 of NAHA.
- Revoke a jurisdiction's designation as a participating jurisdiction pursuant to Section 216 of NAHA.
- Effect remedies for noncompliance pursuant to Section 223 of NAHA.

3. HOPE for Homeownership of Single Family Homes (Title IV, Subtitle C, National Affordable Housing Act of 1990, 42 U.S.C. 12891) (HOPE 3):

- Sign all grant approval documents, including approval letters and grant agreements.
- Approve deadline extensions unless required by statute or regulation.
- Monitor and closeout projects.
- Sign IPA audit correspondence.
- Sign Inspector General audit correspondence.
- Sign congressional correspondence.

4. HUD-Owned Single Family Property Disposition for the Homeless (Sections 203 and 211, National Housing Act, 12 U.S.C. 1709 and 1715b):

- Waive Handbook and Notice provisions not required by statute or regulation (for aspects of the program carried out by Office of Community Planning and Development officials).
- PD Lease/Sale grantee approval with Master Agreement.

5. Shelter Plus Care (Subtitle F, Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended by Section 837 of the National Affordable Housing Act, 42 U.S.C. 11403):

- Sign Grant Agreements and Amendments and Transmittal Letters/ Annual Contributions Contract.
- Approve deadline extensions unless required by statute or regulation.
- Sign SF 718 Funding Reservations.
- Sign grant award letters.
- Sign IPA Audit correspondence.
- Sign Inspector General Audit correspondence.
- Conduct environmental reviews and releases (and determine whether an applicant has the capacity to carry out environmental reviews).
- Approve Annual Progress Reports.
- Sign monitoring letters to grantees.
- Waive Handbook and Notice provisions not required by statute or regulation.

6. Emergency Shelter Grants Program (Title IV, Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. 1137):

- Sign notices of funding amount.
- Sign notification of funding approval.
- Sign Grant Agreements and amendments.
- Approve deadline extensions unless required by statute or regulation.
- Sign SF 718 Funding Reservations.
- Sign IPA Audit correspondence.
- Sign Inspector General Audit correspondence.
- Conduct environmental reviews and releases (and determine whether an applicant has the capacity to carry out environmental reviews).
- Close out programs upon completion.
- Sign monitoring letters to grantees.
- Waive Handbook and Notice provisions not required by statute or regulation.

7. Section 8 Moderate Rehabilitation Single Room Occupancy Program (Section 441 of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11401):

- Sign Grant Agreements and amendments.

8. Comprehensive Housing Affordability Strategies (CHAS) (Section 105 of the National Affordable Housing Act, 42 U.S.C. 12705):

- Sign CHAS approval letters and related correspondence.
- Approve deadline extensions for the CHAS and CHAS Annual Performance Reports.

9. Supportive Housing Program and Supplemental Assistance for Facilities

to Assist the Homeless Program (Title IV, Subtitles C and D of the Stewart B. McKinney Homeless Assistance Act of 1987 (42 U.S.C. 11301 *et seq.*):

- Sign notification of funding approval.
- Sign Grant Agreements and amendments, and Transmittal Letters.
- Approve deadline extensions unless required by statute or regulations.
- Sign SF 718 Funding Reservations.
- Sign conditional approval letters for Supportive Housing Grants.
- Sign approval of Annual Progress Report.
- Sign grant award letters.
- Conduct environmental reviews and releases (and determine whether an applicant has the capacity to carry out environmental reviews).
- Sign IPA Audit correspondence.
- Sign Inspector General Audit correspondence.
- Sign monitoring letters to grantees.
- Waive Handbook and Notice provisions not required by statute or regulation.

10. Rental Rehabilitation Program (Section 17 of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437o):

- Monitor and close out projects.

Authority not redelegated:

- Reduce lower income benefits to 50%. (See 24 CFR 511.10(2)(3)).

11. Urban Homesteading Program (Section 810 of the Housing and Community Development Act of 1974, 42 U.S.C. 1706e):

- Monitor and closeout projects.
- Sign IPA audit correspondence.
- Sign Inspector General audit correspondence.
- Sign congressional correspondence.

12. Housing Opportunities for Persons With AIDs (Section 851 of the National Affordable Housing Act, 42 U.S.C. 12901 *et seq.*):

- Sign notification of Funding and Grant Agreements and amendments.
- Conduct environmental reviews and releases (and determine whether an applicant has the capacity to carry out environmental reviews).
- Sign SF 718 Funding Reservations.
- Sign grant award letters.
- Sign IPA Audit correspondence.
- Sign Inspector General Audit correspondence.
- Approve Annual Progress Reports.
- Sign monitoring letters for grantees.
- Waive Handbook and Notice provisions not required by statute or regulation.

In addition, the Assistant Secretary for Community Planning and Development redelegates to Directors and Deputy Directors of Community Planning and Development in HUD Field Offices the following authority:

1. To order a Limited Denial of Participation sanction, pursuant to HUD regulations at 24 CFR 24.700.

Section C. General Authority Excepted

The authority redelegated in Section B above does not include the authority to issue or waive regulations.

Section D. Authority to Further Redelegate

The authority redelegated in Section B above may be further redelegated.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 3535(d).

Dated: April 12, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94–9232 Filed 4–14–94; 8:45 am]

BILLING CODE 4210–29–P

Office of the Assistant Secretary for Housing

[Docket No. D–94–1056; FR–3668–D–02]

Federal Housing Commissioner, HUD; Revocation and Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: This notice revokes all powers and authorities currently redelegated by the Assistant Secretary for Housing—Federal Housing Commissioner to HUD Regional Administrators and/ or to HUD Field Office Managers, including any powers and authorities further redelegated by Regional Administrators and/or Field Office Managers. This notice then redelegates to Regional Housing Directors and through Regional Housing Directors to Field Office Housing officials all powers and authorities necessary to carry out Office of Housing-FHA programs (including the power to order Limited Denials of Participation sanctions).

It is anticipated that the delegation to Regional Housing Directors—as distinguished from the redelegation to Field Office Housing officials—will exist only for an interim period, so that Regional Housing Directors can provide temporary program oversight for Field Office housing activities. It is also anticipated that in the near term HUD will issue further guidance to field staff concerning their specific functions and responsibilities under the programs for which all powers and authorities are redelegated by this action. Any revocation or modification of this redelegation of authority to Regional Housing Directors will be published in the **Federal Register.**

EFFECTIVE DATE: April 8, 1994.

FOR FURTHER INFORMATION CONTACT: Robert G. Hunt, Director, Management Services Division, Department of Housing and Urban Development, 451 7th Street, SW., room 9116, Washington, DC 20410, (202) 708–0826. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's Field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD employees to serve HUD's customers more effectively. In implementing this objective, the Secretary determined to remove the Regional organizational layer and provide officials at lower organizational levels full authority to carry out program functions, with these field office officials reporting directly to program officials.

This notice revokes and redelegates program authority to meet the objectives of the reorganization for the Office of Housing—FHA. By virtue of this notice, powers and authorities of the Office of Housing—FHA will flow from the Assistant Secretary for Housing—Federal Housing Commissioner to housing officials in field offices. For an interim period, until issuance of a later redelegation, this authority will flow to and through Regional Housing Directors.

This notice revokes all authority redelegated by the Assistant Secretary for Housing—Federal Housing Commissioner to HUD Regional Administrators and/or Field Office Managers, including any authority further redelegated by Regional Administrators and/or Field Office Managers. This notice then redelegates to Regional Housing Directors and through Regional Housing Directors to Field Office Housing officials all powers and authorities necessary to carry out Office of Housing-FHA programs (including the power to order Limited Denials of Participation sanctions). Nothing in this redelegation of authority affects the power and authority previously redelegated to the Directors of the Debt Management Centers in Albany, New York, Seattle, Washington, and Chicago, Illinois.

Accordingly, the Assistant Secretary for Housing—Federal Housing

Commissioner revokes and redelegates authority as follows:

Section A. Authority Revoked

The Assistant Secretary for Housing—Federal Housing Commissioner revokes all authority currently redelegated from the Assistant Secretary for Housing—Federal Housing Commissioner to HUD Regional Administrators and/or HUD Field Office Managers including any authority further redelegated by Regional Administrators and/or Field Office Managers.

Section B. Authority Redelegated

The Assistant Secretary for Housing—Federal Housing Commissioner redelegates to Regional Housing Directors and through Regional Housing Directors to Housing Development Division Directors and Housing Management Division Directors in Regional Offices and in Category A and B Field Offices, and to Housing Division Directors in the Anchorage, Alaska, and Charleston, West Virginia Field Offices, and to Office Managers in Category C Field Offices all powers and authorities necessary to carry out the following Office of Housing-FHA programs:

Single Family Housing Programs

1. One-to-Four-Family Home Mortgage Insurance (section 203, National Housing Act (12 U.S.C. 1709(b), (i)).
2. Rehabilitation Mortgage Insurance (section 203(k), National Housing Act (12 U.S.C. 1709(4k)).
3. Homeownership Assistance for Low-and-Moderate Income Families (section 221(d)(2), National Housing Act (12 U.S.C. 1715(d)(2)).
4. Mortgage Insurance for Service Members (section 222, National Housing Act (12 U.S.C. 1715m)).
5. Mortgage Insurance in Declining Neighborhoods (section 223(e), National Housing Act (12 U.S.C. 1715n(e)).
6. Mortgage Insurance on Condominium Units (section 234(c), National Housing Act (12 U.S.C. 1715y)).
7. Mortgage Insurance for Special Credit Risks (section 237, National Housing Act (12 U.S.C. 1715z–2)).
8. One-to-Four Family Mortgage Insurance in Military Impacted Areas (section 238(c), National Housing Act (12 U.S.C. 1715z–3(c)).
9. Single Family Home Mortgage Coinsurance (section 244, National Housing Act (12 U.S.C. 1715z–9)).
10. Mortgage Insurance for Graduated Payment Mortgages (section 245, National Housing Act (12 U.S.C. 1715z–10)).
11. Mortgage Insurance for Adjustable Rate Mortgages (section 251, National Housing Act (12 U.S.C. 1715z–16)).
12. Mortgage Insurance for Home Equity Conversion Mortgages (section 255, National Housing Act (12 U.S.C. 1715)).
13. Counseling for Homebuyers, Homeowners, or Tenants (section 106, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x)).
14. Mortgage Insurance on Single Family Cooperative Units (section 213, National Housing Act (12 U.S.C. 1715e)).
15. Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (section 220(h), National Housing Act (12 U.S.C. 1715k(h)).
16. Single Family Mortgage Insurance in Disaster Areas (section 203(h), National Housing Act (12 U.S.C. 1709 (h)).
17. Insurance for Purchase of Fee Simple Title from Lessors (section 240, National Housing Act (12 U.S.C. 1715z–5)).
18. Single Family Mortgage Insurance on Hawaiian Homelands (section 247, National Housing Act (U.S.C. 1715z–12)).
19. Single Family Mortgage Insurance on Indian Reservations (section 248, National Housing Act (12 U.S.C. 1715z–13)).
20. Mortgage Insurance for Shared Appreciation Mortgages (section 252, National Housing Act (12 U.S.C. 1715z–17)).
21. Mortgage Insurance for Homeownership Assistance Mortgage Refinances (section 235(r), National Housing Act (12 U.S.C. 1715z)).
22. Expenditures to Correct Structural Defects in Mortgaged Homes (section 518, National Housing Act (12 U.S.C. 1735b)).
23. Mortgage Insurance Single Family Cooperative Housing (section 203(n), National Housing Act (12 U.S.C. 1709n)).
24. Mortgage Insurance Growing Equity Mortgages (section 245(a), National Housing Act (12 U.S.C. 1715z–10)).
25. Mortgage Insurance Experimental Housing (section 233, National Housing Act (12 U.S.C. 1715x)).
26. Mortgage Insurance in Outlying Areas (section 203(i), National Housing Act (12 U.S.C. 1709(i)).
27. Mortgage Insurance in Urban Renewal Areas (section 220(d)(3)(A)(i), National Housing Act (12 U.S.C. 1715k(d)(3)(A)(i)).
28. Mortgage Insurance for Armed Service Housing (section 809/810, National Housing Act (12 U.S.C. 1748h–1, 1748h–2)).

Multifamily Housing Programs

1. Multifamily Rental Housing for Moderate Income and Displaced Families Mortgage Insurance Program (section 221(d)(3) and (4), National Housing Act (12 U.S.C. 1715l(d)(3) and (4)).
2. Multifamily Rental Housing Mortgage Insurance Program (section 207 of the National Housing Act (12 U.S.C. 1713)).
3. Existing Multifamily Housing Mortgage Insurance Program (section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)).
4. Refinancing of Existing Insured Mortgages (section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n(a)(7)).
5. Reinsurance Pilot Program (section 542(b) of the Housing and Community Development Act of 1992 (see 12 U.S.C. 1707 Historical and Statutory Notes)).
6. Housing Finance Agency Risk Sharing Pilot Program (section 542(c) of the Housing and Community Development Act of 1992 (see 12 U.S.C. 1707 Historical and Statutory Notes)).
7. Single Room Occupancy Projects Mortgage Insurance Program (section 221(d) (3) and (4) of the National Housing Act (12 U.S.C. 1715l(d) (3) and (4), pursuant to authority in section 223(g) of the National Housing Act (12 U.S.C. 1715n(g)).
8. Manufactured Home Parks Mortgage Insurance Program (section 207 of the National Housing Act (12 U.S.C. 1713)).
9. Cooperative Housing Mortgage Insurance Program (section 213 of the National Housing Act (12 U.S.C. 1715e)).
10. Rehabilitation and Neighborhood Conservation Housing Insurance (section 220 of the National Housing Act (12 U.S.C. 1715k)).
11. Supplemental Loans for Multifamily Projects Mortgage Insurance Program (section 241 of the National Housing Act (12 U.S.C. 1715z-6)).
12. Operating Loss Loans (section 223(d) of the National Housing Act) 12 U.S.C. 1715n(d)).
13. Nursing Homes, Intermediate Care Facilities, and Board and Care Homes Mortgage Insurance Program (section 232 of the National Housing Act (12 U.S.C. 1715w)).
14. Assisted Living Facilities Mortgage Insurance Program (section 232 of the National Housing Act (12 U.S.C. 1715w, pursuant to authority in section 511 of the Housing and Community Development Act of 1992)).
15. Mortgage Insurance for Hospitals Program (section 242 of the National Housing Act (12 U.S.C. 1715z-7)).

16. Mortgage Insurance for Group Practice and Medical Practice Facilities (Title XI, National Housing Act (12 U.S.C. 1749aaa et seq.)).

17. Housing for the Elderly Mortgage Insurance Program (section 231 of the National Housing Act (12 U.S.C. 1715v)).

18. *HOPE 2:* Homeownership of Multifamily Units (Subtitle B of Title IV of the National Affordable Housing Act of 1990 (42 U.S.C. 12871 et. seq.)).

19. Direct Loans for Housing for the Elderly or Handicapped (section 202 of the Housing Act of 1959 (12 U.S.C. 1701q)).

20. Supportive Housing for the Elderly (section 202 of the Housing Act of 1959 (12 U.S.C. 1701q, as amended by section 801 of the National Affordable Housing Act)).

21. Supportive Housing for Persons with Disabilities (section 811 of the National Affordable Housing Act (42 U.S.C. 8013)).

22. Congregate Housing Services (Title IV of the Housing and Community Development Amendments of 1978, as amended by section 802 of the National Affordable Housing Act (42 U.S.C. 8011 et. seq.)).

23. Service Coordinators for Assisted Housing (section 808 of the National Affordable Housing Act, as amended by sections 674 and 676 of the Housing and Community Development Act of 1992 (12 U.S.C. 1701q(8)).

24. Housing Development Grants (section 17 of the U.S. Housing Act of 1937 (42 U.S. C. 1437o).

25. Special Purpose Grants (Pub. L.'s 101–507, 102–139, and 102–389).

26. Section 8 New Construction and Substantial Rehabilitation (section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f note)).

27. Multifamily Coinsurance Program (section 244 of the National Housing Act (12 U.S.C. 1715z–9)).

28. Section 8 Loan Management Set Aside Program (section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f)).

29. Rent Supplement Program (section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)).

30. Section 236 Rental Housing Interest Reduction and Rental Assistance Program (section 236 of the National Housing Act (12 U.S.C. 1715z–1)).

31. Below Market Interest Rate Rental Housing Program (sections 221(d)(3) and 221(d)(5) of the National Housing Act (12 U.S.C. 1715l(d) (3) and (5)).

32. Flexible Subsidy Operating Assistance Program (section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a, as amended by the Housing and Community Development Amendments of 1987)).

33. Flexible Subsidy Capital Improvement Loan Program (section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a, as amended by the Housing and Community Development Amendments of 1987)).

34. Drug Elimination Grants (Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901), as amended by section 581 of the National Affordable Housing Act of 1990 and section 161 of the Housing and Community Development Act of 1992 (42 U.S.C. 11901)).

35. Housing in Military Impacted Areas (section 238(c) of the National Housing Act (12 U.S.C. 1715z–3(c)).

36. Section 8 Assistance for Property Disposition Resales (section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f)).

37. Management and Disposition of HUD-owned Multifamily Housing Projects (section 203 of the Housing and Community Development Amendments of the 1978 (12 U.S.C. 1701z–11)).

38. Emergency Low-Income Housing Preservation Program (Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note)).

39. Low-Income Housing Preservation and Resident Homeownership Program (Subtitle A of Title VI of the National Affordable Housing Act of 1990 (12 U.S.C. 4101 et. seq.)).

In addition, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates to the above-mentioned HUD officials the authority to order a Limited Denial of Participation sanction, pursuant to HUD regulations at 24 CFR 24.700.

Section C. Authority Excepted

Category D Field Office officials are not redelegated authority under this notice. The authority redelegated in Section B above does not include the authority to issue or waive regulations.

Section D. Authority to Further Redelegate

The authority redelegated in section B above may be further redelegated.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. section 3535(d).

Dated: April 8, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 94–9236 Filed 4–14–94; 8:45 am]

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federal register

Friday
April 15, 1994

Part V

The President

Proclamation 6668—National Day of Prayer, 1994

Proclamation 6669—251st Anniversary of the Birth of Thomas Jefferson

Federal Register
Vol. 59, No. 73
Friday, April 15, 1994

Presidential Documents

Title 3—

The President

Proclamation 6668 of April 12, 1994

National Day of Prayer, 1994

By the President of the United States of America

A Proclamation

In a country built by people from hundreds of nations and with as many beliefs, we rely upon our religious liberty in order to preserve the individuality and great diversity that give our Nation its unique richness and strength of character. America's founders saw the urgent need to protect religious freedom and opened debate on the important subject when the Continental Congress gathered in Philadelphia to chart a course for our nascent country. After hearing Massachusetts delegate Samuel Adams' plea, the Congress voted to begin its session with a prayer. When the framers of the Bill of Rights set down our fundamental rights, the free exercise of religion rightfully took its place at the head of our enumerated liberties.

As our Nation has grown and flourished, our Government has welcomed divine guidance in its work, while respecting the rich and varied faiths of all of its citizens. Many of our greatest leaders have asked God's favor in public and private prayer. From patriots and presidents to advocates for justice, our history reflects the strong presence of prayer in American life. Presidents, above all, need the power of prayer, their own and that of all Americans.

We need not shrink as Americans from asking for divine assistance in our continuing efforts to relieve human suffering at home and abroad, to reduce hatred, violence, and abuse, and to restore families across our land. By following our own beliefs while respecting the convictions of others, we can strengthen our people and rebuild our Nation. As Micah reminds us, we must strive "to do justly, and to love mercy, and to walk humbly" before God.

The Congress, by joint resolution approved April 17, 1952, having recognized the role of faith and prayer in the lives of the American people throughout our history, has set aside a day each year as a "National Day of Prayer." Since that time, each President has proclaimed an annual National Day of Prayer, resuming the tradition begun by our leaders in the Nation's earliest days. Pursuant to Public Law 100–307 of May 5, 1988, the first Thursday of each May has been set aside as a National Day of Prayer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 5, 1994, as a National Day of Prayer. I encourage the citizens of this great Nation to gather, each in his or her own manner, to recognize our blessings, acknowledge our wrongs, to remember the needy, to seek guidance for our challenging future, and to give thanks for the abundance we have enjoyed throughout our history.

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

William J. Clinton

[FR Doc. 94–9332
Filed 4–14–94; 9:32 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6669 of April 13, 1994

251st Anniversary of the Birth of Thomas Jefferson

By the President of the United States of America

A Proclamation

"I am certainly not an advocate for frequent and untried changes in laws and constitutions," Thomas Jefferson once wrote, "But . . . laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change . . . institutions must advance also, and keep pace with the times."

These words have challenged and inspired the countless millions who have come to America's capital and have seen them inscribed on the marble wall of the Jefferson Memorial. Jefferson's statue presides nobly over America's capital city, a steadfast and enduring reminder of the democratic government that he helped to found. Yet unlike his unchanging visage, our democracy's institutions have proved to be remarkably agile in governing, maturing as society has progressed, evolving as human knowledge and technology have advanced—far beyond Jefferson's imagining. Of all the truths Jefferson knew to be self-evident, of all the freedoms he held dear, this understanding of the need for political and social innovation is perhaps his most lasting gift. He helped to endow us with the freedom to embrace change.

As we complete the year celebrating the 250th anniversary of his birth, it is entirely fitting that we again pause to reflect upon both the contradictions of Jefferson's life and the meaning of his legacy. Far from the sculpted perfection of his statue, Jefferson acknowledged, even anguished about, his failings as a leader. In expressing his fervent hope that we would one day purge the evil of slavery from our land, he wrote, "I tremble for my country when I reflect that God is just, that his justice cannot sleep forever." Despite his flaws, Jefferson imbued us with his powerful faith that justice would ultimately transcend our seeming inability to do what we know is right. And I believe he would rejoice to know how far America has come toward winning equal justice under law.

In the United States, we must constantly relearn his teaching that change is both an inevitable and essential part of safeguarding our precious freedoms. We recognize, as he did in his day, that our democracy must continue to develop, that we must shape our politics and policies to meet the rapidly shifting needs of our people and to embrace the better angels of our nature. On this day, we remember that our Nation is an ongoing experiment, a new and fragile spirit, requiring our eternal care and vigilance if it is to continue to grow and prosper and shine.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Wednesday, April 13, 1994, as the 251st Anniversary of the Birth of Thomas Jefferson. I encourage all Americans to reflect upon his words and deeds and to rededicate themselves to making our Nation one of which he would be proud. Additionally, I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

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

William J. Clinton

[FR Doc. 93–9360
Filed 4–14–94; 11:11 am]
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Editorial note: For the President's remarks at a dinner honoring Thomas Jefferson, see the *Weekly Compilation of Presidential Documents* [vol. 30, issue 15].

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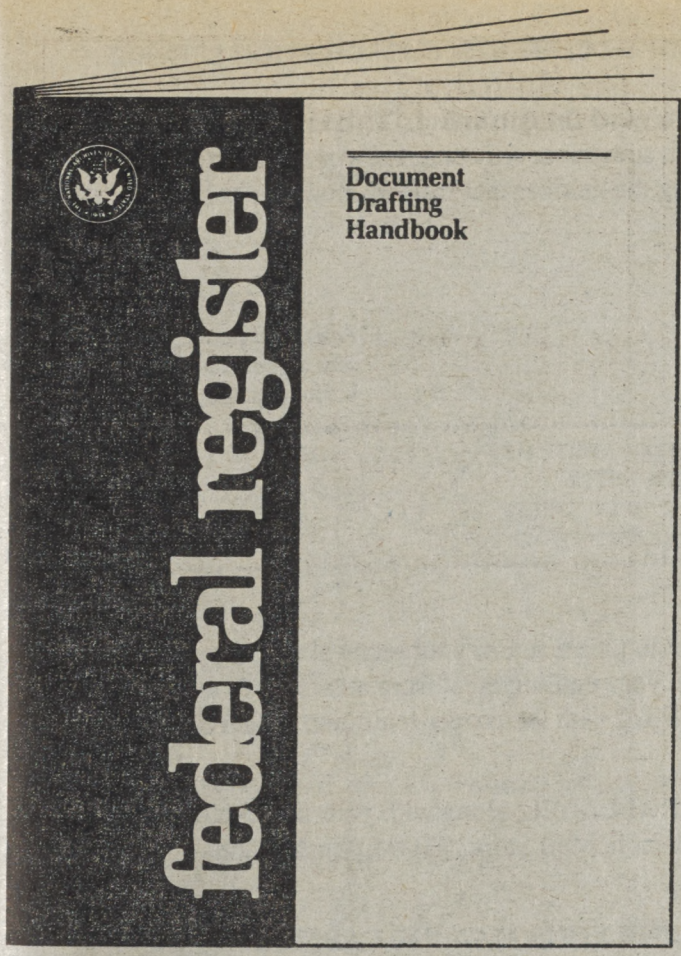

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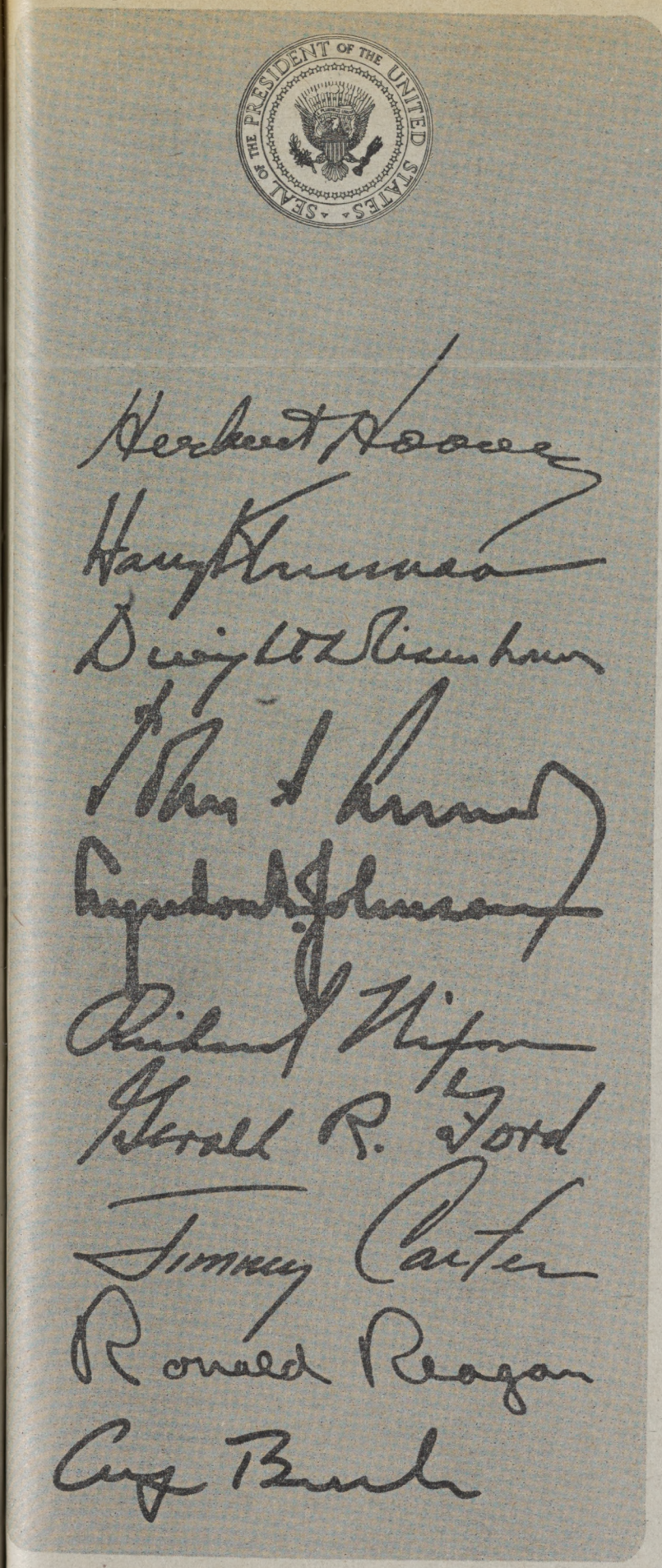

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